

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 524 of 1999

Order reserved on 18.09.2019

Order pronounced on 26.09.2019

Dukalhin Bai, wife of Chamarrai Yadav, aged 35 years, resident of Village Lacchanpur, P. S. Baloda Bazar, District Raipur, MP.

(Now CG)

--- Appellant

Versus

State of Madhya Pradesh **(Now CG)**

--- Respondent

For Appellant : Mr. Deepak Jain, Advocate

For State/Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

Complainant Kanshram (PW-1) and the accused/appellant herein are the brother-in-law and sister-in-law in relation living under the same roof at the relevant time. As per the case of the prosecution, on 27.11.1996 at about 4 PM the complainant (PW-1) made his one and half month old son Rajesh sleep on the cot and left for his household related daily chores putting his another 10 years old son Satyanarayan (PW-5) on guard to take care of him. When PW-1 returned home from the grain-yard he saw the accused/appellant hastening out of the room where Rajesh was asleep. In the meanwhile, he heard the broken cries of Rajesh emanating from the said room and when he along with his mother Malti (PW-7) and another sister-in-law Krishna (PW-6) went inside the room to take stock of the situation they all felt an odour of insecticide emanating therefrom as also from the mouth of infant Rajesh. Thereafter the complainant and his wife took the child to hospital where he remained admitted from 27.11.1996 to 29.11.1996. It is alleged that about a year prior to the date of incident there used to be some quarrel with the accused and the complainant's family as she did not take proper interest in the household work and it is for that she administered insecticide to Rajesh. On the basis of Dehati Nalsi (Ex.P-1) lodged by Kanshram (PW-1)

FIR (Ex.P-1A) was registered for the offences under Sections 328 and 307 IPC. Further investigation culminated in filing of charge-sheet and framing of charge against the appellant under these sections.

2. Having examined number of witnesses and gone through the evidence collected by the prosecution learned trial Court convicted the accused/appellant under Sections 328 and 307 IPC with imposition of sentence of RI for 7 years and fine of Rs.1000/-, plus default clause under Section 307 IPC. However, being the cognate offence, no separate sentence was imposed under Section 328 IPC.

3. Counsel for the accused/appellant submits that though none has seen the accused/appellant administering insecticide on the infant child yet the Court below has erroneously held her guilty for that by the judgment impugned. According to him, as there is no motive on the part of the accused/appellant to eliminate a child in his infancy, the view taken by the Court below convicting and sentencing her as mentioned above is not worthy of approval by this Court. His overall submission is that the view taken by the Court below being contrary to the evidence on record cannot be allowed to stand as it would result in miscarriage of justice.

4. State counsel however supports the judgment impugned and submits that PW-1 and PW-5 have categorically stated that the accused/appellant had entered the room where the infant child was sleeping. He submits that PW-5 who was put on guard of the said child has stated that after PW-1 went out after making the child asleep in the room, the accused/appellant came there, took the child in her lap and tried to do something with him. He further submits that even PW-1 has also seen the accused/appellant coming out of the room as soon as he got back thereto and it is only then the infant child started crying uncontrollably. State counsel thus holds the view of the Court below to be fully justified and does not call for any interference by this Court.

5. From the evidence of PW-1 it is clear that after he returned home, the accused/appellant was seen rushing out of the room where the infant child was sleeping, and immediately thereafter the child started crying bitterly. He has further stated that when he along with PW-7 and PW-6 went inside, some foul smell of insecticide was coming out of the said room. Mouth of the infant child also smelt the insecticide. PW-5 who was put on guard has also supported the case of the prosecution stating that after departure of PW-1, the accused/appellant came there and took the child in her lap and did something with him making him cry effortlessly. Doctor M.A. Deodhar (PW-2) who medically examined the infant child has categorically stated that the child was irritable, having bouts of unconsciousness, bad smell was emanating from his mouth, heart beat and breath rate of the child was 140 and 30 respectively. The opinion given by him says that the child was administered some poisonous substance. Clinical cleansing of the stomach of the child was also undertaken, and that he remained hospitalized from 27.11.1996 to 29.11.1996. In cross-examination also he has reiterated that mouth of the infant child smelt something like an insecticide. PW-3 and PW-4 are the witnesses to memorandum and seizure (Ex.P-6 and Ex.P-7) on the basis of which a phial was seized at the instance of the accused/appellant. Satyanarayan (PW-5) a minor witness though has been declared hostile yet he has stated that the accused/appellant came to the room where infant was sleeping and took him in her lap. Thereafter he expressed his ignorance as to what happened then. PW-7 and PW-6 have stated that the infant child, at the relevant time, was with PW-5 and crying bitterly. They however did not see anyone going and coming out of the said room. Query report (Ex.P-4) given by the doctor further clarifies that the poison injected to Rajesh was insecticide and the death could have occurred because of it. He has reiterated the same thing in his deposition giving to the Court also. FSL report (Ex.P-11) also says that the stomach cleansing

material marked as Article-B was (fenvalerate pyrethroid) – a kind of insecticide.

6. Thus the factual aspect of the matter dealt with above, goes to show that it is accused/appellant who tried to eliminate the child by administering some poisonous substance and, therefore, the Court below did not go wrong in convicting her under Sections 307 and 328 IPC and imposing the sentence described above. Clear evidence is there that she went inside the room after getting an opportune time, took the infant in her lap and it is from the said room including the mouth of the child that the bad smell was emanating. The medical evidence also stands by the prosecution. No illegality or infirmity with the well reasoned finding of conviction recorded by the Court below is visible warranting any interference in this appeal. Conviction of the appellant is thus maintained.

7. As regards sentence, considering the fact that the incident had taken place in the year 1996 and thereby about 23 years have passed by, and further keeping in mind that the accused/appellant is a woman, this Court thinks that the sentence imposed on her by the Court below is too harsh and needs some modification. Accordingly, the jail sentence imposed on the accused/appellant is reduced to RI for 3 years from that of 7 years. Since she remained inside just for about a year, she would be further required to go to jail and complete the remainder of the sentence. Order accordingly.

8. The accused/appellant who is on bail, therefore, is directed to be arrested forthwith and dispatched to the prison to complete the modified sentence. Appeal thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge