

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.532 of 2023**

Arising Out of PS. Case No.-598 Year-2020 Thana- AMARPUR District- Banka

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Suman Devi, Wife of Balmukund Tanti, R/o Village- Solempur, P.S.-  
Amarpur, Distt.- Banka, Bihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Ankit Katriar, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**and**

**HONOURABLE MR. JUSTICE SOURENDRA PANDEY**

**C.A.V. JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE SOURENDRA PANDEY)**

**Date : 17-10-2025**

We have heard Mr. Ankit Katriar, learned counsel for the appellant and Mr. Bipin Kumar, learned Additional Public Prosecutor.

2. The present appeal arises out of the judgment of conviction dated 03.11.2022 and the order of sentence dated 10.11.2022 passed by the learned Additional Sessions Judge-I,



Banka (Bihar) in connection with Sessions Trial No. 249 of 2021, arising out of Amarpur P.S. Case No. 598 of 2020.

3. By the impugned judgment, referred to above, the appellant has been convicted for the offences under Sections 302, 323 and 341 of the Indian Penal Code (*in short referred to as the 'IPC'*) and has been sentenced to undergo life imprisonment with a fine of Rs. 500/- and in default of payment of fine, to further suffer simple imprisonment of one week for the offence under Section 302 of the IPC and has been sentenced to undergo imprisonment of one month each for the offences under Sections 323 and 341 of the IPC.

**Prosecution Case :**

4. The prosecution case is based on the written application dated 02.10.2020 given by the informant (P.W. 2). In his written report, the informant has stated that on 02.10.2020 at around 14:00 hours, when he was working at the poultry-farm of his village, one Dhananjay Tanti informed him that his 7 years old son, namely, Sohit Kumar is lying in an unconscious state and is unable to breathe. It is further alleged that when he reached to his home, he found his son dead. Thereafter, the father and the mother of the informant, namely, Bhudev Tanti and Sita Devi,



respectively, told the informant that his wife, Suman Devi (appellant), has killed his son by suffocating him.

5. On the basis of the aforesaid written application, Amarpur P.S. Case No. 598 of 2020, dated 02.10.2020, was registered for the offences punishable under Section 302 of the IPC.

6. After completion of investigation, the Investigating Officer, namely, Ramashray Prasad (P.W. 5) has submitted Charge-Sheet, being Charge-Sheet No. 465 of 2020, dated 31.12.2020, under Sections 341, 323 and 302 of the IPC.

7. Charges were read over and explained to the accused/appellant, namely, Suman Devi, in Hindi to which, she pleaded not guilty and claimed to be tried.

8. The cognizance of the offences under Sections 341, 323 and 302 of the IPC was taken on 28.01.2021.

9. The prosecution has examined altogether six witnesses and also exhibited some documentary evidences in course of trial. The description of the prosecution witnesses and the exhibits are being mentioned hereunder in tabular forms:-

**List of Prosecution Witnesses :**

P.W. 1	Shashi Yadav
P.W. 2	Balmukund Tanti
P.W. 3	Fulo Devi
P.W. 4	Dr. Ashish Ranjan Kumar



P.W. 5	Ramashray Prasad
P.W. 6	Sita Devi

**List of Exhibits on behalf of the Prosecution :**

Ext. P1/P.W. 2	Signature of the informant on written information
Ext. P2/P.W. 4	Signature of the doctor on the <i>post-mortem</i> report
Ext. P3/P.W. 5	Endorsement of the then SHO on the FIR
Ext. P4/P.W. 5	Signature on the formal FIR

10. Thereafter, the statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure. The accused/appellant denied all the allegations leveled against her and took a plea that she is innocent.

**Findings of the Learned Trial Court :**

11. The learned Trial Court, after examining all the evidences available on the record, found that the allegation as alleged by the prosecution is beyond all reasonable doubts. Before the death of the deceased, only the accused/appellant (Suman Devi) was present in the house and on the body of the deceased (Sohit Kumar), four nail bites were found in front of neck with bruises and abrasions. The cause of death was “asphyxia due to strangulation”. The accused/appellant has failed to prove that the deceased died naturally.

**Submissions on behalf of the appellant :**

12. Learned counsel appearing on behalf of the appellant has submitted that the evidences produced by the prosecution are



marred by contradictions and, hence, cannot be relied upon in order to convict the appellant. It has been submitted that the Medical Officer (P.W. 4), who had conducted the *post-mortem* examination of the deceased, has stated that the cause of death was “asphyxia due to strangulation”, but during his cross-examination, he has mentioned the cause of death as “asphyxia by nail and there was no sign of strangulation”. In such a condition, it has been submitted that very cause of death becomes doubtful and it could not be relied upon.

**13.** It has further been pointed out that P.W. 2, Balmukund Tanti, who is the father of the deceased, in his deposition has stated that there was injury on the back of the head of the deceased and blood was oozing out. However, such statement of P.W. 2 has not been corroborated by the Medical Officer (P.W. 4).

**14.** Learned counsel for the appellant has submitted that the Police Officer (P.W. 5), who had recorded the *fardebayan* of the informant (P.W. 2) at Amarpur Police Station on 02.10.2020, has not been examined and as such, the *fardebayan* has not been proved. It has further been submitted that there is no eye-witness to the incident and the grandmother of the deceased (P.W. 6) has falsely framed her daughter-in-law (appellant). From her contradictory statement, it would be evident that even she had not seen the incident. It has been submitted that from the perusal of the deposition of the father of the deceased (P.W. 2), it would manifest that he has reiterated what his



mother (P.W. 6) had told him and has framed his wife (appellant) for the murder of his own child, although there was no eye-witness.

**15.** Learned counsel for the appellant has submitted that there is absolutely no proved motive on the part of the appellant in the present case as from the perusal of the various depositions, it would be evident that there has not been a single incident of ill-treatment of the deceased at the hands of the appellant (Suman Devi). It has further been submitted that P.W. 6, the mother of the informant (P.W. 2), though has stated to be an eye-witness to the said incident and the entire case has been established on her statement, but there is substantial difference in the statements given by her in the deposition and the cross-examination and these contradictions cut at the root of the entire prosecution case and make the same doubtful.

**16.** It has next been submitted that the Trial Court has passed the judgment and order of conviction and sentence, referred to above, merely on the basis of conjectures and surmises and has ignored the contradictions inherent in the deposition of the prosecution witnesses. The prosecution, it has been argued, has failed to prove its case beyond all reasonable doubts. It has also been submitted that in absence of *mens-rea*, the prosecution has miserably failed in its effort to suggest that it was the appellant who had inflicted injuries, causing death of her stepson.



17. It has been pointed out by the learned counsel for the appellant that conspicuously the two signatories of the *fardebayan*, viz., Umesh Tanti and Ravindra Tanti, were also not examined by the prosecution, raising serious doubt over the veracity of the content of the *fardebayan*. It has lastly been submitted that the appellant is a lady and has a young child with her, who is also residing within the jail premises with her mother, the appellant.

**Submissions on behalf of the State :**

18. Mr. Bipin Kumar, the learned Additional Public Prosecutor for the State, has submitted that the appellant being the stepmother and also found alone with the child in the house, which was seen by the grandmother of the deceased (P.W. 6), there is no iota of doubt with regard to her culpability in the present case. It has been submitted that the *post-mortem* report confirms the homicidal death of the stepson of the appellant as the cause of death was found to be “asphyxia due to strangulation”. It has further been submitted that the factum of the appellant being present at the house alone at the time of the incident has been proved by the consistent evidence of the prosecution witnesses and such ocular evidence has gone on to prove the fact that the appellant was alone with the child and as stated by the grandmother (P.W. 6), who has categorically stated that the appellant had dragged the child (deceased) from the by lanes in order to make him eat and had bolted the doors from inside and,



subsequently, she had seen the appellant sitting on the child and pressing his neck. P.W. 6 has further stated that soon thereafter, the appellant brought the child outside the room and made him lie down on the cot. In view of such specific ocular evidence, there is no requirement of any other evidence to prove the fact that it was the appellant who had committed the murder of her stepson by strangulation.

**19.** Thus, it has been submitted on behalf of the State that there is no illegality in the findings arrived at by the learned Trial Court and, hence, the appeal is fit to be dismissed and the judgment of conviction and order of sentence, referred to above, be affirmed.

**Consideration :**

**20.** We have considered the rival submissions canvassed by the learned counsel for the parties and have also gone through the evidence produced by the parties before the learned Trial Court.

**21.** From perusal of the records, it would appear that the present case was initiated on the basis of the *fardebayan* of the informant (P.W. 2), namely, Balmukund Tanti, who had alleged that on 02.10.2020 at around 02:00 P.M., while he was working at the poultry-farm, he heard the news that his son was lying in an unconscious state and is unable to breathe. On hearing such news, he came back to his house and found that his son, namely, Sohit Kumar was lying dead and his father (Bhudev Tanti) and mother (Sita Devi)



informed him that his wife, namely, Suman Devi (appellant), had killed his son by suffocating him. An information to this effect was, thereafter, given to the Amarpur Police Station, upon which, a formal FIR was drawn.

**22.** Before proceeding ahead, it would be apt to first refer to the evidences led by the prosecution.

**23.** P.W. 1, Shashi Yadav, is a villager and he has merely stated that he learnt about the death of the child who was around five to six years old and was lying dead in the lap of his grandmother and apart from this, he does not know anything.

**24.** P.W. 2, Balmukund Tanti, happens to be the informant and the father of the deceased. He, in his examination-in-chief, has stated that he received the news of the death of his son while he was working at the poultry-farm and when he came back, he saw his son lying dead in the lap of his mother. P.W. 2 has stated that there was red sign on both the cheeks of his son and he was killed by suffocating. He has also stated that there was a cut sign on his forehead. He further states that his mother had told him that his wife had killed his son and when he inquired about the same from his wife, she told him that she killed the deceased due to mistake and she had not thought that he would die. P.W. 2, during his cross-examination, has stated that the appellant is his second wife and he had two sons, namely, Sohita (deceased) and Sumit from his first wife, namely, Geeta



Devi. He has stated that the name of his third wife is Pinki Devi, while his second wife (appellant) is in custody. He has accepted that the occurrence had not taken place before his eyes and he had given this statement to the police, who had recorded his statement at his house. P.W. 2 has also admitted the fact that there was no quarrel or dispute in the family since before. He has stated that one Dhananjay of the village had informed him about the incident. He has further stated that said Dhananjay informed him that the entire village knows about the incident and the fact that his son has been done to death by my wife (appellant). He has also stated that there was an injury behind the head of the deceased and blood was coming out and there were signs on the face and neck of the deceased.

**25.** P.W. 3, Fulo Devi, is a neighbour, who has stated that while she was working at her home, the deceased, Sohita Kumar, aged about 7 years, had come to play at her house and thereafter, his stepmother (appellant) came and took him for food. She has further stated that, thereafter, she had gone to the fields and later on, at around 4 - 5 O'clock in the evening, she heard that Sohita is dead. She has also stated that there were signs of injury on the cheeks and neck as also on the forehead of the deceased. During her cross-examination, she has stated that she does not know as to how Sohita Kumar (deceased) had died. P.W. 3 has also stated that prior to the



incident, there was no fight and quarrel or dispute between Suman (appellant) and her in-laws.

26. P.W. 4, Dr. Ashish Ranjan Kumar, is the Doctor, who had conducted the *post-mortem*, on the body of the deceased (Sohit Kumar), had found the following injuries:

*“External - 4 nail bite in front of neck; Bruise 3” x 1/2” on Rt. Cheek; Abrasion 1” x 1” on Lt. Cheek and Abrasion 1 ½” x 1” on upper Cheeks.*

*Internal - Lungs-Congested; Stomach-Empty; Rt. Heart-fill blood and Lt. Heart-Empty.*

*On section neck blood clot present in derms of mussels of the layers.*

*Cause of death – Asphyxia death due to strangulation.*

*Time of death – 18 to 21 hrs.”*

P.W. 4, during his cross-examination, has stated that this is ligature strangulation. However, he did not mention it on the *post-mortem* report. He has further stated that he found “asphyxia by nail and there was no any sign of strangulation”.

27. P.W. 5, Ramashray Prasad, happens to be the Investigating Officer of the case, who has stated that the informant (P.W. 2) had supported the prosecution case in his reinstatement and thereafter, the statements of the witnesses, namely, Shashi Yadav and Fulo Devi, were recorded and they had all supported the prosecution case. He has also stated that the *fardebayan* is in the handwriting of the then SHO, namely, Arvind Kumar Rai, which he recognizes and the same was exhibited. P.W. 5, during his cross-examination, has



admitted that he had not recorded the statement of the two witnesses of the *fardbeyan*, namely, Umesh Tanti and Ravindra Tanti. He has also stated that the informant got to know about the incident by one Dhananjay Tanti. However, he had not recorded the statement of said Dhananjay Tanti. He has also admitted that he had not recorded the statement of the boundary witnesses, namely, Shyam Tanti and Arjun Tanti. P.W. 5 has also admitted that the *Chowkidar* had taken the deceased for the *post-mortem* and he has also not recorded his statement.

**28.** P.W. 6, Sita Devi, who is the mother-in-law of the appellant and the grandmother of the deceased, has claimed herself to be an eye-witness to the occurrence. She, in her examination-in-chief, has stated that Suman Devi (appellant) brought Sohit (deceased) by dragging him by the lanes and on her asking about as to where she was taking him, the appellant is said to have responded that she is taking him for feeding and thereafter, she bolted the doors from inside. This witness has subsequently stated that the appellant, after taking the child inside the room, slammed him on the floor and sat on his penis and strangulated him. She further states that when the child shouted, then she inquired as to what had happened, upon which, the appellant is said to have stated that he is crying for taking the food. She has further stated that then she opened the door and found that the child was breathing lightly and thereafter, he died in the house. She



has also stated that then the Police was called, who arrested the appellant and took her away and thereafter, she informed her son (P.W. 2) about the incident. P.W. 6 has stated that the appellant is the stepmother of Sohit (deceased). During her cross-examination, this witness has categorically stated that Suman Devi (appellant) had been staying for the last six months in the house and during the said period, no quarrel or altercation had ever taken place between them. She, however, states that she did not give food to the children. In paragraph 7 of her cross-examination, she has stated that the appellant took the child inside the room and bolted the doors. She has gone on to state that she had heard the sound of shouting of the child and had seen him sitting and was lashed to the cot by means of a towel. She further states that the child was dragged out of the room by the appellant itself and was made to lie down on the cot. P.W. 6 has added that she had gone inside the house and saw her (appellant) beating the child.

**29.** Upon careful examination of evidences of the prosecution, it is apparent that the child had died an unnatural death and as per the *post-mortem* report, the cause of death was stated to be “asphyxia death due to strangulation”.

**30.** We have already noted hereinabove the *ante-mortem* injuries found on the body of the deceased. On perusal of the same, it appears that the deceased had died due to pressure on his neck, which



could have been caused by pressing of the fingers, causing marks of nail on the neck of the deceased. We have also taken note of the reference of the injuries in the inquest report, wherein, the Police Officer has stated in Column - 5 about the injuries on the left part of the forehead, injury on the left cheek and abrasions on the neck. On comparison of the two important documents/exhibits, it would appear that there is no exact reference to the injuries. We have also observed that there is no apparent injury which would suggest that the child had been strangled by an object.

**31.** This lead us to co-relate the same with the ocular evidence of the sole eye-witness, the grandmother of the deceased (P.W. 6), who has stated that the appellant had been pressing the neck of the child. P.W. 6 has stated that she had opened the door and entered the house and saw that the child was breathing lightly and thereafter, he died. During the cross-examination, she has also stated that she had seen the child sitting lashed to the cot with the help of a towel and thereafter, she had stated that the child was dragged out from the room by the appellant itself, who kept the body of the child on the cot. This statement of P.W. 6 does not inspire confidence as she at once said that the appellant had closed the door, but on the other hand, she has stated that she entered the room and saw the child breathing lightly.



32. The statement of P.W. 2, Balmukund Tanti, during his examination-in-chief, is of utmost importance, wherein, he has stated that “.....पत्नी से पुछे तो पत्नी ने कहा कि गलती से मार दिया सोचे नहीं थे कि मर जायेगा परन्तु मर गया। अब केश वगैरह मत करो यही कह रही थी। .....” [when he asked his wife, she said that she had accidentally killed him (child); she had not thought he would die, but he did. She was also requesting him for not lodging the case].

33. Considering the aforesaid testimony of P.W. 2, the husband of the appellant and the father of the deceased, and comparing the same with the *post-mortem* report and the *ante-mortem* injuries, referred therein, we examined the matter as to whether it is a case of culpable homicide amounting to murder or that it may be a case of culpable homicide not amounting to murder. Sections 299, 300, 302 and 304 of the IPC are extracted hereinbelow for ready reference:

**299. Culpable homicide.**-Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

**300. Murder.**-Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

2ndly.-If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-



*3rdly.-If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-*

*4thly.-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.*

**302. Punishment for murder.-***Whoever commits murder shall be punished with death or [imprisonment for life], and shall also be liable to fine.*

**304. Punishment for culpable homicide not amounting to murder.-***Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”*

**34.** From the perusal of the provisions contained in Section 304 of the IPC, one fundamental difference between murder, as defined under Section 300 IPC, and culpable homicide not amounting to murder, as defined under Section 304 of the IPC, is “intention” of the offender.



35. The Hon'ble Supreme Court in case of **Chunni Bai Vs. State of Chhattisgarh : 2025 SCC Online SC 955**, has held in paragraphs 18 & 19 as follows:

18. *The difference between “murder” and “culpable homicide not amounting to murder” has been succinctly explained by this Court in State of A.P. v. Rayavarapu Punnayya, (1976) 4 SCC 382 in the following words:*

“12. *In the scheme of the Penal Code, “culpable homicide” is genus and “murder” its specie. All “murder” is “culpable homicide” but not vice-versa. Speaking generally, “culpable homicide” sans “special characteristics of murder”, is “culpable homicide not amounting to murder”. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, “culpable homicide of the first degree”. This is the greatest form of culpable homicide, which is defined in Section 300 as “murder”. The second may be termed as “culpable homicide of the second degree”. This is punishable under the first part of Section 304. Then, there is “culpable homicide of the third degree”. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.”*

19. *The difference was further elucidated in Rampal Singh v. State of U.P., (2012) 8 SCC 289 in the following words:*

“18. *This Court in Vineet Kumar Chauhan v. State of U.P. [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915] noticed that academic distinction between “murder” and “culpable homicide not amounting to murder” had vividly been brought out by this Court in State of A.P. v. Rayavarapu Punnayya [(1976) 4 SCC 382 : 1976 SCC (Cri) 659] where it was observed as under: (Vineet*



*Kumar case [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915], SCC pp. 665-66, para 16)*

*“16. .... that the safest way of approach to the interpretation and application of Sections 299 and 300 IPC is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of Sections 299 and 300 IPC and drawing support from the decisions of this Court in Virsa Singh v. State of Punjab [AIR 1958 SC 465 : 1958 Cri LJ 818] and Rajwant Singh v. State of Kerala [AIR 1966 SC 1874 : 1966 Cri LJ 1509] , speaking for the Court, R.S. Sarkaria, J. neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the Court said that wherever the court is confronted with the question whether the offence is ‘murder’ or ‘culpable homicide not amounting to murder’, on the facts of a case, it [would] be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to ‘culpable homicide’ as defined in Section 299. ... If the answer to this question is in the negative the offence would be ‘culpable homicide not amounting to murder’, punishable under the First or the Second Part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be ‘culpable homicide not amounting to murder’, punishable under the First Part of Section 304 IPC. It was, however, clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative.”*



**36.** As we have seen, the factum of the prosecution case was that the appellant had taken the child inside the room for giving him food and during such process, the child died. If the ocular testimony of P.W. 6, the grandmother of the deceased, is to be believed and taken into account, it could easily be gathered that the appellant was trying to feed the child after he was brought from the house of the neighbour, Fulo Devi (P.W. 3), and in such course, she might have used some kind of force to make him eat without realizing that such force could not be sustained by the child, who died due to suffocation. As per the definition of Section 300 of the IPC, it was a death which the appellant neither intended nor knew herself to be likely to cause death of the child.

**37.** It is relevant to state here that the prosecution witnesses have categorically stated that there was no difference or dispute between them and as such, there was no motive for the appellant to commit such a crime which had no direct bearing to her benefit.

**38.** On the contrary, we have also observed the conduct of the appellant that her intentions were rather pious as she was trying to make the child eat some food, who was, admittedly, playing at the neighbour's house from where the appellant had brought him back to the house and closed the doors in order to make him eat. Such conduct of the appellant shows the soft-side of a mother, who was trying to feed the child/son, who was playing without taking any food.



This fact can also be gathered from the *post-mortem* report of the deceased, wherein, from the internal examinations, the stomach of the child was found to be empty. While saying so, this Court has also taken into account the conduct of the appellant in not fleeing from the place of occurrence after the incident had taken place.

**39.** From the evidence on record, we have seen that the Doctor (P.W. 4) has opined the cause of death as “asphyxia due to strangulation”. However, from the external injuries, he found 4 nail bites on the body of the deceased in front of the neck, bruise on right cheek, abrasion on left cheek and abrasion on upper cheeks. Referring to these injuries, the Doctor (P.W. 4) opined that none of the injuries would go to suggest that they are of such nature, which could have caused the death of the child. The Doctor (P.W. 4), in paragraph 2 of his cross-examination, has stated that this was ligature strangulation, which he had not mentioned on the *post-mortem* report. He has further stated that he had found asphyxia by nail and there was no sign of strangulation. Thus, from such injuries, it does not reflect that the deceased had been strangulated. However, he died of asphyxia.

**40.** As already observed, the intention to kill is one of the major ingredients for an offence to be counted as murder and in order to perceive “intention” in the present case, the entire circumstances



needs to be taken into consideration for establishing the specific intention for causing death of the deceased.

41. We have already given our reasons doubting the *mens-rea* of the appellant and, in fact, we have seen that she had, as per P.W. 6, the grandmother of the deceased, taken the child inside the room during the day time in order to feed him, though in some harsh manner.

42. In view of the aforesaid discussions, we find that the conviction of the appellant under Section 302 IPC is not being made out, considering the circumstances under which the child was found to be dead. As discussed above, we have seen that there was no immediate circumstance or motive in which the appellant could have committed the murder of her stepson. However, if we accept the ocular evidence of the sole-eyewitness, P.W. 6, even then, the intention of committing murder could not be found. However, we are of the opinion that it is a case of culpable homicide not amounting to murder and it will come under Section 304 Part-II of the IPC.

43. In the case of ***Gurmukh Singh Vs. State of Haryana : (2009) 15 SCC 635***, the Hon'ble Supreme Court has held in paragraph 23 as follows:

*“23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:*



- (a) Motive or previous enmity;*
- (b) Whether the incident had taken place on the spur of the moment;*
- (c) The intention/knowledge of the accused while inflicting the blow or injury;*
- (d) Whether the death ensued instantaneously or the victim died after several days;*
- (e) The gravity, dimension and nature of injury;*
- (f) The age and general health condition of the accused;*
- (g) Whether the injury was caused without premeditation in a sudden fight;*
- (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;*
- (i) The criminal background and adverse history of the accused;*
- (j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;*
- (k) Number of other criminal cases pending against the accused;*
- (l) Incident occurred within the family members or close relations;*
- (m) The conduct and behaviour of the accused after the incident.*

*Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?*

*These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.”*



44. From the above, it would be evident that from the evidence which has been led by the prosecution, we do not find that the death was caused with pre-motivation. We have seen that there was no weapon used by the accused/appellant in committing the crime and even the injuries received by the deceased do not go on to show/prove that they would have ordinarily cause death of a person. The intention/knowledge of the accused while inflicting the injuries, which were found on the body of the deceased, are also not being proved rather the deposition of P.W. 2, the father of the deceased and the husband of the accused/appellant, ratifies the same, wherein, he has stated that his wife on being asked as to why she did it, she stated that it was done accidentally and she had not thought he would die. We have also seen that there was no motive as also any kind of quarrel or dispute between the accused/appellant and her in-laws. This Court has observed that the occurrence had taken place in broad day light in presence of P.W. 6, the mother of the deceased, and the conduct and behaviour of the accused/appellant after the incident, wherein, she had brought the body of the deceased out of the room, laid it on the cot and stayed there and did not make any attempt to flee.

45. The conviction of the appellant under Section 302 IPC is, thus, altered to one under Section 304 Part-II of the IPC.



**46.** It appears from the case records that the appellant is in custody since 03.10.2020 and has, thus, spent about five years in jail by now. Mr. Katriar, learned counsel for the appellant, has stated that the appellant has a young child, who too is with her in jail.

**47.** We have also given our anxious consideration on the fact that the appellant never intended to cause death; or that she only wanted to secure the well being and happiness of her stepson and as such, the appellant needs to be dealt with leniently.

**48.** For the reasons afore-noted, this Court deem it appropriate and believe that the interest of justice would be met if the sentence of the appellant is reduced to the period of custody which she has already undergone.

**49.** We order accordingly.

**50.** The appellant, namely, Suman Devi, is directed to be released from jail forthwith, if not required or detained in any other case.

**51.** The appeal stands disposed off accordingly.

**52.** Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

**53.** The records of this case be immediately returned to the learned Trial Court.



**54.** Interlocutory application(s), if any, also stand disposed off accordingly.

**(Sourendra Pandey, J)**

**Rajeev Ranjan Prasad, J :**

**(Rajeev Ranjan Prasad, J)**

Praveen-II/-

<b>AFR/NAFR</b>	AFR
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