

APPELLATE CRIMINAL.

Before Lord-Williams and Jack J.J.

1935
April 4.

SHAILABALA DASEE

v.

EMPEROR.*

Disposal—Concealment of birth, What is—Statement of the accused, how to be recorded—Indian Penal Code (Act XLV of 1860), s. 318—Code of Criminal Procedure (Act V of 1898), s. 342.

Per LORT-WILLIAMS J. Under section 318 of the Indian Penal Code, concealment of the birth of a child means concealment from all and sundry. It is not an offence within the section if the endeavour to conceal proceeds from a desire to escape individual observation or anger, though the accused will not escape the consequences of her act if she merely discloses the fact of the birth to some confidant. A woman is not bound to announce that she is going to have a child, and if the child lives, she is quite at liberty to keep its existence secret.

Queen v. Morris (1) referred to.

To convict a woman of attempting to conceal the birth of her child, the dead body must be found and identified as that of the child.

Reg. v. Williams (2) referred to.

In cases where an accused person makes some statement during the course of the trial which is interpreted as a plea of guilty, the court should record the exact words used, and in the language used.

Per JACK J. The previous announcement of the birth to some persons does not render a subsequent disposal innocent.

Reg v. Jane May (3) referred to.

Where there is no evidence that the child was dead when it was secretly disposed of, no offence under section 318 of the Indian Penal Code is committed.

The material facts and arguments appear from the judgment.

Heeralal Ganguli for the appellant.

Arabindanath Lahiri for the Crown.

*Criminal Appeal, No. 801 of 1934, against the order of H. K. De, Fourth Presidency Magistrate of Calcutta, dated Sep. 22, 1934.

(1) (1848) 2 Cox. C. C. 489.

(2) (1871) 11 Cox. C. C. 684.

(3) (1867) 10 Cox. C. C. 448.

1935
Shailabala
Dasee.
 v.
Emperor.

LORT-WILLIAMS J. In this case, the appellant was charged with and convicted of concealment of birth under section 318 of the Indian Penal Code and sentenced to rigorous imprisonment for nine months and a fine of Rs. 300 or, in default, three months' rigorous imprisonment. She was tried with two other accused who were acquitted. The first accused Ushabala was the daughter of the second accused Shailabala and the third accused Beerendra was the grandson of the second accused Shailabala.

On the 4th July, 1934, Ushabala gave birth to male twins in the Calcutta Medical School and Hospital. Apparently a nurse of the hospital knew some women who desired to adopt a newly born child and on the 8th July she took all the three accused with the twins to 69-3, Corporation Street, in a car. The nurse got out of the car and took the twins into these premises to show them to the women, who, she hoped, might adopt them. While she was inside, all the accused went off in the car. For various reasons, the women were not willing to adopt the twins. The nurse came out and, finding that the accused had disappeared, went back to the hospital and, from information given by another patient, traced the accused. Eventually the twins were given back to Shailabala. Shailabala went off with the twins, saying that she was going to the Tala Bridge at Shambazar, and she asked the women to tell her grandson that she had gone there. That was the last that was seen of the twins.

When Shailabala was examined under section 342 of the Code of Criminal Procedure, it is alleged that she said in the vernacular "what has happened has happened." The magistrate interpreted this as a plea of guilty. We enquired from him whether he had recorded the exact words in the vernacular which the woman used, and in his answer he says that he never keeps any note of the exact words in the vernacular used by accused persons, and it is impossible for him to remember them, but that the accused pleaded guilty, and

that the pleader asked for mercy. In cases where an accused person makes some statement during the course of the trial which is interpreted as a plea of guilty the court should record the exact words used, especially is this the case when a statement is made in answer to questions put by the court under section 342 of the Code of Criminal Procedure.

1935
Shailabala
Dasee
 v.
Emperor.
Lort-Williams J.

There was no evidence that either of the twins died, other than the statement to a magistrate which was produced by him as a witness and which was an exhibit in the case. This exhibit has not been translated; but apparently there is something in the statement to show, that either one or both of the twins died, and that Shailabala tried to get some man to take the bodies to the burning ghat and dispose of them. There is an English case, *Reg. v. Williams* (1), in which Mr. Justice Montague Smith decided that, in order to convict a woman of attempting to conceal the birth of her child, the dead body must be found and identified as that of the child of which she is alleged to have been delivered. Such evidence is not available in this case.

But a much more important point, in my opinion, is that section 318 of the Indian Penal Code punishes a person for secretly burying or otherwise disposing of the dead body of a child and so intentionally concealing or endeavouring to conceal the birth of such child. In this case, there was no concealment of the birth. The birth took place in the Calcutta Medical School and Hospital and was attended by nurses and others in the hospital, who were well aware that Ushabala had given birth to twins. It was known to the two women Pankajini Venchara and Ghasiya Methrâni, whom the nurse endeavoured to persuade to adopt the children. Further, it was known to the grandson, the third accused, and, if we are to accept the woman's statement as true, she made known the

(1) (1871) 11 Cox. C. C. 884.

1935

Shailabala
Dasee
 v.
Emperor.

Lord-Williams J.

fact of the birth and death to some other persons mentioned in the statement. Thus for at least 24 hours the birth had been known to a number of persons.

In *Queen v. Morris* (1) Mr. Justice Coltman decided that the concealment sought to be checked by this type of legislation is that which would keep the world at large in ignorance of the birth of a child. While, therefore, the offence may on the one hand be committed, even though the pregnancy and delivery be made known to a confidant, so on the other hand, it is not an offence within the section if the endeavour to conceal proceeds from a desire to escape individual observation or anger. It is clear from the evidence that this birth was not concealed from the world at large, and, as stated in Mayne's Criminal Law of India, 4th Edition, page 545, a woman is not bound to announce that she is going to have a child; and if the child lives, she is quite at liberty to keep its existence secret. Similarly, there was no legal obligation upon this accused nor upon Ushabala to spread broadcast the fact that Ushabala had given birth to a child. Section 318 is designed to punish such a person for intentionally concealing the birth of the child from all and sundry; though, as is stated in the case to which I have just referred, she will not escape the consequences of her act if she merely discloses the fact of the birth to some confidant.

For these reasons we are of opinion that the facts in this case do not come within the provisions of section 318 of the Indian Penal Code. The conviction and sentence are, accordingly, set aside and the accused is acquitted.

The appellant, who is on bail, will be discharged from her bail-bond and the fine, if already paid, must be refunded to her.

JACK J. I agree that the conviction and sentence should be set aside. It has been held that a previous announcement of the birth to some persons does not render a subsequent secret disposal innocent. *R. v. Douglas* (1). But where to conceal its birth a woman left a baby in the corner of a field to die of exposure, and the dead body was subsequently found there, it was held that she could not be convicted of secretly disposing of the dead body of a child. *Reg v. Jane May* (2). In this case there is no evidence that the babies were dead when they were secretly disposed of.

1935
Shailabala
Dasee
 v.
Emperor.

Accused acquitted.

A. C. R. C.

(1) (1836) 1 Mood. 480 ;
 168 E.R. 1352.

(2) (1867) 10 Cox. C. C. 448.