

APPELLATE CRIMINAL.

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May 5.

Before Mr. Justice Knox, Mr. Justice Blair and Mr. Justice Aikman.

QUEEN-EMPRESS v. MIRCHIA.

Act No. XLV of 1860 (Indian Penal Code), section 317—Exposure of child—Facts constituting the offence defined—Child left in charge of a blind woman and deserted.

A woman, who was the mother of an illegitimate child aged at the time about six months, left the child in charge of a blind woman in whose company she was, saying that she was going to get food and would return shortly. She went away to another village and did not return. Apparently she never intended to return. Upon these facts it was *held* by Blair and Aikman, JJ., *dissentiente* Knox, J., that the mother of the child could not properly be convicted of the offence defined by section 317 of the Indian Penal Code.

THE facts of this case are sufficiently stated in the judgment of Knox, J.

The Public Prosecutor (*Mr. E. Chamier*) for the Crown.

The appellant was not represented.

KNOX, J.—Musammat Mirohia has been convicted of an offence under section 317 of the Indian Penal Code and sentenced to rigorous imprisonment for two years. The following facts are proved in the case:—Mirchia was the mother of an illegitimate child. The age of the child at the time under consideration was six months. Mirchia was wandering about, and in her company was a blind woman. This woman she persuaded to go with her to a place where a fair was about to be held. On the road Mirchia made over the child to the blind woman, promising to return with food, which she said she was going to beg. She never returned. The blind woman found her way to the nearest Police station and made over the child to the Police. Upon these facts I am of opinion that Mirchia did leave the child with the intention of wholly abandoning it; and the only difficulty as to whether she was rightly convicted under this section arises from the fact that in the Code the offence is described as being an act of exposing or leaving a child *in any place* with the intention of wholly abandoning such child. I am not prepared to give to the words “in any place” the effect of wholly controlling the act done. The offence contemplated in

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my opinion was the injury done to the child by the act of leaving with the intention of wholly abandoning it. Otherwise we shall be pushed to difficulties, as in the case of a child being made over to the care of another child of tender years, himself or herself practically unable to protect the child from injury, or placed in the hands of a lunatic. I do not think it was the intention of the Legislature to leave unpunished the leaving of a child with the intention of wholly abandoning it, even though the child, as in the present case, may have been left temporarily with a person physically unfit to take care of the child or to secure it from harm. In any case, the appellant is, according to the strict definition of the Indian Penal Code, liable to a conviction for assault. I would therefore dismiss the appeal and sustain the conviction.

BLAIR, J.—The appellant has been convicted of the offence defined by section 317 of the Indian Penal Code. That section runs in the following words:—“Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

“Explanation. This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.”

In the interpretation of Acts the elementary rule is to give full and accurate effect to every word used in them. Upon this principle I propose to deal with this section. It differs materially in language from the section which is in force in England, and which became law about the same time that the Indian Penal Code came into force. Their objects were apparently similar, though not identical. The words of the English Act, section 27, are:—“Whoever shall unlawfully abandon or expose any child, being under the age of two years, whereby the life of such child shall be endangered, or the health of such child shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanour.”

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Those words differ materially from the words of the Indian Penal Code section. The provisions of the English Act are limited to children under two years of age, while in India they are extended to children under twelve years of age. The English Act does not define the mode of such abandonment or exposure, and no doubt the word "expose" read with the word "abandon" would probably be held to be used in a wider and less literal sense than the words of the Indian Penal Code. It seems to me that the words of section 317 of the Indian Penal Code should be dealt with in the most literal sense. To expose literally means to physically put outside, so that such putting outside involves some physical risk to the person put out. Having reference to a child, it would mean putting it somewhere where it could not receive the protection necessary for its tender age; as, for instance, putting it outside the house, whereby it would be exposed to the risk of climate, wild beasts and the like. The exposure contemplated by the Act was one by which danger to life might immediately ensue. The explanation of section 317 seems to me to indicate with much clearness the scope and purview of the section and the nature of the evil against which it sought to provide. That explanation provides for the case of injuries actually ensuing that the guilty person shall be punished for the injury so inflicted according to the circumstances under which the injury is done, *i. e.*, for murder or culpable homicide, as the case may be. It seems to me that, as the word "leaves" comes in immediate juxtaposition with the word "expose," the word "leaving" means leaving in a sense *ejusdem generis* as the exposure, and indicates an offence only slightly distinguishable from exposing. It cannot in my judgment mean leaving in the large sense of abandonment, but must be construed in strict connection with the word "exposure." The narrower construction of the words "expose or leave" is much strengthened by the insertion of those striking words "in any place." I cannot conceive of any possible antithesis to those words unless it be "with any person." It seems to me manifest that if the framers of the Act had intended to include in the section a case like the present,

they would have used after the expression "in any place" the words "or with any person," or some other words to that effect. I find myself wholly unable to understand where, upon any other construction but the one suggested, a line is to be drawn in cases of abandonment of children. I do not see how in point of law the abandoning of a child in the protection of a person able to take care of it, and willing, perhaps, from kindly motives to do so, but under no legal obligation to take care of it, is to be distinguished from leaving a child, as was done in the present case, in the protection of a blind woman who could and did afford some limited protection to the infant. I have yet to see upon what principle this conviction can be supported. Take the case of a person who leaves a child of eleven years of age at a Hill school under the care and protection of a schoolmaster with intent to abandon. I am quite unable to see where a line can be drawn which would include the one case and exclude the other. Of course there may be cases, as my brother Knox pointed out, of much difficulty and requiring some discrimination. One would have to consider whether putting a child in physical possession of another child wholly incapable of protecting it would come at all within the meaning of the section; whether, for instance, leaving a child of eleven years under the care of another child of five years would fall within the purview of the section. These difficulties do not arise in the present case. Here the blind woman was to some extent capable of protecting, and did protect, the child. She was a person with whom the child had been left. Upon these findings I must hold that the child was not exposed or left in any place within the meaning of section 317. I would therefore quash the conviction and set it aside.

AIKMAN, J.—I concur with my brother Blair in thinking that this conviction must be quashed. The appellant, Musammât Mirchia, gave birth to an illegitimate child and was in consequence turned out of her house. In order to get rid of the child she persuaded a blind woman named Jahri to take charge of it, saying that she would go and bring some food and return shortly. She

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went off to another village, and I think there can be no doubt that she had no intention whatever of returning, but that she intended wholly to abandon the child. Her conduct was undoubtedly culpable, but the question which we have to decide is whether she committed an offence falling within the purview of section 317 of the Indian Penal Code. In my opinion, if that section does not apply, no other section in the Code does. The words of the section are:—"Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both." I consider it proved that the intention of the appellant was to wholly abandon the child. It cannot, I think, be said that when she handed over the child to Musammat Jahri she exposed the child. The question is:—Can she be said by handing over the child to this other woman to have left it in any place? In my opinion it would be straining the words of the section to hold that this was a leaving of the child in a place. The Legislature might, if it had chosen, have made such conduct as the appellant has been guilty of punishable either by some other section or by some appropriate words in the section under consideration. The section might have been made to run "in any place or with any person." But we have to interpret the section as it stands; and as it stands it does not in my opinion provide for the punishment of the act which the appellant has committed. I would therefore allow the appeal.

By the Court.

The order of the Court will be that the finding and sentence are reversed and the appellant will at once be released.