

I accordingly accept the appeal and alter the conviction to one under section 19 (f), Arms Act. As this is a case of trafficking in arms, I sentence the appellant to the full sentence of three years' rigorous imprisonment, together with a fine of Rs. 250, and in default of its payment, to three months' further rigorous imprisonment.

N. F. E.

Appeal accepted in part.

APPELLATE CRIMINAL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Zafar Ali.

MUSSAMMAT GHULAM JANNAT, Appellant

versus

THE CROWN, Respondent.

Criminal Appeal No. 604 of 1925.

Criminal Procedure Code, Act V of 1898, sections 287, 350—Statement of accused recorded by one Magistrate—case committed for trial by his successor—Admissibility as evidence in the Sessions Court.

The Magistrate, who had recorded the statement of the accused at the inquiry, was succeeded by another Magistrate who committed the case for trial.

Held, that in view of section 350 of the Criminal Procedure Code the statement was rightly admitted in evidence under section 287.

The Sessions Judge of Mangalore v. Malinga (1), followed.

Appeal from the order of E. R. Anderson, Esquire, Sessions Judge, Multan, dated the 29th April, 1925, convicting the appellant.

ABDUL RAZAK, for Appellant.

ABDUL RASHID, Assistant Legal Remembrancer, for Respondent.

The judgment of the Court was delivered by—

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SIR SHADI LAL C. J.—On the morning of the 3rd February, 1925, the corpse of a newly born child with a strip of cloth tied round its neck was found in the bath room of a mosque called *Pir Gauhar Sultan Masjid*, situate outside the Delhi Gate of the Multan City. The Civil Surgeon, who conducted the *post mortem* examination, deposes that the child had been born alive and that death was due to asphyxia caused by strangulation. The Sessions Judge of Multan has convicted the appellant *Mussammat Ghulam Jannat* of the murder of the child, and has sentenced her under section 302, Indian Penal Code, to transportation for life.

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Now, the evidence of Miss Shaw, who medically examined *Mussammat Ghulam Jannat*, leaves no doubt that the latter had recently given birth to a child; but the question for determination is whether she committed the murder. *Mussammat Ghulam Jannat* lives in a small hamlet about 3 or 4 miles from the town of Multan, and there is ample evidence on the record that, on the afternoon of the 2nd of February, 1925, the day before the date of the discovery of the corpse in the bath room, she came to Multan accompanied by her mother *Mussammat Aishan*; and that she was seen going towards the mosque. There is also reliable evidence to the effect that on the 8th February the prisoner produced from a trunk inside her house a *chaddar* from one edge of which a small strip had been torn off, and the strip of cloth found tied round the neck of the child exactly fits that *chaddar*. Moreover, in the statement made by her on the 11th February, 1925, before the Committing Magistrate, she admitted that

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she had given birth to a child in the bath room of the mosque, and that after tearing off a strip of cloth from her *chaddar* she had tied it round the neck of the child in order to stop its cries and thereby to prevent the discovery of the birth. It appears that the Magistrate, who recorded the statement, was subsequently transferred; and that the case was eventually committed to the Court of Session by his successor. In view, however, of section 350, Criminal Procedure Code, we consider that the statement recorded on the 11th February has been rightly admitted in evidence under section 287, Criminal Procedure Code, (*vide, The Sessions Judge of Mangalore v. Malinga* (1)).

It appears that *Mussamat Ghulam Jannat*, who is a young girl of 18 years of age, is married to a boy who is only about 13 years old; and that she contracted an intimacy with one *Shahu* and became pregnant. There can be little doubt that, when she suddenly gave birth to an illegitimate child in the town of *Multan*, she was anxious to conceal her shame, and she accordingly tied a strip of cloth round the neck of the child and strangled it.

The confession made by the prisoner before the Committing Magistrate, corroborated as it is by the circumstantial evidence described above, leaves no doubt that she killed the child. She has, therefore, been rightly convicted of murder, and transportation for life is the minimum punishment prescribed by law for the offence of murder. We accordingly confirm the conviction and dismiss the appeal.

While we are unable to reduce the sentence inflicted by the Sessions Judge, we consider that this is a fit case in which, in view of the mitigating circumstances, the Local Government should exercise

the powers vested in it by sections 401 and 402, Criminal Procedure Code. We accordingly direct that the proceedings be forwarded to the Local Government with a copy of our judgment and our recommendation that the sentence of transportation for life may be commuted to one of rigorous imprisonment for three years.

N. F. E.

Appeal dismissed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Harrison and Mr. Justice Campbell.

QAIM (DEFENDANT) Petitioner,

versus

NURA AND ANOTHER (PLAINTIFFS) Respondents.

Civil Miscellaneous No. 224 of 1925.

(Civil Appeal No. 533 of 1921.)

Civil Procedure Code, Act V of 1908, Order XXII rules 4 and 9 (2)—Abatement of appeal—Death of respondent—Abatement automatic after expiry of 90 days—Application to set aside the abatement—Limitation.

Held that, if within 90 days from the death of a respondent no application has been made to implead his legal representative, the appeal abates automatically, and unless that abatement is set aside on an application under Order XXII rule 9 of the Code, within 60 days from the date of abatement or a period further extended in virtue of section 5 of the Limitation Act, the appeal is dead.

It is not necessary that an order should have been passed declaring that an abatement has in fact taken place.

Sarat Chandra Sarkar v. Maihar Stone and Lime Co. Ltd. (1), and *Ram Gopal v. Har Kishan* (2), followed.

Raghubir Saran v. Mst. Sohan Devi (3), referred to.

Gujrati v. Sitai Misir (4), dissented from.

Application under Order XXII rule 9, section 151 and Order I rule 10, Civil Procedure Code,

(1) (1921) I.L.R. 49 Cal. 62.

(3) (1925) I.L.R. 6 Lah. 233.

(2) (1925) 88 I.C. 478.

(4) (1922) I.L.R. 44 All. 459.

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