

# CALCUTTA HIGH COURT

Sailabala Dasi

Vs

Emperor

(Lort-Williams, J.)

04.04.1935

## JUDGMENT

### **Lort-Williams, J.**

1. In this case, the appellant was charged with and convicted of concealment of birth under Section 318, I.P.C., 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 Usha Bala was the daughter of the second accused Sailabala and the third accused Birendra was the grandson of the second accused Sailabala. On 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 8th July she took all 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.

2. 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 Sailabala, Sailabala went off with the twins, saying that she was going to the Talla 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.

3. When Sailbala was examined under Section 342, Criminal P.C., 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 this 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, Criminal P.C.

4. There was no evidence that either of the twins died, other than the statement to the Magistrate

which was produced by him as 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 Sailabala tried to get some man to take the bodies to the burning ghat and dispose of them. There is an English case, *Reg. v. Mary Ann William* 11 Cox CC 684, in which Montague Smith, J., 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.

5. But a much more important point is that Section 318, 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 Venchura and Ghasia Methrani, whom the nurse endeavoured to persuade to adopt the children. Further, it was known to the grandson, accused 3, and if we are to accept the woman's statement as true, she made known the 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.

6. In *Queen v. Morris*, 2 Cox CC 489, Coltman, J., 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 confidante, 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*, Edn. 4, p. 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.

7. For these reasons we are of opinion that the facts in this case do not come within the provisions of Section 318, 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 the bail bond and the fine, if already paid, must be refunded to her.

**Jack, J.**

8. 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 Mood CC 480. 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: *Jane May* (1867) 10 Cox 448. In this case there is no evidence that the babies were dead when they were secretly disposed of.

