

Emperor Vs. Supadi Lukadu

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Court : Mumbai

Decided On : Mar-24-1925

Reported in : (1925)27BOMLR604

Judge : Pratt and ;Crump, JJ.

Appeal No. : Criminal Appeal No. 14 of 1925

Appellant : Emperor

Respondent : Supadi Lukadu

Judgement :

Pratt, J.

1. This appeal has been admitted though time-barred and I would deal with it in our revisional jurisdiction.
2. The accused has been convicted of an attempt to commit suicide and of the murder of her infant daughter.
3. The 'accused Supadi is a girl of seventeen years of age unhappily married to a man called Lukadu. Her mind was distracted by the illness of her infant daughter and she was anxious to go back to her father's house where she would get rest after the drudgery of her unhappy home, and time to attend to her ailing infant. Her father and sister came to see her home but the husband refused because he

wanted her to stay at home and do the household work, Supadi was much disappointed and the next morning her father tried to take her back when the husband was absent, But the husband intercepted the cart and forced Supadi to return. This fresh disappointment was too much for Supadi who was already sorely tried by her husband's ill-treatment and the illness of her infant. She did go back, but instead of going to her husband's house she jumped into a well in order to drown herself. At the time she jumped in, her infant was tied on her back. She was found in the well the next day but the infant was drowned. When she was taken out she burst into tears and clasped the dead body of her child.

4. She has been rightly convicted of attempt to commit suicide but I cannot bring myself to believe that she is guilty of murder of the infant.

5. The Sessions Judge does not believe that she had any intention of causing the death of the child. He applies Section 300 (4) on the ground that she must have known that jumping into the well with the child was so imminently dangerous that the act would in all probability cause the child's death. That would be true if the accused at the time she jumped into the well were conscious of the presence of the child on her back. But her mind was in so abnormal a condition that she was at the moment attempting to commit suicide. I believe, therefore, that she was not thinking at that time of the child and that she was not conscious of the child's presence. As she was not conscious of the child there was not such knowledge as to make Section 300 (4) applicable. But that lack of consciousness implies negligence for, as said by Holloway J. in *Nidamarti Nagabhushanam* (1872) 7 M.H.C.R. 119 'culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that, if he had, he would have had the consciousness '

6. The offence which accused has committed is, in my opinion, not murder, but causing death by a negligent omission, i. e., the omission to pat the child down before jumping into the well.

7. I would alter the conviction under Section 302 to one under Section 304A and reduce the sentence to six months' simple imprisonment to run concurrently with

the sentence under Section 309.

Crump, J.

8. It is a matter of some difficulty to determine what was the precise intention or knowledge of the accused at the moment when she threw herself into the well, and though it might be argued that she must have known that her child was with her, and that, even if she did not intend its death, she knew that her act was so imminently dangerous that death was the most probable result, still the conclusion which commends itself to my learned brother is equally one which can be drawn from the proved facts, Where the balance is so equal I prefer to lean in favour of the accused. Therefore I agree with the order proposed.

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