

**In Re: Puttawwa**

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**Court :** Karnataka

**Decided On :** Mar-28-1958

**Reported in :** AIR1959Kant116; AIR1959Mys116; 1959CriLJ617

**Judge :** Nittoor Sreenivasa Rau and ;A. Narayana Pai, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 401; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal No. (B) 7 of 1957

**Appellant :** In Re: Puttawwa

**Advocate for Pet/Ap. :** M. Ramchandra Rao, L.A.S.;G. Shankar Setty, Addl. Asst. Adv. Gen.

**Judgement :**

1. The Accused who is a widow has been convicted of an offence punishable under Section 302, I. P. C., for having killed her newly born child on the night of 19-3-1956 and sentenced to imprisonment for life. The learned Sessions Judge has also in view of the circumstances of the case, recommended that this was a fit case for Government to reduce the sentence to one year's rigorous imprisonment.

2. It was brought to our notice at the commencement of the arguments in the case that Government has remitted the un-expired portion of the sentence of imprisonment. Sri M. Ramachandra Rao who appears on behalf of the Legal Aid

Society for the appellant stated that nevertheless he was entitled to press his appeal. We do not entertain any doubts in the matter since a remission of sentence does not mean acquittal and an aggrieved party has every right to vindicate himself or herself.

3. The prosecution case briefly stated is as follows:

4. The accused lost her husband within a brief time after her marriage: she married again: her second husband also died soon afterwards: thereafter she stayed in her parental house and came to have illicit intimacy with one Allabux: so she was sent out from that place: then she came to Kurgan and sought and obtained shelter in the cattle shed of P. W. 2, Tirkapna: it was found that she was carrying and P. W. 2 Tirkappa and his wife P. W. 1 Honawa wanted her to leave the place: she, however, prevailed upon them to allow her to remain there: on the night in question she had labour pains and some time in the course of the night she gave birth to a live child and P. W. 1 Honawa assisted her during confinement; next afternoon the dead body of a child was found lying near the house of Chikkappa, having been left there by a dog: the police Patel of the village conveyed information to the Police through the Wali-kar.

First of all, a complaint for an offence under Section 318 was instituted by the Police but after the post mortem examination of the child which revealed that the child had been born alive and had been strangled to death, the accused was prosecuted for an offence under Section 302, I. P. C. The accused denied having committed the offence. She admitted that she gave birth to a child but stated that she became unconscious at the time, that she did not know whether the child was born alive, that when she saw the child some hours after the delivery it was lying dead and that P. W. 1 Honawa took it away saying that she would bury it. The learned Sessions Judge relying upon the evidence of P. Ws. 1 and 2 has found that the accused gave birth to a live child, that it died as a result of asphyxia caused by throttling and that the child must have been born a day or two before the post mortem examination. It may be mentioned that the examination was conducted on 21-3-1956.

5. The learned Advocate for the appellant has taken us through the evidence in the case and has pointed out what he urges to be discrepancies in the evidence of P. Ws. 1 and 2 and has also commented upon the evidence of the other witnesses. He has also contended that the identity of the child which was found near Chikkappa's house and subjected to the post mortem examination with the child that the accused gave birth to has not been established and that, therefore, the conviction cannot be sustained. It appears to us that this contention has to be upheld.

The learned Sessions Judge has accepted the prosecution version in regard to the child having been born alive and has not believed the accused's version that the accused became unconscious and that she was told by P. W. 1 Honawa that she would bury the dead child. But he has not adverted to the question of identity at all in the course of his judgment. A number of authorities have been cited by the learned Advocate for the appellant bearing on the necessity of establishing the identity of the person alleged to have been murdered.

There can be no doubt or dispute about the matter. It is no doubt true that even in the absence of the discovery or production of the body of the murdered person a conviction can be sustained if the evidence clearly establishes that a particular person was intentionally killed. But if the charge is that a particular person was murdered that fact has to be established. In the present case, the prosecution has sought to make out that the body which was found near Chikkappa's house is that of the child to which the accused gave birth on the night of 19-3-1956. The only two persons who saw and who could have seen the child were P. W. 1 Honawa and the accused.

No material whatever has been placed on record to show that either of them had a look at the child which was found near Chikkappa's house. The only witness who supplies some sort of link is P. W. 9 Hamimappa who says that he saw the accused going towards the nalla some two hours before day break and that she was carrying a child in her hands. The learned Judge has disbelieved this evidence. The learned Additional Assistant Advocate General has urged that there is no good reason to disbelieve his evidence. It appears to us, however, that the

learned Judge was fully warranted in not relying upon this witness's evidence. The witness admits that it was still dark at the time and that his eye-sight is poor.

Therefore, even if he should be regarded as an honest witness, he could only speak about his impressions. He could not have been in a position properly to identify the accused. The learned Advocate for the appellant has relied upon the case reported in *Emperor v. Kuppammal* : AIR1941 Mad1 , where the circumstances were similar. It was established in that case that the accused had given birth to a child and that the body of a child was found in a municipal syphon in the neighbourhood. There was no evidence to establish that the accused had been anywhere near the spot at the relevant time. The learned Judge referred to the case reported in *Reg v. Williams*, (1867) 11 Cox C.C. 684, where in similar circumstances it was held that there was no case to go before a Jury.

6. It will be seen that even accepting the findings of fact by the learned Judge no case has been made out against the accused, when the identity of the child which was found near Chikkapna's house has not been established with the child borne by the accused on the night of 19-3-1956, however grave the doubts may be that arise in one's mind on account of the proximity of time and place.

7. We, therefore, allow this appeal and set aside the conviction. We learn that the appellant has already been set at liberty and hence no direction is called for in regard to that matter.

8. Appeal allowed.

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