

State Vs. Kehari Singh

State Vs. Kehari Singh

SooperKanoon Citation : sooperkanoon.com/499734

Court : Madhya Pradesh

Decided On : Mar-05-1952

Reported in : 1952CriLJ1187

Judge : Dixit and ;Chaturvedi, JJ.

Appellant : State

Respondent : Kehari Singh

Judgement :

Chaturvedi, J.

1. This is an appeal filed by the State under Section 417, Criminal P.C., against an order passed by the Sessions Judge Gwalior on 4.12.50 in Criminal Case No. 20 of 1950 acquitting the respondent Kehari Singh of an offence under Section 318, Indian Penal Code.

2. The prosecution story was that Mst. Konsa, a Rajput widow, aged 24 years, was pregnant, & on 5th January 1950 gave birth to an illegitimate child who was soon throttled and Mst. Konsa's uncle Kehari Singh took the dead body of the child and threw it in a well in village Semari, P.S. Ghatigaon, District Gird. Mst. Konsa was committed to Sessions for standing her trial for offences under Sections 302 and 318, Indian Penal Code, Kehari Singh was committed for standing his trial for offences under Sections 302/109 and 318, Indian Penal Code. Both were

acquitted by the learned Sessions Judge Gwalior and the State has filed this appeal only against the acquittal of Kehari Singh respondent and the prayer is that 'the accused be convicted under Section 318, Indian Penal Code. It will be seen that this appeal relates only to the offence of secretly disposing of the dead body of the child. No appeal has been preferred against the order of acquittal for the offence either of murder or of abetment of murder.

3. The dead body of the child was seen floating in a well on 12.1.1950 and a report was sent to the police by Parmal Singh P.W. 10, who was Naib Tehsildar of the Village at that time, through Choukidar Khemoo P.W. 1. The report mentioned only this fact that a child is lying dead in a well outside the 'Abadi', It was subsequently found by the police that it was the child of Mst. Konsa who had given birth a week before. It appears from the evidence that many villagers knew that Mst. Konsa was pregnant, and if the statement of Lali, P.W. 9 is to be believed the birth of Mst. Konsa's child was known, to many persons. The birth had taken place at Lali's own house and she had told everything to Jhandu Prasad P.W. 6, Ratan P.W. 4, Sita Ram P.W. 11 and also to the villagers. There is thus no doubt, and, it is proved by the prosecution evidence itself that the pregnancy of Mst. Konsa and thereafter the birth of the child was known to all and sundry. It was not a secret thing.

4. The respondent Kehari Singh in his examination under Section 342 admitted that Konsa is his niece and is a widow and had given birth to a child who had died immediately afterwards. He took the dead body and threw it in a well near the village; for, the custom in that village is that the dead body of a child is thrown either in a well or in a river.

5. There is no evidence on behalf of the prosecution about the custom of disposing of dead bodies of the children that is prevalent in this particular village. But the main question in this case is whether the secret disposing of the dead body of this child was with the intention of concealing, or of endeavoring to conceal, the birth of this child? It is important to note that it is the act of secretly disposing of the dead body with the intention of concealment of the birth of the child (and not with the intention of concealing the death of the child) that is made punishable under

Section 318, Indian Penal Code.

6. When the birth of the child was known to most of the villagers in the village no inference can be drawn that the disposing of the dead body of this child was with the intention of concealing the birth of a child within the meaning of the expression in Section 318, Indian Penal Code. In this view of the matter the appeal cannot succeed and we dismiss it. We direct that the respondent who has been arrested and is in Jail be released forthwith.

Dixit, J.

7. I agree with my learned brother that the evidence on record does not lead to the inference that the disposal of the dead body of the child in this case was with intention of concealing the birth of the child. The appeal must, therefore, be dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com