

In Re: Veeral Alias Kanal

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SooperKanoon Citation : sooperkanoon.com/787694

Court : Chennai

Decided On : Sep-18-1969

Reported in : AIR1970Mad298; 1970CriLJ1020

Judge : Kailasam and ;Venkataraman, JJ.

Acts : [Evidence Act, 1872](#) - Sections 24 and 133

Appeal No. : Criminal Appeal No. 156 of 1969

Appellant : In Re: Veeral Alias Kanal

Advocate for Pet/Ap. : P.M. Sundaram, Amicus Curiae;Public Prosecutor

Disposition : Appeal allowed

Judgement :

Kailasam, J.

1. The accused Veeral alias Kanal was tried by the learned Sessions Judge of Coimbatore for an offence under Section 302 of the Indian Penal Code in that on 9th September 1968 at about 3 A. M. at Vellaikinar, she committed the murder of her new-born female child by strangulation with the umbilical cord. The learned Judge found the accused guilty of the charge and sentenced her to undergo rigorous imprisonment for life. In the circumstances of the case, the learned Judge has also made a recommendation to the Government for reduction of the sentence

of imprisonment for life to one of rigorous imprisonment for a period not exceeding two years.

2. The accused was married to one Chinnan of Vellaikinar village. They had a son, Palaniswamy. Chinnan died about ten years ago. After her husband's death, the accused left Vellaikinar, and went away somewhere, but she came back to Vellaikinar about four months prior to the occurrence. On the request of the accused, P. W. 1 Deival who has a house in the Harijan colony permitted her to live with P. W. 2 K. Chinnal and her daughter in a vacant shed belonging to P. W. 1 which is immediately north of the house of P. W. 1. Sometime before the occurrence, P. W. 1 came to know that the accused was pregnant. On the day prior to the occurrence, P. W. 1 met the accused and told her that she (P. W. 1) had heard that the accused was likely to cause miscarriage of her conception. The accused protested and stated that she was not of immoral character and that she would not cause any miscarriage, but would go to a hospital and have her delivery attended to.

3. According to P. W. 2, on the date of the occurrence, P. W. 2, and her daughter took their bed on the pial while the accused slept inside the shed. About first cock-crowing time, the accused woke up P. W. 2, saying that she wanted to answer calls of nature and asked P. W. 2 to accompany her. P. W. 2 and the accused proceeded towards the kuttai which is on the south west. On the way, they saw P. W. 4, Muthan, coming in the opposite direction. When questioned by P. W. 4 as to where they were going, the accused stated that she was going to the tank for easing. Then the accused went near the slope of the tank. A few minutes thereafter, she stated that she was going to deliver a child. P. W. 2, was standing a few feet away. A minute or two later, the accused delivered a child and the child gave out a cry. The accused then snapped the umbilical cord, put it round the child's neck and tightened it. Then there was no noise of the child. P. W. 2 protested at the behaviour of the accused. The accused knotted the umbilical cord round the child's neck. She then said that the child had died, and requested that P. W. 2 may keep silent over the whole matter. The accused then dug a small pit on the tank slope and placed the child in that pit. She covered the child with the blouse M. O. 1, belonging to the daughter of P. W. 2. A little while thereafter, the

accused passed placenta and that was also put into the pit. The accused then covered the pit with mud; at the request of the accused P. W. 2 led her back to her house, and afterwards P. W. 2 went for her work.

4. At about 7 A. M. on 9-9-1968, P. W. 5 Palanal, a girl aged about 13 years, was returning home from Karuppan Thottam belonging to one Krishnaswamy Goundar after picking flowers. When she passed the Kuttai near the burial ground, she saw the dead body of a female child on the sloping bund of the tank. She ran to the village and informed several people, including P. W. 1, Deival, about what she saw. P. W. 1 on hearing from P. W. 5 about the dead body of the child lying near the slope of the tank, went to the spot and saw the child. She found the umbilical cord round the child's neck. According to her, there were contusions on the child's neck, and there was bleeding from the right ear and the tongue was protruding. Suspecting that the child must be that of the accused, she searched for the accused, but the accused was not found. Then P. W. 1 went to the house of the village munsif, P. W. 11, V. S. Venugopal and gave a statement. Exhibit P.1, at about 10 A. M. In the report, P. W. 1 mentioned that she went and saw the child lying dead with the umbilical cord round the neck of the child. She further stated that on hearing the information, the accused skulked away and was chased and caught hold of by P. W. 10, Chinnan, and was produced before the village munsif. In the complaint, it was reported that the accused committed murder of the female child by strangulation and had thrown it away on the burial ground. P. W. 11 recorded the complaint of P. W. 1 and obtained her left thumb impression. He would add that while recording Exhibit P-I, P. W. 10 produced the accused before him and he questioned her. According to P. W. 11, the accused wept and told him that she had strangled the child with the umbilical cord and buried it in the slope of the tank, as otherwise the villagers would scold her and drive her out of the village for giving birth to a child in her state of widowhood, The village munsif sent reports to the police and the Magistrate, At about 4-30 P. M. police came, and P. W. 15, K. Kanniappan, Inspector of Police saw the dead body of the child in the slope of the tank. The accused was produced before him. He arrested her and questioned her. He also held inquest over the body of the child. During the inquest, he examined P. Ws. 1, 2, 4, 5 and others. P. W. 15 then sent a requisition to the Sub-Magistrate, Coimbatore, for sending the accused to the hospital for

treatment and certificate.

5. P. W. 7, Dr. Krishnamurthi, Civil Assistant Surgeon, Government Hospital, Coimbatore, admitted the accused in the hospital at 9-50 A. M. on 10-9-1968 and referred her to the duty lady Doctor, P. W. 9. P. W. 9, Dr. Saroja, examined the accused and found that she must have delivered a child between 35 to 48 hours prior to her examination.

6. The dead body of the child was sent by the Sub-Inspector of Police to the hospital and P. W. 8, Dr. Sagundhi, the Woman Assistant Surgeon, attached to the Government Hospital, Sulur, conducted the autopsy. According to P. W. 8, in this case, the umbilical cord must have been put round the neck of the child and knotted after the child's birth.

7. When examined in the Committal Court, the accused stated that it was true that she took P. W. 2 with her; but she would state that even at the time of delivery of the child, the umbilical cord was wound round the neck of the child. She got giddiness and fell on the child, and she did not wind round the umbilical cord around the neck of the child and she also did not kill the child. In the Sessions Court, she stated that she took P. W. 2, with her, that she went to the tank and felt like answering calls of nature, that she sat down and realised that she had delivered and that she became unconscious thereafter. She added that she vaguely remembered having fallen over the child after it was delivered. She stated that she would never have had the heart to kill the child even if it was illegitimate. She denied having told the village munsif that she killed the child.

8. The learned Sessions Judge on a consideration of the evidence placed before him found that the prosecution had proved its case beyond all reasonable doubt, convicted the accused under Section 302 of the Indian Penal Code and sentenced her to imprisonment for life.

9. The case for the prosecution is that the child was born alive and that the accused strangled it by putting a knot with the umbilical cord round the neck of the child and killed it. To substantiate this version, the prosecution relies on the testimony of P. W. 2. The prosecution further relies on the evidence of P. W. 11,

the village munsif, who states that while he was recording the first information report from P. W. 1, P. W. 10 produced the accused before him and the accused confessed that she strangled the child with the umbilical cord, and buried it in the slope of the tank. In addition to the evidence of these two witnesses, the prosecution relies on the medical evidence for proving that the death was due to strangulation by the use of the umbilical cord after the child was born alive.

10. Before considering the medical evidence, it is necessary to consider the evidence of P. Ws. 2 and 11, which if accepted, would prove that the accused is guilty of the charge framed against her. As already stated, so far as P. W. 2 is concerned, it is common ground that P. W. 2 accompanied the accused to the tank slope where the child was delivered by the accused. The accused herself admits the presence of P. W. 2 along with her at that time. The evidence of P. W. 4 that the said accused and P. W. 2 were going together can be accepted. The question is whether the evidence of P. W. 2 that the accused delivered the child, that the child gave out a cry and immediately the accused snapped the umbilical cord, put it round the child's neck, knotted it and the child, died, can be safely accepted. It is admitted by P. W. 2 that the pregnancy of the accused, was known to many women in the village. The accused came to the village four months before the date of the occurrence and her advanced stage of pregnancy was known to the villagers. P.W. 2 also would admit that the accused did not take any step to cause miscarriage on the conception, nor did she attempt to leave the village and go away. She appeared to resign herself to the consequences at her act of folly. On this aspect, the evidence of P. W. 1 is that when she questioned the accused about her pregnancy, the accused stated that she was not of immoral character and that she would not cause any miscarriage of her conception, but would go to a hospital and have the delivery attended to. P. W. 3 would say that the accused admitted to her that she was pregnant and implored her not to tell this to anyone in the village. This evidence is not in accordance with that of P. Ws. 1 and 2 who would state that the accused admitted that she was pregnant and that she was not going to cause any miscarriage and she would have the delivery attended to in a hospital. It is therefore, clear from the evidence of P. Ws. 1 and 2 that the villagers knew about the pregnancy of the accused and that the accused told the persons when questioned that she would not cause any miscarriage and she would join a

hospital and have the delivery attended to. In this background, it is not possible to come to the conclusion that the accused was determined to kill her child when it was born. If P. W. 2 had known that the accused was calling her to help her in killing the child, she would be in the position of an accomplice and her evidence would require corroboration in material particulars. According to P. W. 2 she never expected that the accused would kill the child after the delivery. There is no reason for not accepting the evidence of P. W. 2 that she did not know that the accused wanted to put an end to the life of the child after the delivery.

11. The point that has to be considered is whether the statement of P. W. 2 that she saw the accused putting the umbilical cord round the neck of the child and strangulating it can be accepted. In cross-examination, it was specifically put by the accused to P. W. 2 that the child was born with the umbilical cord twisted round its neck and that it was a still born child. The witness denied the suggestion. But her subsequent conduct makes her testimony suspicious. According to her, at the request of the accused, she led back the accused to her house and after leaving the accused in her house, she went away for work. She would state that at about 10 A. M. she learnt that the villagers had known about the killing of the child by the accused and went to the village munsif's house and saw the accused there, She then told the people about the accused taking her to the tank slope and what followed thereafter. Strangely enough, the village munsif is completely silent about P. W. 2 coming to his house and telling about what she knew. If only P. W. 2, an eye-witness, had stated what she saw to the village munsif, the village munsif would have certainly spoken to it In the Court. If P. W. 2 had given the Information to the village munsif while he was preparing the reports that would have found a place in the village munsif's reports. P. W. 2 admitted that she was taken to the police station four or five days after the occurrence and was kept there for two days and sent away. She denied that even from Monday evening (that is the day of the occurrence) she was kept at the Station for a week and thereafter sent home. There is no explanation for her being detained at the police station for two days even according to the witness. The conduct of P. W. 2 in not informing the villagers and giving a complaint is not explained. Further, her detention in the police station creates a suspicion that her evidence is not voluntary. The learned Sessions Judge found that the very fact that P. W. 2 did not go and inform anyone

in the village about the accused delivering a child and killing it would attract a certain amount of criticism to the evidence of P. W. 2. In spite of this defect in the testimony of P. W. 2 the learned Judge was prepared to accept it as the medical evidence 'clinchingly corroborated' the testimony of P. W. 2. I am of the view that criticism of the evidence of P. W. 2 is justified, and her evidence would not stand by itself.

12. The evidence of the village munsif that the accused confessed the crime was strongly relied upon by the learned Public Prosecutor. P. W. 11, the village munsif would state that the accused was produced before him by P. W. 10 and that when he questioned her, she wept and told him that she strangled the child with the umbilical cord and buried it in the slope of the tank. P. W. 10 would state that he searched for the accused in the shed given to her and as she was not there, he searched for her in the village and found her about three furlongs east of the village on the road leading to Saravanampatti. He told the accused that she should not leave the village without the matter of the child's death being cleared and brought her to the village and handed her over to the village munsif at about 10 A. M. In cross examination, it was put to the witness that the accused was not going away from the village, but was brought from a tea shop. There can be no doubt from the testimony of P. W. 10 that the villagers suspected foul-play by the accused in the death of the child and forcibly took her to the village munsif's house, Taking the surrounding circumstances into account, it is very likely the accused would have been subjected to a near inquisition by the villagers when she was produced before the village munsif. It is also probable that the village munsif suspecting her would have put some questions. In the circumstances, even if she had made a statement the voluntary nature of that would have to be carefully considered. It is well settled that oral confessions which are not reduced to writing will have to be very carefully assessed before they can be acted upon. Added to that, in this case, the voluntary nature of the statement, if ever she made one, is also open to doubt. More than all these facts, the question whether the accused did make a confession or not, has to be considered. According to the village munsif, the accused made the confession while he was making the report. If the accused had made such a confession before the village, munsif when he was recording Exhibit P-6, certainly P. W. 11 would have included it in Exhibit P-6, or

would have at least stated about the confession as an addenda to the report. When questioned about the non-inclusion of this fact in Exhibits P-7 and P-8, the village munsif, while admitting that he had not made any reference about questioning the accused and about her admitting the guilt, did not offer any explanation. The learned Sessions Judge accepted the testimony of P. W. 11 as he thought that there was no reason for an independent and respectable witness like him to perjure against the accused. I am unable to accept the assessment of the evidence of P, W. 11 by the learned District Judge, for, prudence dictates, that one should be very cautious before an oral confession by an accused is accepted. For the reasons which I had set out above, I feel that it is extremely unsafe to place any reliance on the testimony of P. W. 11 that the accused confessed the crime to him.

13. The question that remains to be considered is whether the medical evidence conclusively establishes that (1) the child was born alive and (2) that its death was caused by strangulation of the neck with the umbilical cord. The evidence of the doctor who conducted the postmortem, P. W. 8, Dr. Sugandhi, is that she found the umbilical cord tied around the neck of the child and contusions and abrasions were seen all around the neck with a knot in the umbilical cord on the right side of the neck. In her opinion, the child appeared to have died of asphyxia due to strangulation with the umbilical cord. She also was of the view that the child would not have, been a still born child, and the child must have been alive at the time of the birth and it must have died thereafter due to asphyxia, as otherwise, the internal organs would not have been in a congested state. She admitted that the umbilical cord could have been found round the neck of the child along with the knot at the time of birth. But in this case, because of the presence of contusions and abrasions on the neck of the child, the cord must have been put round the neck and knotted after the child's birth. She further stated that the contusions and abrasions on the child's neck could have been caused due to some pressure being applied at the place with human fingers. In cross-examination, the doctor admitted that there were no nail marks on the child's neck. The doctor arrived at her opinion that the child ought to have been born alive from the fact that the internal organs were found to be in a congested state. She also concluded that the umbilical cord must have been put round the neck and knotted after the child's birth from the fact

that there were certain contusions and abrasions in the neck.

14. The question arises whether these symptoms conclusively establish that the child was born alive and whether the death was caused by strangulation by knotting the umbilical cord round the neck of the child. A child is considered to be born alive when, after complete extrusion from the mother, it exhibits, some sign of vitality, such as for example, activity of the heart, breathing, movement of the limbs, crying etc. Where respiration is not established it is essential for a person who was present at the delivery to give evidence of the complete birth as well as of the subsequent sign of life. (Taylor's Principles and Practice of Medical Jurisprudence Volume II page 115). In this case, as already stated, I am not prepared to place much reliance on the evidence of P. W. 2 who speaks to the child being born alive. In this case, there is no attempt to establish respiration. At page 116 the learned author states that it is important to consider most carefully the accepted signs of live birth and to discuss the nature and value of the deductions which may legitimately be drawn from them. Evidence of life may be drawn from various circumstances, such as breathing (expansion of the lung, air in the stomach or bowel), crying, muscular movements, circulation and heart-beat, etc. In this case, apart from the oral testimony of P. W. 2 that the child cried, which I am not prepared to accept, no evidence as to breathing or circulation and heartbeat was deposed to. Evidence as to breathing is considered essential, for several changes are produced in the lungs after the child starts breathing when it is born alive. A tabulation is given by Taylor as to the changes caused to the lungs of the child after a live birth. For Instance, the volume of the lungs becomes four to six times larger, their margins get rounded, the colour changes, air sacs become visible, they contain full of blood, which is frothy on squeezing, the weight of the lungs increases, and the expanded areas float in water. Neither the evidence of the doctor nor the post mortem discloses that any attention was paid to these aspects, and there is no mention of the lungs except stating that all internal organs were found congested. At page 122, the learned author points out as follows:

'Another common cause for foetal distress at and after birth is cerebral damage due to moulding or to encirclement of the neck by the cord causing engorgement of veins These changes, too, may stimulate those of asphyxiation, but

suspicion must not be maintained in the face of a reasonable natural possibility, such as difficult labour.'

Referring to hydrostatic test, It is pointed out that microscopic examination of the lung will be necessary before an opinion can be expressed. The various other tests which are prescribed by the medical science to determine whether the child was born alive or still-born were not performed. The conclusion of Taylor after a discussion on the medico-legal aspects on this question at page 150 is significant and may be extracted:

'The conclusions to be drawn from these observations are that if the Courts were to insist upon conclusive medical evidence of a separate existence in every trial for child murder or infanticide, there would be very few convictions, except where a confession was made by the accused, where the infant was found alive, but dying, or the crime was committed in the presence of eye-witnesses.'

But, in this case, the alleged confession by the accused cannot be accepted and the evidence of the eye-witness, P. W. 2 is suspect. The medical evidence is not helpful since the necessary tests have not been performed, and the data that is furnished by the medical evidence is grossly inadequate. In this state of evidence it is extremely hazardous to come to the conclusion that the child was born alive.

15. I will now proceed to consider whether the medical evidence has established that the death was homicidal or caused by strangulation of the neck by knotting the umbilical cord. To recapitulate, the evidence of the doctor is that she found the umbilical cord tied around the neck of the child and contusions and abrasions were seen around the neck and that the knot in the umbilical cord was on the right side of the neck. The cord was not found attached to the navel and the doctor was of the view that the cord was snapped from the child's navel after the birth. The doctor also did not find any nail marks on the child's neck. The aspects relied on by the prosecution are the presence of a knot in the umbilical cord on the right side of the neck, the contusions and abrasions around the neck and the snapping of the cord from the child's navel. The encircling of the cord round the neck is not uncommon and Taylor reports at page 144, on the authority of Walker, that the cord encircles the neck in some twelve per cent of cases occasionally twice, and it

has caused death in many instances, in spite of skilled assistance. Though not very common, cases have been reported from time to time, in which an actual knot has been found in the cord. For such a knot to occur, the body of the child in its movements in utero must have passed through a loop of the cord, forming a knot which may be tightened by its further movements. Taylor again quotes Gardinar who found that in ten per cent of cases the cord may encircle the neck more than once, or be knotted, though these abnormalities are rare. Again at page 172, the author states the position thus:

'Where the cord is knotted, the possibility of it being a natural obstetric event, though not entirely eliminated (for the cord is occasionally found knotted in obstetric practice) becomes more remote, and the likelihood of wilful strangulation looms larger. Unless the cord is knotted several times, a wilful act cannot, however, be regarded as proved.'

Thus, no inference as to homicide can be inferred from the fact that the strangulation was by the umbilical cord. But, the knot that is found is rather uncommon and leads to a suspicion that it may be homicide. But the possibility of such a knotting due to natural causes cannot be ruled out.

16. The snapping of the cord is also not uncommon for Taylor points out at page 145 that in precipitate labour, the cord, especially when very short, may be torn. The cord may be severed in other ways, either by accident or deliberately. When the cord is used as a strangulating ligature, it may show evidence of having been handled roughly. In this case, the doctor has not noted any evidence of the ligature having been handled roughly. The contusions and the abrasions on the neck of the child, on which the doctor relied on, do not also conclusively establish that death was due to homicide. Marks of fingure nails on the neck are not uncommon. The learned author at page 171 finds that in self-assisted deliveries, the mother may claw with the fingers in desperation to get the infant out and have done with her troubles. In this case, there were no nail marks. The doctor, P.W. 8, herself admitted that the contusions and abrasions on the child's neck could have been caused due to some pressure being applied at that place. This may be at the time when the delivery took place or even due to the encirclement of the cord. The

author finds that when a child is born with the umbilical cord round the neck, it is not uncommon to find injuries on the neck. At page 156, the author quotes an instance where the cord was coiled three times around the neck, passing under right armpit; and upon removing it, three parallel discoloured depressions were distinctly marked. These extended completely around the neck and corresponded to the course taken by the coils. Much reliance cannot therefore be placed on the presence of contusions and abrasions on the child's neck.

17. The snapping of the cord is relied on by the prosecution as a very strong circumstance indicating violence. The doctor has found that the skin in the abdomen was found to have been peeled off and hence according to her, it is quite likely that the cord was snapped from child's navel after the birth. Whether the snapping of the cord was accidental or deliberate, the doctor has not offered any opinion. As already pointed out the snapping of the cord by accident cannot be ruled out. In the circumstances, I am unable to place any reliance on the fact that contusions and abrasions were found on the neck of the child or that the cord was found snapped. Considering the medical evidence as a whole, I am of the view that it is far too inconclusive to find that death was due to strangulation by intentionally tying the umbilical cord on the neck of the child. Having rejected the alleged confession of the accused as spoken to by P.W. 11 and the oral evidence of P.W. 2 and having found the medical evidence inconclusive, I am satisfied that the conviction of the accused cannot be accepted. The accused is entitled to the benefit of doubt, and should be acquitted. I would allow the Criminal Appeal, set aside the conviction and the sentence imposed on her and set her at liberty.

Venkataraman, J.

18. I agree that the appellant will have to be acquitted, but I would put my reasoning on some aspects in a different form. At the outset, I agree with my learned brother that it is unsafe to act on the testimony of P.W. 11 that the accused made an extra-judicial confession of the murder. If the accused had made such a confession, P.W. 11, would have referred to it in his forwarding report.

19. So far as the evidence of P. W. 2 is concerned, it seems to me that even when she left the house along with the accused, she knew that the accused expected to deliver a child and wanted to dispose it of. In this view of the matter. P.W. 2 would be in the position of an accomplice and that is also the view of the learned Sessions Judge. The reasons for my view are these. P.W. 2 admits that previous to that night she had not accompanied the accused for her answering calls of nature, and that during nights they would answer calls of nature even at places near their house. Actually, the evidence of the Circle Inspector of Police (P.W. 15) shows that the place where the dead body was buried was about a furlong from the shed of the appellant. If it was merely for answering calls of nature, P.W. 2 would have asked the accused why it was necessary to go so far. P.W. 2 no doubt states in chief examination that the tank was the usual place where they would go for answering calls of nature, since water was available there. Obviously, P.W. 2 would be interested in suppressing the fact that she was an accomplice, and therefore gave such evidence in chief examination. Further, it is difficult to believe that the appellant had taken M. O. 1, the blouse belonging to P. W. 2's daughter, without the knowledge of P. W. 2. It may be noted that the cross-examination on behalf of the accused was that P.W. 2 has taken M.O. 1 on coming to know that the accused had developed labour pains. Really, the whole cross-examination proceeds on the basis that it was P.W. 2 who killed the child and wanted to foist the blame on the accused and therefore did not inform anybody. Her conduct in not informing the villagers of what the accused did, according to her, till 10 A.M. fits in with the view that P.W. 2 is really in the nature of an accomplice. She was kept at the police station for two days. If she was a mere innocent witness, why should she have been kept at the police station for two days.?

20. My learned brother thinks that the medical evidence has not conclusively established that the child was murdered and that we cannot rule out the possibility of the child having been born dead with the umbilical cord round the neck. With great respect, I am, however, inclined to differ from my learned brother on this aspect. It seems to me that the evidence of P.W. 8, that the child died of asphyxia due to homicidal strangulation with the umbilical cord, must be accepted. The doctor gave three reasons in support of the conclusion: (i) contusions and abrasions were seen all around the neck with a knot in the umbilical cord on the

right side of the neck, (ii) on dissection she found the subcutaneous tissues in the neck to be echymosed, (iii) the internal organs were congested. It seems to me that the two facts, viz., the presence of contusions and abrasions around the neck, and echymosis of the subcutaneous tissues in the neck prove violence and pressure at that place. Those circumstances, taken along with the congestion of the internal organs and the remoteness of the possibility of the child being born dead with the umbilical cord around the neck with a knot at the time of the birth are sufficient to show that death was due to homicidal violence and strangulation with the umbilical cord and pressure with hands. Though the doctor is not positive, she also says that because the skin of the abdomen was found to be peeled off, it was likely that the cord was snapped from the child's navel after the birth. Modi at page 374 of the Fifteenth Edition (1965) states:

'Strangulation:-- This is also a common form of child murder. During the act of strangulation, far greater violence is used than necessary, and severe marks of abrasions and contusions with extravasation of blood in the soft tissues are usually found on the neck.'

Lower down he says:

'Rarely, the natural folds of the skin in the neck of a fat child may resemble the cord marks caused by strangulation, but in that case, no marks of abrasions or any extravasation of blood will be visible on the neck.'

21. These passages support the evidence of the doctor that death was due to homicidal strangulation.

22. Similarly Taylor, at page 172, of the Twelfth Edition states:

'Marks of encirclement by the umbilical cord are seldom clear-cut, for the cord is soft and its 'weave' or 'twist' of vessels too easily flattened by the pressure of tightening to cause a visible pattern on the skin.'

This again suggests, that, where contusions and abrasions are present, as in this case, it is not a case of natural death by encirclement of the umbilical cord prior to birth.

23. Apart from the medical evidence itself, we cannot ignore the other pieces of circumstantial evidence in the case which go to show that it was not a case of the child being born dead with the umbilical cord around its neck with a knot. In the first place, the circumstances of the case taken as a whole clearly suggest that the accused and P.W. 2 went to the tank knowing that there would be delivery soon and intending that the child, when born, should be disposed of. Under the circumstances, it seems to me to be too good a coincidence to be true that the child was born dead with the umbilical cord around the neck, relieving the accused and P.W. 2 of the necessity of killing the child. Again, if the child was born dead with the umbilical cord around its neck, there was no need at all to bury the child. Indeed, one would expect the conduct of the accused and P.W. 2 to be different from what it was if the child was born dead with the umbilical cord around the neck. If that was what happened, we could expect P.W. 2 and the accused not to have buried the child, but to have called somebody to witness the fact that the child was born dead with the umbilical cord around the neck. In order to divert the unjustified suspicion which might otherwise fall on them of their having murdered the child. Actually neither P.W. 2 nor the accused opens her mouth till when the matter came to light otherwise by the discovery of the corpse by P.W. 5 and the reporting of the matter to the village Headman by P.W. 1.

24. It would, therefore, follow that between themselves P. W. 2 and the accused murdered the child after it was born alive. But here comes my difficulty, because we cannot completely rule out the possibility of P. W. 2 herself having played a more active part than what she would allege and in fact having been primarily instrumental for the death of the child. The accused herself might have been quite exhausted because of the delivery of the child, and P. W. 2 might have taken the active part in murdering the child and disposing it of. One can no doubt ask whether on this line of reasoning the accused would not be guilty, by invoking Section 34 I.P.C., of having shared with P.W. 2, the intention to murder the child. But, the answer to this question is that that is not the case with which the prosecution came forward, and it would be unfair to the accused to convict her on such a basis when she had no notice at all of such a case. Under such circumstances, it would not be proper or even legal for the Court to alter the conviction of the appellant under Section 302 into one under Section 302 read with

Section 34 I.P.C.

25. It is in this view of the matter that I agree that the appellant will have to be acquitted.

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