

Kamakka Vs. Emperor

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Court : Chennai

Decided On : Feb-14-1911

Reported in : 9Ind.Cas.790a

Judge : Abdur Rahim and ;Ayling, JJ.

Appellant : Kamakka

Respondent : Emperor

Judgement :

1. We think the evidence of the medical witnesses establishes the fact that the child was thrown into the well. The accused in her first statement and also before the Committing Magistrate, stated that she threw the child into the well, but in the first statement she said that the child had died soon after delivery and it was the dead child that she threw into the well. It seems to us that it is possible that, when the prisoner threw the child into the well, she might have thought that it was dead. We do not think that we can safely rely on the evidence of Prosecution witness No. 2, who was examined as an approver and made contradictory statements at different stages of the case. The case rests really upon the admission of the accused that she threw the child into the well; but she says that it was dead at the time. She may well have been under that impression; and, if the conviction is to be based solely on a statement of her own, it is fair that that statement should be taken in its entirety, unless there is good reason to the contrary. The charge of murder, therefore, fails, and the accused will be acquitted of that charge. But she

is certainly guilty under Section 318, Indian Penal Code, and we convict her under that section and sentence her to rigorous imprisonment for two years.

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