

**In Re: Alamelou**

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**SooperKanoon Citation :** [sooperkanoon.com/807846](http://sooperkanoon.com/807846)

**Court :** Chennai

**Decided On :** Aug-21-1963

**Reported in :** 1965CriLJ224

**Judge :** S. Ramachandra Iyer, C.J. and ;Anantanarayanan, J.

**Appellant :** In Re: Alamelou

**Judgement :**

**Anantanarayanan, J.**

1. This is a special criminal appeal preferred by one Alamelou, a young woman aged about 19, who has been convicted by the Court assizes of Karikal for the offence; of murder or assassination of a newly-born child (infanticide) under Article 300 of the French Penal Code, and sentenced to solitary confinement (Reclusion) for five years, in view of certain extenuating circumstances present in the case. We desire to add that, extraordinarily enough, the appellant had intimated her intention to withdraw this appeal, in 1961; but the learned Public Prosecutor has, with commendable fairness, conceded that this cannot be done, as this is a case of a conviction for Grande Crime, and it is the duty of this Court, in appeal, to satisfy itself that the judgment is in accordance with law.

2. Very briefly, stated, this young unmarried woman was found guilty of killing her new-born infant, which she seems to have later buried, shortly after the murder. We are not now concerned with the fact of burial, and how far that would constitute

any separate offence. The record shows that, throughout, the appellant contended that either she gave birth to a dead child, or that the child was alive at the moment of delivery, but that she had to deliver the child herself, in the absence of any assistance whatever, and that the act of effecting that delivery probably led to the death of the child, because she had to pull the infant out by the neck. But, throughout consistently, the appellant has asserted her innocence, and denied that she was responsible, in any sense, for the voluntary murder of her infant. In other words, there is no incriminating statement of any kind by the accused, which could form the basis of her conviction under the French Criminal Processual Law.

3. The conviction seems to be based entirely upon the results of the autopsy, namely, the report of the medico-legal expert, Dr. P. A. Selvaradjou, Chief Medical Officer of the Health Department of Karikal. Undoubtedly, that report shows that Alamelou had recently, prior to the doctor's examination of the accused, given birth to an infant, as there were signs of pregnancy and recent delivery upon her. It also shows that the child, upon whom the autopsy was held, was born alive, since signs of pulmonary respiration were present. The child was viable, and had a normal constitution, and normal weight. But the child appears to have survived only for a few moments and death was apparently due to the fractures of the parietal and occipital bone of the skull, found upon the infant. The question is whether there is any legal evidence on record to establish, that this appellant committed this murder.

4. We are unable to find any such evidence, or even a shred of such testimony, which would support the conviction. The learned Public Prosecutor has with fairness conceded that the evidence of the neighbours, at best for the prosecution, amounts to nothing more than suspicion or conjecture. We cannot rule out the possibility that the child might have met with some accident at delivery, such as a fall on a hard surface, which might have caused the fractures and resulted in death. It is a cardinal principle of all systems of criminal jurisprudence, including French Criminal jurisprudence, that suspicion cannot displace proof, and that guilt cannot be inferred by guess-work of any kind. In the total absence of legal evidence, we are constrained to conclude that the verdict of the jury, and the conviction based thereon, cannot be supported. We find from a perusal of Article

694 of Dalloz Repertoire Pratique, Vol. 2, that our powers in cassation, even apart from Section 10 of the Pondicherry Administration Act, are wide enough to justify interference in appeal, where a conviction is based on material which is totally destitute of the legal elements of the crime. Hence, we direct the acquittal of the appellant, and further direct that she shall be set at liberty forthwith, if she is in custody.

5. Before parting with the case, we desire to express our indebtedness to Sri T. Ramalingam, who assisted us by appearing as Amicus Curiae.

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