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**In Re: Boya Latchmakka**

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**SooperKanoon Citation** : sooperkanoon.com/810193

**Court** : Chennai

**Decided On :** Mar-14-1939

**Reported in** : AIR1940Mad294

**Appellant** : In Re: Boya Latchmakka

**Judgement** :

**Stodart, J.**

1. The referred trial and the appeal relate to the case of one Latchmakka, a woman of 30, who has been sentenced to death for the murder of her new born infant. The appellant had left her husband two years ago and at the time of the crime, she was living in a house two doors from his. Her husband's mother, P.W. 3, is the only material witness in the case. P.W. 3 says that on the night of 8th December, the appellant whose condition had been apparent for some time called her saying she was in great pain. P.W. 3 advised that she should take some hot water and went on the following morning to the appellant's house and found the appellant sitting leaning against a wall and the newly delivered child lying on the ground dead. P.W. 3 then took the child out, buried it and having obtained assistance, she attended to the appellant and tidied up the house and went away. The learned Sessions Judge has found that the appellant throttled the child but we do not find sufficient proof in the case either that the child died of homicidal violence or that the appellant intentionally caused its death. The Assistant Surgeon, Madanapallee, who examined the body was of the opinion from the

condition of the internal organs that death was due to asphyxia. He also found on the front of the neck a bruise 21/2 inches long by one inch wide and on these data, he gave it as his opinion that asphyxia was probably due to throttling.

2. On the admitted facts, the appellant was alone without assistance when the child was born. The mark on the neck may have been caused by an accident at the time of birth or shortly after it. The evidence of P.W. 3 is that when she first saw the appellant, the appellant was in a very weak and helpless condition and it is very difficult to believe that she would have had the energy or the will to kill her child. Learned Counsel for the appellant has also pointed out that there is no conclusive evidence that the child was born alive. His argument is certainly supported by eminent authority. P.W. 1 the Assistant Surgeon, bases his opinion that the child was born alive on the fact that the lungs on suction floated in water. But the learned authors of Edn. 9 of Taylor's Medical Jurisprudence point out that this is not an infallible test of live birth and that a child may breath while its head is in the vagina, either during a presentation of the head or of the breach. The learned authors say this is not very uncommon and must be set down as a possible occurrence. The appellant told P.W. 3, the mother-in-law, that the child had been born dead, and in our opinion, there is no sufficient reason why this statement should not be believed. The probabilities in fact are in favour of the appellant and we find it very difficult to understand the opinion of the learned Sessions Judge based on the facts which we have set out above that the appellant killed her child and that there were no extenuating circumstances. He has taken the very unusual course - unusual in cases like this - of sentencing the appellant to death though we find at the same time that he has addressed the Government recommending that the sentence be reduced to a term not exceeding five years' rigorous imprisonment. It is obvious, in our opinion that if the case of the appellant was one which the Judge thought should be dealt with under Rule 260 of the Criminal Rules of Practice by reduction of a sentence, the sentence of death was quite inappropriate. In the result, we allow this appeal, set aside the conviction and sentence of the learned Sessions Judge and direct the appellant to be set at liberty.

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