

(1879) 08 AHC CK 0008

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Banni

RESPONDENT

Date of Decision: Aug. 4, 1879

Citation: (1880) ILR (All) 351

Hon'ble Judges: Straight, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Straight, J.

In disposing of this appeal, it is necessary I should correct a mistake of procedure into which, according to my judgment, the Sessions Judge has fallen, by making two convictions of the appellant for offences against Sections 304 and 317 of the Indian Penal Code, and passing sentence for each. As long as the child remained alive the charge u/s 317 of "exposure with intent to abandon" could have been properly sustained, and had Musammat Banni been tried before its death for this offence, she could rightly have been convicted, and as provided by the explanation at the end of Section 317 such conviction would have been no bar in the event of the child's death to a prosecution for culpable homicide. To give an analogous case, A commits an assault upon B and undergoes his trial for an assault before B's death, which ultimately takes place in consequence of the injuries inflicted by A. A's conviction for the assault is no bar to an indictment for manslaughter. But if before A's trial B dies, then A must be tried for manslaughter, the lesser crime having merged into the greater, and the offence committed relating to one and the same transaction. In the present case when the child died the offence of Musammat Banni, u/s 317, became absorbed in the more serious charge of culpable homicide, and the unlawful act of exposure having directly caused the death, and being done with the knowledge it was likely to cause death, brought the accused within the operation of Section 304. It seems to me that the maxim "nemo debet bis puniri pro

uno delicto" applies, and that in this case two separate sentences can no more be passed than they could for murder and wounding with intent to murder, where the death of the party attacked had taken place, and the death and the wounding involved one and the same transaction. The criminal exposure u/s 317 was the direct cause of the death of the child, and therefore the crime, instead of stopping at Section 317, death being caused, took the more serious shape u/s 304. It was, of course, perfectly proper to frame a charge upon Section 317, because had any question arisen about the cause of death being the exposure, the transaction would have resumed its character u/s 317. For the preceding reasons I therefore think it safer to quash the conviction and sentence upon Section 317, but agreeing as I do in the view taken as to the proper punishment for the conduct of the accused by the experienced Sessions Judge, I order that so far as the appeal against the conviction on Section 304 is concerned it be dismissed, and that the sentence in respect of the conviction on that section be increased to one of four years rigorous imprisonment.