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Case Report

ILLEGITIMACY: IS IT A MOTIVE FOR HOMICIDE? - A CASE REPORT

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ABSTRACT

A fetus was buried by unknown male and female, informed by informer to police. On the spot, Police has investigated and asked to Sub-Divisional Magistrate/Tehsildar for inquest as well as permission for exhumation. After exhumation, single dead female fetus found and suspects were also identified by informer and asked about their relationship and for cause of death of fetus. Police became suspicious as they received inappropriate answers from them, confirms foul play happened and shifted the body for postmortem examination to Department of Forensic Medicine and Toxicology for expert opinion to finalize the cause of death. Case details explained as below.

Keywords: Informer, Exhumation, Inquest, Fetus, Expert Opinion, Sub-Divisional Magistrate.

INTRODUCTION

As per section 112 of the Indian Evidence Act "A legitimate child is a child who is born during the continuance of a valid marriage between his mother and any man or within 280 days after its dissolution by divorce or death of the husband and the mother remaining unmarried"¹.

Term "illegitimate child" is now rare "extramarital child", "love child" and "child born out of wedlock" are more commonly used².

An illegitimate child is one who is born out of wedlock or not within a competent time after the stoppage of the relationship of husband and wife or born within wedlock when the husband is not capable to produce³.

In 2009, 41% of children born in the United states were born to unmarried mothers⁴. In April 2009, the National Center for Health Statistics announced that nearly 40 percent of American infants born in 2007 were born to an unwed mother; that of 4.3 million children, 1.7 million were born to unmarried parents, a 25 percent increase from 2002^{5 & 10}.

The Legitimacy Act 1926 of England and Wales legitimized the birth of a child if the parents subsequently married each other, provided that they had not been married to someone else in the meantime⁶.

The Legitimacy Act 1959 extended the legitimization even if the parents had married others in the meantime and to putative marriages which the parents incorrectly believed were valid⁵.

The Family Law Reform Act 1969 (c.46) allowed an illegitimate to inherit on the intestacy of his parents⁶.

Under the English Law contained in the Family Law Reforms Act, 1987 the illegitimate children enjoy full rights of succession⁷.

Special Marriage Act, 1954 (sec 16) and the Hindu Marriage Act, 1955 (Sec 11) such a child is not entitled to inherit the property of any person other than the parents⁸.

Manner of deaths of illegitimate child

1. Suffocation: Suffocating child in a rug, Stuffing their mouths with black salt, Suffocating them with a wet towel or bag of sand, Forcing grains of poppy seed or rice husk down their throats
2. Strangulation-Putting after birth placenta to her face, ligature material or manually
3. Drowning -In Gujrat, Killing a newborn baby girl by drowning her in a pail of milk- Doodh Peeti custom
4. Fracture of the skull
5. Fracture or dislocation of the cervical vertebra- by twisting the neck
6. Poisoning-Putting opium to mother's nipple. In Tamilnadu, kallar community feeding girl child with poisonous oleander barrier

CASE DETAILS

Full term female fetus, length of fetus 50cm, weight 1900 gms, cc-30cm, mac-18cm, abdominal girth 28cm, umbilical

cord tied with white thread, Palmar crease present, bluish marks over legs, nail beds cyanosed.

1. Contusion present over aspect of neck 1.5 cm x 1 cm in size bluish in color, horizontal in direction, 3cm above to Manubrium Sterni.
2. Excoriation of skin by animals/ insects over anterior aspect of chest lower side and upper abdomen varying in direction and size on cut section pale in color.
3. Excoriation present over right anterior aspect of forearm of wrist varying in direction and size on cut section pale in color.
4. Subscalpular hematoma present over left parietal, temporal and occipital region. brain matter edematous.
5. Both lungs cyanosed, stomach contains whitish colored milk like semisolid matter, all other organs were pale.
6. Blood and piece of sternum for DNA preserved.
Cause of death: Full term female fetus of gestational age 35-36 wks cause of death was manual strangulation

DISCUSSION

The first and foremost question comes in mind is that why legitimacy is required? Can it give bread and butter to the person or family? Is it everything for the ancestral property or money? What about the dignity in society? And very shockingly in the largest democracy of the world, where no school readily admits a child who cannot fill the blank asking for the father's name but certainly it gives something due to which person can live with dignified life in society?

It gives Inheritance of property, Paternity of the child, Supposititious or fictitious children and don't destroys the stability of any existing social structure.

Laws in India-

The amendments to the Criminal Procedure Code that allow illegitimate children to force their biological parents to pay for their upkeep & more teeth added to it by an Andhra Pradesh Bill proposed last year that suggests simplified prosecution and enforcement⁸.

The Bill says that illegitimate children now have the right to take shelter in the homes of either of their biological parents⁸.

Illegitimate children now enjoy all the rights of legitimate children and can claim them from their official parents⁸.

If these children file a police case with the help of friends and relatives or NGOs, an alleged biological father can be forced to undergo a DNA test to establish paternity. This new provision gives additional protection to the illegitimate children of rich and philandering persons⁸.

Illegitimate children entitled to ancestral properties decision given by Supreme Court by the Bench of Justices GS Singhvi and AK Ganguly New Delhi, Wed Apr 06 2011⁸.

“With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today⁹.”

Recommendations

1. In Birth certificate, Status of legitimacy should be mentioned.
2. Reducing the number of out of wedlock birth should be the goal as per (PROWRA) act 1996 i.e Personal

Responsibility and Work Opportunity Reconciliation Act⁹.

3. Vigorous implementation of most sacred ideas of human rights and social justice.
4. Statutory provisions in Hindu laws
5. If specific goals were not set then bonuses were awarded to states that reduced the percentage of births to unmarried women by largest amount (without increasing abortions)

CONCLUSION

In our country, an illegitimate child cannot inherit to his father, even if the genetic father is known. The illegitimate children must be given right equal to other children because it is the law itself which has categorized them as an illegitimate and legitimate. The children have done no wrong. They should not be punished by curtailing their right for no fault on their part. The recommendation which were given should be strictly followed and accused should be punished. As in this case, imprisonment for life given by session court to accused of this murder. Fast track court has given their judgment within 2 years.

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Photographs are self explanatory:



Photograph showing multiple contusion or animal bites over the abdomen was in dilemma at time of postmortem but confirms that animal bites



Contusion over the neck signifies Manual strangulation



Weight of the fetus at time of postmortem



Submucosal haemorrhage below to injury signifies manual strangulation



Blue colored ink mark signifies hospital delivery



Tracheal tearing at places

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