

CROWN COURT. – Saturday.
THE CHARGE OF CONCEALMENT OF BIRTH,
AT NEWLYN, SUMMARILY DISMISSED

Margaret Harvey Toman, on bail, was indicted for endeavouring to conceal the birth of her child, of which she been delivered, by secretly disposing of the dead body of the same, at the parish of Paul, on or about the seventh of March, 1867.

Mr. Henry C. Lopes, M.P., and Mr. Pendarves were counsel for the prosecution, and the prisoner was defended by Mr. Carter.

Mr. Lopes, in stating the facts of the case to the jury, said:- The case that will be laid before you is one of a somewhat remarkable character. There is a large mass of evidence to be adduced in support of the prosecution, and, therefore, I shall content myself with giving you a short outline of the case which we propose to prove. The prisoner is charged with concealing the birth of her child, and it will appear that within a very recent period, in fact just previously to the enquiry before the magistrates, the body of a child was found in the closet of the prisoner's house. It was wrapped up in a merino skirt, and there was also found at the same time that which appeared to be an after birth, concealed in a seal-skin jacket. The prosecution will suggest to you that that child was the child of the prisoner at the bar, and that the birth of the child had been concealed by her. I will shortly detail to you in what way we propose to bring that offence home to the prisoner. It will be proved to you that she is a married woman, and that, her husband being absent in Australia, she kept a lodging-house at Newlyn. On the 7th of March, 1867, she was taken ill, and previously to that day it was noticed that she was much stouter than she was subsequently. A number of witnesses will be examined, and they will detail to you the circumstances of the illness to which I have referred, and what took place on the evening of that day. It will be contended on the part of the prosecution that the prisoner was confined on that evening, and that either on that night or within a short time afterwards, the child was deposited in the privy. I am bound to say, gentlemen, that the whole of the evidence is purely circumstantial, and the way in which the prosecution connects the prisoner with the crime is this. They say that previously to her illness on the 7th of March, 1867, there were indications which led people to believe that she was with child, and that after that date those indications disappeared; they further say that the child was wrapped up in a article, or rather in articles, that beyond question were her property, and furthermore it will be proved that whereas she had been in the habit of wearing those articles before the seventh of March, after that date they were not again seen until they were found under the circumstances which I have described to you.

Mr. Carter:- Your lordship might perhaps consider it rather early for me to raise any objection, but I contend that even if my learned friend succeeds in proving every circumstance as he has opened them, it will fall very far short of anything like a substantiation of this charge. The substance of the indictment is that the prisoner endeavoured to conceal the birth of the child by a secret disposition of the dead body, but I think I may appeal to my learned friend that among the host of witnesses he intends to call, he has not the slightest evidence that this woman ever endeavoured to secretly dispose of the dead body of the child, or that anything found two years afterwards had relation to any act that she might have committed in the month of March, 1867. Therefore, the multitude of witnesses who are to be called in support of the prosecution are rather to supply a want of cogent proof. I will, therefore, ask my friend Mr. Lopes, where there is any legal evidence of the offence which is laid in this indictment?

Mr. Lopes:- I am bound to say, my lord, there is no evidence whatever to show that the prisoner in any way dealt with the dead body of the child. I experienced that difficulty in opening the case, and I do not think I can carry the case beyond what I have stated. One point of our case is that, before the 7th of March, the prisoner was much stouter than usual, and that subsequently to that day this was not observable.

His Lordship:- That may be said of a million people. Many of us are stouter or thinner every day.

Mr. Lopes:- I shall prove that the body of the child was found wrapped up in apparel which beyond all question was the property of the prisoner.

His Lordship:- That had been the property of the prisoner! You mean that the body of the child was found wrapped in a merino skirt that had belonged to the prisoner, and you say the same of the seal-skin jacket?

Mr. Lopes:- Yes, my lord. I shall prove clearly that both articles were hers, and, as I said just now, I shall further prove that whereas she was in the habit of wearing those things before the 7th of March, after that time they were not seen. I shall also prove that a large quantity of the prisoner's clothes were seen with blood upon them on the 8th of March.

His Lordship:- I do not mean to say it is necessary in cases of this kind – in fact it is not necessary – to prove that the child was born alive, but I believe you have no proof of that.

Mr. Lopes:- No, my lord, I cannot prove it. The child was never seen alive by any of the witnesses.

His Lordship:- Of course, decomposition in the course of two years has proceeded to such an extent that it was impossible for you to show, except from very conjectural evidence, what the age of the child was in the womb.

Mr. Lopes:- That is so.

His Lordship:- Then it may have been under a seven months' child, in which case it is not a child within the meaning of the statute. I do not wish to express an opinion prematurely, and therefore I should like to hear what Mr. Carter has to say upon this difficult question, because the opinion now given by the court may be misunderstood.

Mr. Carter:- My answer, my lord, would, I think, be complete upon the case of the prosecution, and by the witnesses whom I shall call for the defence. Taking the general circumstances of my friend's case, I grant that they are correct, except in one instance, and that is, that I have never seen in the course of the evidence a word about the *placenta*.

His Lordship:- You are quite right, Mr. Carter. These depositions have been carefully perused in order that nothing might be overlooked, and it struck me that I had heard nothing about the *placenta* in them. There was a something which was otherwise described in the depositions.

Mr. Lopes:- Just so my lord. I had no intention to misrepresent it.

Mr. Carter:- I say there is not the slightest evidence, even if the child was born in the prisoner's house, that it was concealed from any person. There was entire publicity, any person who choose to go into the prisoner's room, at the time mentioned, might have done so, and did do so. They do not call any persons who were actually in and out of the room, nor do they show this poor woman, who was suffering from quinsy or sore throat at that time, and confined to her room, was ever out of the house from the Thursday following. There could have been no opportunity for her to dispose of the body of the child, which was found two years afterwards. I content that there has never been any act or sign of the prisoner which would lead to a justification of this charge.

His Lordship:- I think there is great weight in your objection. As I understand it, the evidence of the *accouchement* is, to say the least of it, problematical. So far as the evidence goes, no child was ever seen by any human eye, but, supposing there was a child seen, then there is no proof either of the sex or age of the child, nor is there any proof of identity excepting that of the clothes to which reference has been made. I think the sealskin jacket may be removed out of the question. The child was wrapped up in a merino skirt which once belonged to the prisoner, but there is no proof of any actual disposition by the prisoner personally, and no proof that she gave directions to any other person. I think, Mr. Lopes that, even if you prove all that you have opened, it will be my duty to tell the jury that there is no case against the prisoner.

Mr. Lopes:- I am quite of your lordship's opinion.

His Lordship, in addressing the jury, then said: In this case, before any person can be convicted under the statute, it must be proved first of all that the woman had a child, but there is no direct evidence of that. She was ill; she had been stouter and she was thinner, and that, no doubt, would lead to a suspicion. No child was ever seen by any human eye; no child was ever heard by any person in the house; but even supposing the child which was found was hers – of which there is no proof – generally speaking, a child under the age of seven months is not a child within the statute. Any evidence, after decomposition had gone on for two years or more, as to the age of that child, must be entirely unreliable, but supposing all these difficulties are got over, still there is no proof that this disposition was done by the prisoner herself, or by her order, and that being so, if the learned counsel had proved all that he has opened I should have felt it my duty to tell you there was no case for your consideration. I am fortified in that by the counsel for the prosecution himself, saying after hearing my opinion but not before, that he is of the same opinion. That being the case you will say the prisoner is not guilty.

The prisoner was acquitted.

Mr. Carter made an application to his lordship that the expenses of the prisoner's witnesses, who were examined before the magistrates, might be allowed.

His Lordship granted the application.

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