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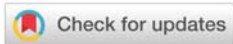
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Case Study

Mother killed her newborn baby

Abstract

In Dubrava, near Varaždin, Croatia, a young woman at 28 years of age has given birth to a baby in a family home in mid-February this year. Because of the mental derangement a few days later, she become sick at her job and she was admitted to a hospital in Varaždin. The doctors found that she had recently given birth. Due to her health condition and the fact that they knew nothing about the child, the doctors informed the police. When the police went to search her house, they found the dead body of a newborn baby. This case contains elements of neonaticide and infanticide which is described as a killing in Article 112 of the Croatian Criminal code. Croatian Criminal code does not differ neonaticide and infanticide. This is one criminal act.

Introduction

Why are children the victims of their parents' inability to cope with life [1]? Are children expendable? What can stir a parent to kill a child, especially a newborn? People are horrified when parents kill their children, and the media focus varying amounts of attention on such crimes. Professionals and the lay public need to understand why these incidents occur and what family, medical, public agency, educational, and legislative actions can and should be undertaken to reduce them.

Throughout history, prosecutions of and convictions for neonaticides and infanticides have been, on the whole, more merciful than those of other kinds of homicides [2]. Most contemporary societies have also refused to punish neonaticides as they do other homicides. Customs and laws often treat child murderers in a selective and targeted manner. For example, it has been alleged that fathers are generally punished more severely than mothers. This might be because gender stereotypes and cultural images of women produce responses which affect public sympathy and attitudes when women kill their offspring. Women have been perceived either as the "mother," virginal and pure, or as Eve, the wanton temptress. The word "mother" brought to mind the symbol of the warm nurturer, and if reality failed this expectation, a cultural disappointment was evoked, frequently abetted by individual experience. Our cultural assumptions were that mothers are self-sacrificing, compassionate, caring, and above all, loving. We have often confused the notion of "good mother" with that of the "good woman". Hence, one of the commonly held assumptions was that women were not criminals and that any illegal activities on their part was, therefore, pathological. Mothers who killed their infants,

which is unnatural, were considered to be either "mad" or evil sociopaths ("bad"). Women, when tried for crimes, were too often judged not just on the basis of their legal infractions "but also for their compliance or variance with stereotypically female behavior". If the female had not conformed to assumed gender characteristics, she was perceived as "bad." This was especially true in cases of neonaticide and infanticide because these crimes contradicted the concepts of motherhood and femininity which involved nurturing, unselfishness, and above all the projection of the child's role in the family.

Neonaticide

Neonaticide stories become even more patterned when they draw to a close [3]. When they finally go into labor, the overwhelming majority of these young women mistakenly believe that they need to defecate. They spend hours alone, on a toilet, laboring silently. That they are able to endure labor in silence is shocking, given that birth typically is a noisy process. The fact that they are able to pass hours uninterrupted in the bathroom, when, more often than not, family members are in the house with them, underscores the extent to which these girls are emotionally and physically isolated from those who ostensibly should be their support system.

Once their babies are born, most of these young women behave in a manner that demonstrates their exhaustion, panic, and again, their denial. Amazingly, in view of the long months of a pregnancy, those who commit neonaticide seldom are prepared for contending with labor, delivery, and their newborn [3]. Instead, the young women behave impulsively, typically worrying first about being discovered. Rather than pulling the baby out of the toilet, many of them leave the baby to drown while they attempt to clean up the blood and tissue

that accompanies childbirth. Others suffocate or strangle their newborns moments after birth, in an effort to silence them.

Neonaticide, a crime almost exclusively committed by the biological mother, occurs throughout the world and seems to be one of the least preventable crimes [4]. Mothers who commit neonaticide usually give birth to the child alone and kill their newborn very soon after delivery, most commonly within the first 24 h of life. The majority of newborns are killed by smothering, strangling, head trauma, drowning, or neglect. In most cases, the scene where the dead neonate is found is not consistent with the scene of delivery, and a broad variety of methods of disposal can be observed. Issues that have to be addressed by the forensic pathologist during autopsy include (i) estimating the gestational age and physical maturity of a neonate; (ii) determining whether there are indications of live birth or stillbirth; (iii) answering the question as to whether the child was viable and able to survive, and if so for how long; (iv) documenting lethal and nonlethal injuries as well as underlying (potentially lethal) organic diseases; (v) helping to establish the identity of the mother; and (vi) determining cause, mechanism, and manner of death if possible. In addition to the flotation test for lungs and the stomach, to determine whether the neonate was born alive, postmortem computed multislice tomography assists with the distinction between live and stillbirth but also the differentiation between artificially aerated lungs (resulting from resuscitation attempts) and naturally aerated lungs, making this presently the gold standard in postmortem imaging techniques in addition to autopsy in cases of neonaticide.

Since terminology and legislation vary among different countries, a number of terms have been used to classify the killing of very young children, including infanticide (killing of an infant between 1 month and 1 year of age), neonaticide (killing of a newborn within its first 24 h of life; other definitions extend this to 28–30 days after birth), and filicide (killing of a child by a parent).

Infanticide

Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, if the circumstances were such that but the offence would have amounted to murder or manslaughter, she shall be guilty of [an offence], to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child [5].

The essence of the offence, then, is a voluntary killing of a child under the age of one year by its mother [6]. It is a noteworthy example of how doctrine is constructed out of a view taken on a matter of sentencing. It had long been recognised that the death penalty was inappropriate for mothers who killed their children in the few months after

childbirth. Hormonal changes after birth commonly result in temporary depression which may become clinical depression. In severe cases this may lead to the mother killing the child.

Calls have been made in recent years for the offence/defence to be reconstructed to take into account the current state of evidence surrounding the killing of newly-born infants [6]. First, it seems clear that relatively few such killings result from mental imbalance resulting from lactation or the fact of having given birth. Considerations such as the frustrations of coping with an inconsolable child, particularly in conditions of poverty and limited space, are more conducive to such a response. Yet despite this the vast majority of infant killings by mothers are treated as infanticides or lesser offences rather than murder. It has been concluded that infanticide is used in practice as a means of ensuring leniency of treatment to mothers who kill their very young children, whether there are cogent medical grounds for doing so or not. In this sense infanticide is a less onerous defence to murder than is diminished responsibility.

The failure to recommend extension of the coverage of infanticide to male parents may be considered odd, given that environmental stresses are now recognised as a serious determinant of infant killings [6]. If a child screaming at an out-of-work mother suffering sleep deprivation in a cramped flat impairs her responsibility, there is no obvious reason why it should not impair the responsibility of a male parent in like circumstances. It has been concluded that this failure is representative of an invidious tendency to show mercy only to female killers of their children. This not only potentially demeans women but may be unfair to men suffering comparable stress. Indeed, outside the field of infanticide, statistics show that mothers, although equally represented as potential killers of their children, are generally treated more favourably than fathers. This tendency may itself derive from untenable assumptions. Male killers are more likely to be perceived as wicked, and mothers as victims of circumstances even though the circumstances of the killing are broadly comparable. Whatever the rights and wrongs of the situation, however, it is arguable that mercy and compassion are proper objects of the criminal law given the wealth of evidence concerning the stresses of childbirth and the early period of child-rearing. Opening up the defence to fathers and mothers of children above twelve months would leave one questioning the logic of restricting the defence only to natural parents. If it is thought bad public policy to open up the defence so as to potentially loosen the demands of self-control in the population at large, it may nevertheless be right to afford the defence to those (mothers) socially and congenitally most in need of it.

Infanticide cases presented some unusual challenges for investigators [7]. The proceedings were usually initiated by the discovery of a dead newborn. Investigators had to locate the mother so she could be questioned about the incident, and they also had to determine that the newborn had indeed died as a result of violence and not of natural causes. Both of these steps involved the expert testimony of a physician. Women were examined for evidence of recent pregnancy and delivery such as vulvar swelling, cervical dilatation, uterine enlargement,

lochia, darkened areolae, and lactation. The infant's body was examined to determine if it had been born alive. Determination of live birth was based largely on an examination of the lungs. The lungs of a stillborn infant were said to be unexpanded by air and as a result did not fill the pleural cavities or cover the heart.

Motives

Cultural mores, economic development, and technical-medical progress have created communities that can provide more favorable and nurturing environments for families [2]. Yet the problem of child homicide remains, though on a smaller scale than in the past. Women's status and rights have been firmly established on more equal terms in Western societies. They have gained the vote, and, in general, have access to more control of their reproductive functions. Young people enjoy more freedom from adult supervision, have greater economic opportunities, and have a far longer adolescence than formerly. The rising divorce rate and the earlier physical maturation of youngsters have abetted earlier sexual activity. The pressure to engage in sexual intercourse is substantial. This has led to a dramatic increase in teenage pregnancy which has just begun to slide in the past few years. When a boy urges a girl to have intercourse — “everyone does it!” — what alternatives does she have? (She could say “no,” but may be weighing this against the consequences in terms of future dates, peer popularity, or other factors.) If she “does it” and becomes pregnant, again what alternatives does she have? Homicide is one tragic option, whether as neonaticide by a panic-stricken mother at the time of birth, infanticide by an ill-prepared parent in the child's first year of life, or filicide even later.

What are the salient characteristics of homicidal mothers? They differ in socio-economic background, community, and education [2]. But though different in these instances, they do possess other similarities. The women are usually young and single. The majority of them live with parents, guardians, or relatives. They are often, but not always, poor. Most are not married or do not have committed relationships. They keep themselves isolated and are unwilling to admit even to themselves that they are pregnant. Yet the studies both in the past and present indicate that while the actions (neonaticide or infanticide) are similar in behavior, psychological and environmental circumstances vary widely.

When a mother kills, it challenges cultural and biological conceptions of women and motherhood [8]. Throughout history infanticidal mothers have been documented in myths, poems, novels, opera, plays, the media, legal and medical texts as either ‘mad’ or ‘bad’. Since at least the middle of the nineteenth century, deviant, unnatural women have been the subject of intense media focus. Salient warnings about the evil power of women are found in fairy stories and folk tales about jealous stepmothers and wicked witches. As moral tales, they constitute a subtle form of moral regulation by making an example of undesirable ‘types’ of women and encouraging morally upright behaviour.

Infanticide was still seen as a moral rather than a social problem, to be dealt with by medico-legal means [8]. The focus on psychiatric disturbance allowed for social and mental distresses to be taken into account without ‘threaten[ing] basic legal tenets of responsibility’. While this medical excuse complemented medical knowledge of the time, both law and early psychiatry operated in morally regulatory ways, using the sexed female body as their moral standard. The idea of a disturbed mind as a result of childbirth and/or lactation drew on the negative aspects of the sexed female body to explain the apparent irrational and unnatural act of infanticide. The infanticidal woman was a sexed subject, but a contradiction in terms, being both a wilful criminal and a subject whose biology condemned her and excused her; she was both ‘bad’ and ‘mad’.

Psychiatry

Psychiatry is a specialty within medicine [9]. Its practitioners, as in other specialties, are trained to see their role as identifying sick individuals (diagnosis), predicting the future course of their illness (prognosis), speculating about its cause (aetiology) and prescribing a response to the condition, to cure it or ameliorate its symptoms (treatment). Consequently, it would be surprising if psychiatrists did not think in terms of illness when they encounter variations in conduct which are troublesome to people (be they the identified patient or those upset by them). Those psychiatrists who have rejected this illness framework, in whole or in part, tend to have been exposed to, and have accepted, an alternative view derived from another discourse (psychology, philosophy or sociology).

As with other branches of medicine, psychiatrists vary in their assumptions about diagnosis, prognosis, aetiology and treatment [9]. This does not imply, though, that views are evenly spread throughout the profession, modern Western psychiatry is an eclectic enterprise. It does, however, have dominant features. In particular, diagnosis is considered to be a worthwhile ritual for the bulk of the profession and biological causes are favoured along with biological treatments.

The illness framework is the dominant framework in mental health services because psychiatry is the dominant profession within those services [9]. However, its dominance should not be confused with its conceptual superiority. The illness framework has its strengths in terms of its logical and empirical status, but it also has weaknesses. Its strengths lie in the neurological evidence: bacteria and viruses have been demonstrably associated with madness (syphilis and encephalitis). Such a neurological theory might be supported further by the experience and behaviour of people with temporal lobe epilepsy, who may present with anxiety and sometimes florid psychotic states. The induction of abnormal mental states by brain lesions, drugs, toxins, low blood sugar and fever might all point to the sense of regarding mental illness as a predominantly biological condition.

Mental Disorder

Mental disorder represents the main point of contact between psychiatry and the law [9]. The early days of psychiatry

in the nineteenth century were heavily influenced by eugenic considerations – it was assumed that a variety of deviant conducts could be explained by a tainted gene pool in the lower social classes. This degeneracy theory, which characterized early biological psychiatry, linked together the mad, the bad and the dim. However, during the First World War and its aftermath such an underlying assumption began to falter. In the forensic field, there emerged a resistance to the old eugenic ideas of degeneracy, which accounted for criminality in terms of an inherited disposition to bad conduct. This was replaced by an increasing interest in environmental or psychological explanations for law-breaking. Since that time, psychiatric experts have played a major role in identifying and explaining criminal conduct. And once there was that shift away from bio-genetic determinism, then this opened up questions, still pertinent today, about psychological explanations. Given that the latter contain elements of determinism as well as assumptions about human agency, then case by case the balance allotted to each is always open to consideration and varying perspectives. The norms of the criminal justice system permit this ambiguity. For example, mental illness may be considered as a reason to exculpate criminal action in a context, in which usually intention, and therefore intentionality, is the focus of interest to judges and juries.

Mental illness is category of infanticide cases involves women with severe mental illness, whether acute or chronic, who clearly are not prepared for the task of mothering. A significant depressive or psychotic episode may render a woman unable to generate the continual flow of selfless compassion and patience that children demand [10]. Likewise, a woman with a chronic mental impairment may be constitutionally incapable of meeting the demands of parenting in isolation, without external support. Tragically, there are numerous infanticide cases involving severely impaired women who were expected to care for their children, essentially alone.

Criminal law

Infanticide is a specific blood tort in terms of the subject and object of the offense [11]. The perpetrator only can be a biological mother (*delicta propria*), and the subject is only a newborn. The discovery and proving of infanticide, among other things, requires the good understanding of certain concepts in the field of medical science (pregnancy, birth), and especially in the field of judicial medicine. The specific traces of this tort are primarily biological traces related to the mother and child.

The concept of criminal act of infanticide is, in criminal terms, subordinated to the term “murder” [11]. It is about the kind of privileged murder of “*sui generis*”. This is an act where the connection between the social environment and criminal activity is very direct and strong. Thus, the individual case of infanticide does not only remain at the level of a single criminal act related to the perpetrator of the biological mother of the child, but has a strong social connotation, especially by its etiology and its consequences. Until it is proved that the subject is the mother of a newborn, it is not possible to talk about infanticide, but it can be murder, an unlucky case or a

sudden natural death or, for example, sudden infant death syndrome.

Constitutive elements of the criminal act of infanticide are as follows: 1. the perpetrator may be only a biological mother; 2. the object of action is her own infant; 3. the act of perpetration may be any act (action or omission) that causes the death of the child; 4. The consequences of the offense the death of the child and 5. Time of committing can only be at the time or directly after childbirth.

Forensic Evidence

When the baby has been found in a house or other building, he may need to visit the scene, preferably with the child still in situ [12]. Numerous cases are on record of the infant being in a lavatory pan and, if there are head injuries or drowning, the circumstances must be evaluated. The external examination is, as always, important. It is vital to assess the degree of putrefaction because if it is in any way decomposed, it will almost certainly be impossible to determine whether live birth had occurred.

Decomposition must be distinguished from intrauterine maceration, as the latter is definite proof of stillbirth [12]. If death occurred within 2–3 days before expulsion from the uterus, the appearances may be fairly normal, apart from general softening and histological evidence of general cellular autolysis. When it has been dead for many days, the macerated fetus is usually a brownishpink, rather than the greenish hue of putrefaction. The surface is slimy, blistered, desquamating and sometimes almost jelly-like. The joints are grotesquely loose and the cranial plates may be virtually detached beneath the scalp. Rarely, a macerated fetus – which is normally sterile – may become infected if not expelled after the membranes rupture; it will then be born in a putrefied state.

In infanticide we may gain numerous points of evidence if the autopsy is performed in the appropriate order and prescribed protocol [13]. The maturity of the newborn can be assessed from body measurements and besides the weight, we can observe the disappearance of the lanugo, the length of hair, the descent of the testes into the scrotum, the form of the external genitalia, and we measure the diameter of the ossification center at the distal end of the femur, which in the matured newborn measures about 5 mm in diameter. During the external examination we look for vernix caseosa on the body surfaces, which can be found in abundance in the axillae, and between the thighs and buttocks of the mature newborn. In the autopsy of the newborn after dividing down of the scalp we look for the presence of a serous swelling on the presenting part of the head (*caput succenadium*), or the formation of the so-called cephalhematoma, which is a collection of blood under the periosteum extending to the border of the bone.

The gastrointestinal air content test indicates the length of time the live-birth newborn survived, since the infant, while taking the first breath, will also swallow air, and this is the explanation of how air gets into the gastrointestinal tract. To estimate the presence of the air in the stomach the organ

must be tied off at the cardia and pylorus and then removed for the float test, after which the stomach contents are examined which in many cases provides evidence of prior breathing and swallowing movement (inhalation or swallowing of meconium). The air content of the small intestine can verify the amount of time the baby lived after birth, as air arrives in the small intestine of the newborn after six hours and into the large intestine by 12 hours.

The investigations in infanticide, in most cases, are conducted against unknown perpetrators, since generally the body is found in abandoned places, usually in garbage dumps and due to this reason the results of an investigation and legal studies initiated are doubtful [13]. At other times it may be reported because of the complications, with a heavily hemorrhaging woman after giving birth being brought into a medical institution and the institution making the report discovers the fact of delivery.

The question of over which spread of time infanticide should be considered child murder varies from country to country. In Hungary the practice prevails of considering it infanticide if it occurs during birth or immediately after. At the same time in other countries under the title of child murder are listed those cases where a child is killed up to 12 months of age, as it is in the United States, while in literature collected from Japan about child murder, attacks on children up to 15 years old are included. A large amount of statistical data has been amassed concerning child murder. Child murder makes up 10 - 24% of the autopsies in forensic medicine, of which a significant part, according to the statistical data, are infants between the ages of 8 days and 12 months.

Preventive

As enlightened as we may think we are at the beginning of the 21st century, a society that focuses on punishment rather than prevention has learned little from the past [1]. One of the purposes of punishment is allegedly deterrence of future crimes, and it is clear that function has had little success. It is doubtful that we will ever eradicate the abuse and murder of children totally, but we have a moral and professional obligation to do what we can to prevent these crimes.

There are two major approaches to combating the problem of neonaticide. One is to prevent pregnancy, especially among girls in their teens. Whether we are addressing teens or older women, however, prevention of pregnancy is a major key to reducing the number of births of unwanted babies. The other possible approach is to ensure prenatal care when pregnancy does occur, so the prospective mother and the fetus not only have appropriate medical care, but also the social and psychological support that eliminates denial and makes her aware of her options.

Programs aimed at preventing pregnancy are termed primary; those working with teens (or older women) who are already pregnant or parenting are considered to be secondary programs [1]. There will probably always be a problem about prenatal care and continuing support when the woman is in a

state of denial about being pregnant, but the proposed programs can at least reduce the number of cases in that category.

Confronted by changing sexual mores, teen pregnancies, and more nevermarried mothers, society seeks ways to influence the prevalent youth culture [1]. One of the ways suggested is to increase sexual education for the whole community, but make it particularly directed toward the young and available in the public schools. The issue is whether there should be sex education in the schools at all and, if there should be, what it should include.

Parenting education—that is, the realities of infant and child development among other matters, is critical for adolescent parents, perhaps especially the fathers, but is also important for chronologically, if not emotionally, more mature parents. There might then be fewer abusive overreactions to wet diapers, infant cries, and similar normal situations that too often result in homicide. These classes, too, might begin and be required at 4th or 5th grade level, emphasizing the 24-hour responsibility of parenting, the total commitment needed by babies, and the fact that parents “give” more to babies than they “get” in return, at least for many months or even years. This is also important for babysitters, which is another reason why it should be taught so early. Other needs for adolescent parents typically include taking control of their sexual activity, learning how to set goals and to move toward their attainment, and how to follow through on their plans and commitments.

Conclusion

Unfortunately, a small innocent baby has lost her life because of her mentally disrupted mother. It's a sick woman which must be treated. The media reported that she had hiding pregnancy from her family and from her neighbors. If someone knew about her pregnancy, maybe she receive right advice on how to cope with the baby which is on the way.

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