

Law (Edn) (1925) Department.

Mis SERIES.

G.O. No. 2022

DATED 24-11-25

[Despatch Abstract.]

Madras Children Act, 1920 - Reference under section 27 -
Youthful offender Naina Mahomed - Ordered to be sent to the
Reformatory and Senior Certified School, Chingleput.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

C.F.- 31

②

DEPARTMENT.

Received



Registered

191

Subject.

Reporting for orders of Government the case of a boy convicted of abduction and murder under section 27 (1) of the Madras Children Act IV of 1920.

ENCLOSURES.

No. One printed copy of judgement in S.C.No. 121 of 1925. Spare copies

D. No. 7735

Additional Sessions Court

Station Coimbatore, Dated the 11th November 191 25

From (Name) Rao Bahadur A.V. Govinda Menon Esq. B.A., B.L.

(Designation) Additional Sessions Judge.

To The

Secretary to the Government of Madras. Law (General) Department.

Sir,

I have the honour to refer for orders of Government under Section 27(1) of the Madras Children Act IV of 1920 the case of Naina Mahommad who was convicted by me for offences punishable under sections 369 and 302 I.P.C in Sessions Case No. 121 of 1925 on the file of this court. My judgement in the case is enclosed.

I have the honour to be,

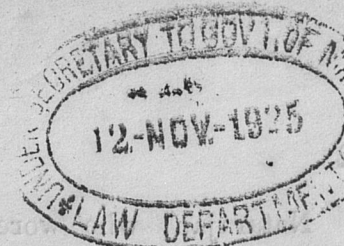
Sir,

Your most obedient servant,

Alloooooo

Additional Sessions Judge.

R.S.



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IN THE COURT OF SESSION OF THE COIMBATORE DIVISION.

The 28th day of October 1925.

SESSIONS CASE No. 121 OF 1925.

PRESENT:

Rao Bahadur A. V. GOVINDA MENON Esq., B.A., B.L.

Additional Sessions Judge.

NAME OF PRISONER ...	Naina Mahomed son of Kadir Batcha Row-then (aged about 13).
OFFENCE ...	1. Abducting a child with intent to take property from the person of that child, (Sec. 369, I.P.C.). 2. Murder, (Sec. 302, I.P.C.).
NAMES AND CASTES OF ASSESSORS ...	1. M. Samuel, Christian. 2. Muthu Avanashi Goundan, Vellala. 3. Kali Chetti, Inuthan Chetti. 4. Lakshminarasimhan, Brahmin.
OPINION OF ASSESSORS ...	Not guilty on either count.
FINDING OF JUDGE ...	Guilty on both counts (Sections 369 and 302, I.P.C.).
ORDER ...	Under Sec. 27 (i) of the Madras Children Act IV of 1920, the accused is directed to be kept in safe custody in the Central Jail pending final orders of the local Government to whom the case will be reported.
NAME OF PRISONER'S PLEADER, IF ANY.	Mr. E. S. S. Pattamaly, Vakil appointed by Court.

Committed by M.R.Ry. A. S. Venkataramana Ayyar, Stationary Sub Magistrate Udamalpet, Coimbatore District, in R. C. No. XIV of 1925.

JUDGEMENT.

The accused Naina Mahamed, a Mahomedan boy aged 13 years is charged that he on or about the 20th day of June 1925 at Udamalpet abducted a male child named Natarajan, aged 5, and son of Prosecution witness Thimmaraya Asari, with the intention of taking dishonestly a silver waist string from the person of the said child (Section 369, I.P.C.) and secondly that at about the same time and place he intentionally killed the child by throwing it into a well (Section 302, I.P.C.).

2. P.W. 1, Thimmaraya Asari is a goldsmith living in Udamalpet. The deceased Natarajan was his only son. On the 20th of June last, a New Moon day,

P.W. 1 left his house at about 11 A.M. Natarajan who wore a silver waist string (M.O. I) weighing Rs. 3-4-0 round his waist and a coat (M.O. II) on his body, was then playing in the Perumal Kovil Street with a top (M.O. III). When P.W. 1 returned home at about 2 P.M. to take his food the boy could not be seen in the house or its neighbourhood. He searched for him here and there, and presently returned to his house and had his food. He resumed his search for the missing boy without success, but learnt that the child was last seen playing with a boy working in the bakery. At about 7 P.M. he laid the complaint Exhibit A before the Head Constable (P.W. 15) who was in charge of the Udamalpet Police station. At the instance of P.W. 15, he went to the Karnam of the village who was then acting as monigar (P.W. 9), requested him to publish by tom-tom the fact of the missing of his son : and continued the search. While so employed, he saw the Head Constable come along the street marching the accused, a Mussulman youth who worked in the bakery.

3. The accused when questioned gave certain information, and took the party to P.W. 6 Mastan Saheb a petty shop keeper who said that the accused had that day, brought a silver zone to him and offered to sell it to him for 8 annas, and that he suspecting the accused, sent him away without purchasing it. Then the accused took them to the shop of Abdul Rahiman Saheb (P.W. 7) who promptly delivered to the police the zone M.O. I saying he had taken it on pawn from the accused for 14 annas. Exhibit B is the mahazar prepared therefor. It was then 8 or 8-30 P.M.

4. The police continued their investigation, and on the following day, the accused took them to a well in the garden of Palani Goundan (P.W. 14). On certain information supplied by the accused, a diver Kali Muthu Goundan (P.W. 11) was made to dive into the well in which the water was 12 cubits in depth. The body of the deceased boy was brought out of the well by P.W. 11. The boy wore M.O. II, but his zone was missing. An investigation under section 174, Cr.P.C. was held, by the Sub Inspector and Inspector who had arrived by then, and the corpse was sent for post-mortem examination to the medical officer who opined that death was due to asphyxia due to drowning (Exhibit F).

5. P.W. 2, another goldsmith of Udamalpet saw the accused and the deceased at about 12 noon on the New Moon day in question, while he was going east from the paddy shop street, round the corner. The deceased had a piece of bread in his hand, and the accused carried a tray containing bread. The deceased then wore M.O. II and a zone looking like M.O. I.

6. P.W. 3, a twelve-year-old school-boy studying in the II Form in the Municipal High School, Udamalpet, lives in the paddy shop street. As he was going to his house during the midday interval for his meal, he saw at about 2 P.M. the deceased Natarajan in accused's company. Accused had placed his bread tray on a stone in the lane, and was playing with deceased's top M.O. III. While P.W. 3 walked, the top which was spinning, touched his foot accidentally. The deceased had a coat like M.O. II, and wore a silver zone which he saw when the wearer bit, in boyish fashion, the ends of his coat. That same evening, he heard the tom-toming in the streets that the deceased boy was missing.

7. About a furlong from the house of Palni Goundan (P.W. 14), P.W. 4, a petition writer saw, at about 2 or 2-30 P.M. on the day of occurrence one Naina Mahomed (not the accused) carrying the deceased, and the accused following him, with a bread tray. The deceased wore a coat like M.O. II. P.W. 4 was on his

way to his house after bath in Kadir Khan Saheb's garden, west of the Dhali Road. On the same day, between 2 and 3 P.M. a chetty trader P.W. 5 while seated in his uncle's shop in Nadar street, saw the accused and another Naina Mahomed going along the street. The latter carried a boy. P.W. 5 to whom accused owed 3 pies on account of fruit purchased from him previously called him; and accused sold him bread for 3 pies in lieu of the money. Then accused's companion said to accused "Come, it is time. Why are you talking to him?" And they went away, carrying the child. The same evening P.W. 5 told a number of people of what he had seen. At about 3 P.M., P.W. 10 a coolly working in one Easwara Ayyar's hotel in Udamalpet on the Dhali Road saw accused and the other Naina Mahomed go along the road from north to south. The deceased boy was not then with them.

8. P.W. 6, a Mussulman petty trader says that at about 1 P.M. on the date of occurrence, accused came to him with a bread tray, and offered to sell him M.O. I. P.W. 6 asked him how he came by it. He first said he had brought it from his house. Pressed further, he said that he had been to a goldsmith to sell bread, that he found M.O. I in the rubbish heap in front of his house and that he had picked it up without being observed by the goldsmith. On this, P.W. 6 grew more suspicious, and returned the zone which had portions of cut thread attached to it on either end, to the accused who went away.

9. P.W. 7, another Mussulman petty shop keeper deposes that on a Saturday 4 months ago, accused went to his shop and asked for a loan of 12 annas on a pledge of the zone M.O. I. As M.O. I looked black, P.W. 7 wanted to satisfy himself if it was genuine silver and showed it to P.W. 8 a goldsmith living west of his shop. P.W. 8 said it was silver of inferior quality and the zone was worth a little less than Rs. 2. As accused used to supply biscuits to him, P.W. 7 unsuspectingly gave him 12 annas on the pledge of M.O. I. Accused promised to redeem the ornament next day, and left the shop. Shortly after, he returned and asked P.W. 7 for an additional loan of 2 annas saying he wanted it to make up the deficiency in the money due to his master for bread sold. P.W. 7 gave him 2 annas on accused's promise to repay that amount also on the following day.

10. The acting Village Monigar was present with the police when M.O. I was recovered from P.W. 7 on information supplied by the accused. P.W. 11 a professional diver was called by the police on 21-6-1925, to dive into the well in Palni Goundan's garden. The well is about $\frac{3}{4}$ of a furlong from the Dhali Road. There is a prickly pear fence round the garden. On the eastern side of the fence there is a permanent gap just sufficient to admit a man. The accused showed the well and a place to the north of the step. Sheer down the spot which he showed, in the bottom of the well, the corpse of the deceased boy was found and P.W. 11 took it out. The child had M.O. II on his person.

11. P.W. 14 is the Village Monigar of Kanakkampalayam. It was from his well that the dead body was recovered. He was present when the body was taken out of the well by P.W. 11 and a mahazar Exhibit C was prepared therefor. About one and a half furlongs from the well, were discovered the top M.O. III and a string, the spot having been pointed out by the accused (Exhibit D). The well in P.W. 14's garden is $\frac{1}{2}$ a furlong east of the Dhali Road. The southern-most house in the village is 3 or 4 furlongs from the well. There is no path leading from the road to this unused well which is still incomplete. On the southern side

of the garden there is a small gap in the fence, to go to the well. In the north-eastern corner of the fence, was found on 21-4-1925, a gap recently made. East of the well and close to the road there is a draw well the water of which is used for drinking purposes. P.W. 14's house is about a furlong from the well. P.W. 6's house is $1\frac{1}{4}$ miles from the unused well, $\frac{3}{4}$ furlong from P.W. 7's shop and 4 mars off Easwara Ayyar's hotel.

12. P.W. 15, the general duty Head Constable proved the various steps in his investigation and says he questioned P.Ws. 6 and 7 the same evening and recovered M.O. I at about 8-30 P.M. P.W. 13 who examined the accused to find out his age deposes that in his opinion the accused is between 12 and 14 years old. The evidence of the assistant surgeon who conducted the autopsy over the corpse of the child brought to him by P.W. 12 has been filed as Exhibit E. (Sec. 509, C.P.C.). The post-mortem certificate is Exhibit F. The medical man found sand and mud underneath the nails of hand and feet of the child, and also in its groin and axilla. Frothy fluid exuded through the nostrils. There was a small contused wound of the size of a pea, skin deep on the right upper eye-lid. There were a few small abrasions on the forehead and right side of the face. The lungs were congested and distended and exuded frothy fluid on removal. Sections exuded frothy reddish fluid. There was about 3 oz. of whitish pasty substance and brownish thin particles in the stomach, besides 12 oz. of almost clear fluid. The whitish substance pointed to food made of flour, and the brownish thin particles, to the crust of bread. In the opinion of the assistant surgeon the boy was certainly alive when he entered the water, and died of asphyxia.

13. The accused said in the lower court that he did nothing at all and that the silver zone he pledged with P.W. 7 Abdul Rahiman Saheb was his. In this court he gave a pretty long story. He said that on the date of occurrence while he was selling bread, one Naina Mahomed (who was co-accused with him in the Committing Court) asked him to sell him (Naina) bread for Rs. 2 and called him to his (Naina's) house. He followed Naina with his bread tray. On reaching his house, Naina said he would buy bread for 2 annas only and told him to go to his house again in the afternoon with Rs. 2 worth of bread. Accused sold him accordingly bread for 2 annas. Just then, a boy (presumably the deceased) was standing within 4 cubits of the accused. Naina asked accused who that boy was. Accused said he did not know. Accused asked Naina to pay him the price of the bread, 2 annas. Naina said he would pay it when accused went to him in the afternoon with bread for Rs. 2. Accused thereupon went to his master and told him that Naina wanted bread for Rs. 2 and that he (accused) had already sold him on credit 2 annas worth of bread. Then accused went to his house for his midday meal and thence at about 4 P.M. to his master's shop. His master beat him for being late. Accused said that though he was late, he could easily do business for Rs. 2 as an order for that amount had been booked already. Eventually his master put bread to the value of Rs. 3 in his tray, and the accused went round the town with it. He was able to sell bread for 4 annas. On going to Naina's house, he could not be found. This fact was reported to accused's master. Later, accused found Naina standing underneath a *peepul* tree, about 10 yards from the police station. Accused went up to him, held him by his upper cloth and taxed him with having put him (accused) to a severe loss. Naina said he would buy the bread as already arranged and asked accused to accompany him, which he did. On their

way, they met a non-Mahomedan to whom accused complained of Naina's conduct, and who scolded Naina. Then the latter said he would buy the bread, and asked accused whether he (accused) would take the thing which he would put into his (accused) hands, to a shop. Accused asked Naina what the thing was. Naina insisted upon accused's first promising that he would do as he (Naina) bade him. Accused said yes. Naina put into accused's hands a silver zone. Accused said he would not give it back to him unless he paid the 2 annas due. Thereupon Naina said: "We both are Islamites. I won't cheat you. I will pay you your money. You take this to a shop." Accordingly, accused took it to P.W. 7's shop and pledging it with him, got 12 annas first, and an additional 2 annas next. He gave 12 annas to Naina and kept the 2 annas for himself. Naina went away. Then accused went to a place where he found Naina and some elders of his community gambling. Naina had a lot of money with him in currency notes and cash. Asked how he got the money Naina said he had at first lost Rs. 9 and subsequently earned a good deal by gambling. Accused left the place and went to his master's shop. On the way he met P.W. 1 and a constable. Then he (accused) was arrested by the police and taken into custody. He knew nothing further. The accused calls no witnesses.

14. The evidence in this case is purely circumstantial. But it is, in my opinion, sufficiently cogent and conclusive to bring home the guilt to the accused. None of the witnesses bears any ill-will toward the accused. None of them implicate him in the sense that they saw him actually commit the crime. P.W. 1's house is in Perumal Kovil Street. The unused well where the dead body was recovered on 21-6-1925, the day after the alleged murder is one mile to the south-east of P.W. 1's house and half a furlong East of Dhali Road. The accused was seen with the deceased at different points in the journey to this well, by P.Ws. 2, 3, 4 and 5. The time which these witnesses give can only be approximate, and I do not think much point could be made out of any small inaccuracies as regards the exact hour at which they severally saw the party. P.W. 10 saw accused and the other Naina Mahomed going alone, at about 3 P.M. towards the town. P.W. 10 works in a hotel on the Dhali Road. P.W. 6's house is close to this hotel (about 4 mars off). P.W. 7's shop is also not far from the place, its distance from P.W. 6's house being only about $\frac{3}{4}$ of a furlong.

15. If P.W. 10's evidence is true, he must have seen the accused after the crime and after his (accused's) visit to P.Ws. 6 and 7. P.Ws. 6 and 7 are both Mahomedans. There is no reason to distrust their evidence. Both of them swear that accused went to them with M.O. I. To P.W. 6, accused gave different versions as to how he came by M.O. I. P.W. 7 took M.O. I on pledge. This is admitted by the accused. M.O. I is well identified by P.W. 1 as having been the zone worn by his child when he saw him last alive, at 11 A.M. on the day of occurrence. He says he himself made M.O. I and could recognise his handiwork. There is thus no reasonable doubt about the identity of the zone. The only question is whether accused got into possession of it in the manner alleged by him in his statement. Before the Committing Magistrate, his case was that it was his own. If he innocently got it from his namesake as he now says, there was no necessity for him to have disguised this fact from P.W. 6. Nor was there any reason for him to have invented the story of the rubbish heap. On a careful consideration of the whole evidence, I feel no doubt that M.O. I which the deceased child wore was seen in the possession of the accused, soon after the murder, and that he gave inconsistent and false statements as to how he had got it.

16. That the deceased Natarajan died of asphyxia due to drowning is proved by the medical evidence (Exhibit E). The post-mortem signs are clear on this point, and the only question is whether the death was accidental or homicidal. The theory of accident does not fit in with the proved facts in the case. The boy who was aged about 5 and playing with the top M.O. III could not have by himself gone from his house to the well a distance of more than one mile. There was a prickly pear fence all round P.W. 14's garden where the well is, and the path to it from the road is not a beaten track. P.Ws. 4 and 5 say that the accused's namesake (a young man aged 20 or 22) was seen carrying the child. It is also in evidence that the boy had a piece of bread in his hand (P.W. 2). The brownish undigested substance found in his stomach by the medical officer shows that he had eaten of it, just before he was drowned. M.O. III, the top was not discovered anywhere near the well, or in the water, but in the fence in Kadar Saheb's garden, about one and a half furlongs from it. Under all these circumstances, it is clear that the child must have been deliberately decoyed to the well by some one, and that its death was not accidental. I cannot also easily get away from the fact that the zone which the child wore was not on its corpse when it was taken out. The probabilities abundantly justify the inference (and in my view, the *only* inference) that the intention of the murderer or murderers was the theft of the silver ornament worn by the child.

17. The accused's pointing out the well from the bottom of which the dead body was recovered, his showing the place where the top and string were found, and his directing the police to P.Ws. 6 and 7, are circumstances which negative the theory of his innocence. P.Ws. 11 and 15 say that the accused said that his co-accused before the Committing Magistrate, was the man who threw the child into the well. In view of the fact spoken to by the prosecution witnesses, viz., that the accused was seen with his bread tray, in company with the deceased child, I do not consider the question of who drowned the child of much importance. Both accused and his companion were parties to the murder, within the meaning of Section 34, I.P.C. I am not to be understood as deciding the complicity of the other Naina Mahomed in the crime. I am only assuming for argument's sake, the truth of the self-exculpating statement of the accused, elicited in cross-examination from the witnesses by the learned vakil for the defence.

18. The facts are perfectly clear. The deceased child who wore M.Os. I and II and played with M.O. III was seen at about 2 P.M. at various stages of the route from its house to P.W. 14's well, in the company of the accused. The child was not with the accused at about 3 P.M. About that time, he went to two merchants with M.O. I. He gave inconsistent stories in justification of his possession of M.O. I. He gave the names of P.Ws. 6 and 7 to the Police. He took the police to the well which is more than a mile from Perumal Kovil. He pointed out a certain place on the top of the well. When the diver dived immediately underneath, he recovered the body of the deceased child. The child had eaten brown bread, a tray containing some loaves of which was seen with the accused when he took the child. The accused pointed out the place from where the child's top and string were recovered. The admitted possession of M.O. I by accused is sufficiently recent to enable the presumption of guilt being safely drawn against him from it, in the absence of satisfactory explanation at his hands. The chain of circumstantial evidence is very strong. The implications arising from that evidence have not been rebutted. The accused's statement is improbable and his subsequent conduct is against its truth.

19. The assessors are of the opinion that the accused is not guilty on either count. Asked whether they believed the prosecution witnesses, the 1st assessor said he did not, adding that the case was a concoction at the hands of P.W. 15, the Head Constable. The 2nd assessor stated he disbelieved the prosecution witnesses because no one said he saw the throwing of the child into the well. The 3rd assessor also disbelieved them for the same reason. The 4th assessor opined that he did not believe the witnesses and that he did not wish to give any reason for his disbelief except that the accused was very young. I think that the assessors, probably untrained in appreciating circumstantial evidence, have not properly understood the bearing of the various facts reliably proved by the prosecution. And, I suspect that all of them have been obsessed by the youth of the accused, though it is only the 4th assessor who frankly admits this fact.

20. Disagreeing from the assessors, I find the accused guilty under both counts (Sections 369 and 302, I.P.C.) The accused gives his age as 13. P.W. 13 the assistant to the District Medical Officer, Coimbatore corroborates this and says that the accused is between 12 and 14. The provisions of Sec. 22 of The Madras Children Act IV of 1920 therefore apply: and the accused cannot be sentenced to death or transportation for life or imprisonment. There is nothing in the evidence to suggest that the accused is so unruly as to attract the provisions of the proviso to section 22. The offences proved to have been committed by the accused are serious and under section 27 (i) of the Act, I direct the accused to be kept in safe custody in the Central Jail, Coimbatore, pending orders of the local Government to whom the case will be reported.

A. V. GOVINDA MENON,
Additional Sessions Judge.

RECORD OF THE OPINION OF ASSESSORS.

1st Assessor:—Not guilty on either count.

2nd Assessor:—Not guilty on either count.

3rd Assessor:—Not guilty on either count.

4th Assessor:—Not guilty on either count.

Question:—Do you believe the prosecution witnesses?

1. Answer:—No. I think the case is a concoction by the Police H.C. examined here as P.W. 15.

2. Answer:—No. No one says he witnessed the throwing of the child into the well. I disbelieve the prosecution witnesses for this reason.

3. Answer:—I don't believe them because no one speaks to the accused having done the deed.

4. Answer:—I don't believe them. I don't wish to give any reason except that the accused is very young.

LIST OF WITNESSES EXAMINED.

FOR PROSECUTION	...	...	...	1. Thimmaraya Asari, Father of deceased.
				2. Kandaswami Asari.
				3. Kandaswami, Student saw the accused and deceased playing with M.O. III.
				4. Arumugha Goundan.
				5. Sinnan Chetti.

6. Masthan Khan Saheb, Petty shop-keeper.
7. Abdul Rahiman Saheb, Do.
8. Thirumoorti Asari.
9. Subramania Mudaliyar, Karnam (was Ag. V.M.)
10. Sama Naicken.
11. Kalimuthu Goundan, took the dead-body from the well.
12. Sankaran Nair, P.C. 141.
13. G. S. Tambi, Assistant Surgeon.
14. Palani Goundan, V.M.
15. Alavanda Nayudu, H.C.

FOR DEFENCE ... Nil.

LIST OF EXHIBITS FILED.

By PROSECUTION:—

- A/20-6-1925. Complaint of P.W. 1 to Police (F.I.R.)
 B/Do. Mahazar for recovery of M.O. I excepting portion marked.
 C/21-6-1925. Do. of dead body Do.
 D/Do. Do. of M.O. III Do.
 E/27-7-1925. Deposition of medical officer in lower court.
 F/21-6-1925. Post-mortem certificate.
 G/ Plan.
 H/20-8-1925. Statement of accused in lower court.

By DEFENCE ... Nil.

MATERIAL OBJECTS PRODUCED.

- I. A silver zone.
- II. A coat.
- III. A top with a string.

A. V. GOVINDA MENON,

Additional Sessions Judge.

/True Copy/

Additional Sessions Court,
Coimbatore.

Dated 11th November 1925.

[Signature]
Additional Sessions Judge.

To

- The Registrar, High Court, Madras.
 „ District Magistrate, Coimbatore, with 2 spare copies.
 „ Inspector-General of Police, Madras, through the Superintendent of Police, Coimbatore.
 „ Superintendent of Police, Coimbatore, with 2 spare copies.
 „ Superintendent, Central Jail, Coimbatore.
 „ Public Prosecutor, Additional Sessions Court, Coimbatore.
 „ Prisoner, through the Superintendent, Central Jail, Coimbatore.

Received in Fair-copying Section. Initials. Date.

Copied ..
 Examined ..
 Signed ..
 Despatched ..

Man in special + man as special
16/11

Special

Law (Education) Deptt.

3134B From the Additional Sessions Judge,
Coimbatore, D.No. 7735, dated 11th
November, 1925.

Reference under section 27 of the
Madras Children Act in regard to a
youthful offender.

Endt. No. 3134B-1 dated 16/11/25

Forwarded to the I.G. of Prisons who
is requested to report what recommenda-
tion he would make in regard to the
detention of the youthful offender.

SK
16.11.25.

[Signature]
16/11

DESPATCHED

16 NOV 1925

*The I.G. of Prisons (with
current in orig! to be ret'd
with reply).
Reminder after 10 days.*

DEPARTMENT. 11

Received



Registered

192

Subject.

A. 3222 B
21/11/25 -

Reference under Section 27 of the Madras Children Act
in regard to a youthful offender.

ENCLOSURES.

No.

No. G/876

Spare copies

Station Ootacamund Dated the 19th November 1925

From (Name) Lieut-Col. J. P. Cameron, C.I.E., I.M.S.,
(Designation) Inspector-General of Prisons.

To The Secretary to the Government of Madras

Law (General) Department.
Fort St. George, Madras.

Sir,

In returning herewith the enclosures received with
Government Endorsement No. 3134 B-1, dated the 16th November
1925, I have the honour to state that the best way to deal
with the case of the youthful offender Naina Mahomed - -
referred to therein, is to send him to the Senior Certified
School, Chingleput, and detain him there for a period of
five years or until he attains the age of 18 years, as
required by section 24 (a) of the Madras Children Act IV of
1920.

I have the honour to be,
Sir,
Your most obedient servant,

J. P. Cameron
Lieut-Col, I.M.S.,
Inspector-General of Prisons.

p. 10 ante

3134 B

Law (Education) Departt.

From the Additional Sessions Judge, Coimbatore,

D.No. 7735, dated 11th November 1925.

Reference under section 27 of the Madras Children Act in regard to a youthful offender.

The additional Sessions Judge, Coimbatore, has convicted a youthful offender named Naina Mahomed under sections 369 and 302 I.P.C., and submits the case for the orders of Government under section 27 of the Children Act. This act applies to children in young persons and youthful offenders of the male sex in the Municipality of Coimbatore. In the ~~rest~~ ^{other} ~~parts~~ ^{of the Act} ~~of the Act~~ ^{Coimbatore} ~~parts~~ ^{of the} ~~district~~ ^{sections} 25 and 26 and a few other sections of ~~the Act~~ which are necessary in order to bring sections 25 and 26 into force are alone applicable to children, young persons and youthful offenders. As the whole act is in force in the town of Coimbatore where the youthful offender in the present case was convicted the Additional Sessions Judge seems to be of opinion that the case should be disposed of under the Children Act. The offence was committed at Udamalpet where ~~the whole Act~~ ^{however} is not in force. It is presumed that this does not prevent the boy being dealt with under the Children Act. If necessary, the opinion of the Law (Drafting) Section may be taken on this point.

2. Section 27 of the Children Act provides for the case of a youthful offender who has been convicted of serious crime and who in the opinion of the court cannot be suitably dealt with under the ~~other~~ ^{other} provisions of the Act. The section empowers the local government to order any such youthful offender to be detained in such place and on such conditions as it thinks fit. When the bill was under consideration Sir Harold Stuart noted as follows in regard to this section. ~~It~~ (the section) follows the English Act and it is intended

Notif. No. V on page 2 of
G.O. No. 1621
16.9.25 (C)

Notif. No. VII on page 2+3
of G.O. No. 1621
16.9.25 (C)

A

Page 43 of stock file
put up.

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intended for extremely bad cases requiring more rigorous treatment than can be provided in an industrial (Junior Certified) school or even a reformatory (Senior Certified) school. It is necessarily rather ~~more~~ ^{more} in its terms because each case will have to be dealt with on its merits. In many instances no doubt the order would merely be that the child or young person should be detained in a reformatory or perhaps even in an industrial school."

3. In offering their remarks on the bill the Government of India stated as follows:--
"The Government of India are in some doubt as to the exact object of this clause. If it is the intention that the local Government is to have power virtually to sentence offenders to imprisonment in cases in which such a sentence is not permissible under clause 21 it might be considered whether this meaning should not be made clear. It is assumed ** that it is not the intention of the bill that the local Government should have power to award a term of imprisonment in excess of the maximum period provided by law for the offence committed."

With reference to these observations of the Government of India ^(was added) the proviso to clause 2 of section 27 ~~was added~~ to the effect that no period of ~~intention~~ detention ordered by the local government shall exceed the maximum period of imprisonment to which the youthful offender could have been sentenced for the offence committed.

4. It is for consideration what orders should be passed under section 27 (2). This is the first instance in which a case has been submitted for orders under this section.

Section 27 is to be resorted to only if the Court considers that "no punishment which under the prov^s of the Act it is

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* 22 in the Act

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10 14
authorized to inflict is sufficient. The punishments authorized under the Act are.

- (1) Commitment to Certified Schools.
- (2) Discharge after admonition.
- (3) Commitment to the Custody of parent or Guardian etc.
- (4) Whipping.
- (5) Fine.
- (6) ordering parent or Guardian to pay a fine.
- (7) Imprisonment in the case of specially unruly & depraved Young persons.

In this case the offence committed was very serious but the Court has stated that there is nothing in the evidence to suggest that the boy should be dealt with under the proviso to sec 22. Commitment to a Certified School is apparently not considered sufficient by the Sessions judge. It is therefore for consideration whether the youngster may not be sent to the Borstal School at Tanjore. Sec 27 (2) is to the effect that notwithstanding the prov^s of sec 22 the Court may order the child or young person to be detained in such place & on such conditions as it thinks fit."

imprisonment.

Em no 3134 B1
13/11/25

Special

By 1753
13-11-25

U.S. (Drafting) u.o on A above
V.T.K.
13-11

Law (Drafting) Department

Under section 1(2) of the Madras Children Act, Government may apply the whole or any portion of the Act to children, young persons or youthful offenders in any local area in the presidency. Notification VII annexed to G.O.No.1621 dated 16th September 1925 summarises the effect of the - previous notification, besides adding to their scope. The whole Act applies in the municipality of Coimbatore to children, young persons and youthful offenders. 'Youthful offender' has been defined as a person who has been convicted of an offence punishable with transportation or imprisonment and who at the time of such conviction was under the age of sixteen years. Hence, a youthful ^{offender} becomes such only on conviction. And the latter part of the definition of the term makes it clear that the age of the offender has to be reckoned at the time of the conviction. It is therefore the place of conviction of the youthful offender which has to be taken into account in considering whether the Act applies to him or no. If the place is one, to which the Act has been applied, the offender may be proceeded with under its provisions. If not, he has to be dealt with in accordance with the ordinary law. The conviction here was of the Sessions Judge, sitting at Coimbatore. Hence the 'child' as he was before 'conviction' became a 'youthful offender' after conviction, at the place of conviction, viz, Coimbatore to which place, the whole Act has been applied. There is no objection therefore to the Act being applied to the offender in this case. The preamble to the Act, inter alia declares that it is expedient to provide for the punishment of youthful offenders

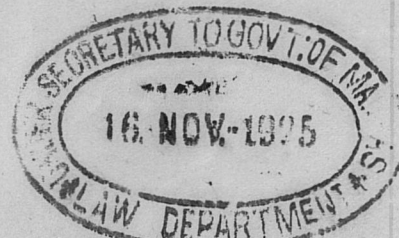
Mad. Act IV of 1920 as amended by Mad. Act I of 1924.

P. 188 of stock
He placed at bottom
pp 2+3 of (C)

portion underlined
p 3 of (C)

S. 3(3) of the Act

and therefore strengthens the conclusion that the Act may be applied to the punishment of the -- offender in this case.



d. Cou 3156B.
16/11/25.

dy. 16/11/25
16-11-25

S. 15/11
Send the Case to the I.G. of Prisons and ask him what he recommends.

V.T.K.
16.11.
Law Con. 11/25

A draft endt is subd.

Mark it "Special" 8/11
16.11.25.

16/11

p. 10 CF [Endt: to the S.G., No. 2134B-18/16.11.25]

p. 11 CF [C. 3222B] From do., No. 8768/19.11.25

For orders whether the S.G.'s recommendation (p. 11 CF) may be accepted. If so, the draft order below is for approval.

conv
21.11.25
S.K.
21.11.25

The 16's recd may perhaps be approved, but there is one point to be considered. The District Judge has sent up the Case under Sec 27(1) which says that the Court "when a child or young person is convicted of an offence so serious a nature that the Court is of opinion that no punishment which under the provisions of this Act (i.e. Children's Act) is authorized to inflict is sufficient". Detention



Law (Education)

DEPARTMENT.

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Date _____

Initials.

Madras Children Act, 1920-- Reference under

Section 27--Youthful Offender Naina

Mahomed--Ordered to be sent to the

Reformatory and Senior Certified

School, Chingelput.

READ AGAIN G.O. No. _____, dated _____, 192_____

22 22 22 22 22 192

READ ALSO :—

C. No. 3222B From the Addl. Sessions Judge, D. No. 7735, dated 11-11-1952
Coimbatore

" " " " I. G. of Prisons " " 876 " " 19-11-1925

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ORDER.

Mis.

No. 2022 dated 24-11- 1925.

Under section 27 (2) of the Madras Children Act, 1920, (Madras Act IV of 1920), as amended by the Madras Children (Amendment) Act, 1924, (Madras Act I of 1924), the Local Government order that Naina Mahomed convicted in sessions case No. 121 of 1925, on the file of the Additional Sessions Judge, Coimbatore, be detained in the Reformatory and Senior -- Certified School, Chingleput, until he attains the age of 18 years.

C. V. V.
21-11-25

To

The Addl. Sessions Judge,
Coimbatore.

S. K.
21-11-25

The I. G. of Prisons.

2nd Aug 1941

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 When examined —
 When signed —

192

READ AGAIN G.O. No. , DATED
 192

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED OF, BEING MEANT FOR DESPATCH
 IN ORIGINAL.

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