

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 201-202

Press
~~Mis~~

36.39

Dated

17-2-1857.

Not to be folded or roughly handled

File 23-10

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Fort St. George, Judicial Consultation, 17th February 1857.

Read again Memorial from certain Native Inhabitants of Madras, dated 2nd and recorded in Dairy to Consultation 10th February 1857.

No. 36. Read further Address from the same parties; to the Right Honorable GEORGE FRANCIS ROBERT LORD HARRIS, Governor in Council of Fort St. George, dated 14th February 1857.

THE HUMBLE PETITION OF THE UNDERSIGNED
INHABITANTS OF MADRAS.

SHEWETH,

That Your Petitioners in their former Petition to your Lordship in Council, being desirous of confining themselves within the narrowest limits possible, forbore to draw Your Lordship's attention to several points, which, as has been since suggested to them, are nevertheless of an importance that should cause them not to be overlooked, and that they therefore crave permission to trouble your Lordship with this brief supplemental Appeal, in the hope that it may lend extra weight to their original representation.

2. That on the night of the killing of Narasoorajoo, not a syllable was said, either by his son or brothers, or the pensioned Sepoy, to the Police Officers summoned by the first prisoner, regarding the enticing away of deceased by the 4th and 5th prisoners, subsequently deposed to at length; neither does it appear that any allegations of malice or violent usage were tendered at that time, by the relatives of deceased. Narasoorajoo was simply charged with theft, and taken into unopposed custody accordingly as a thief. Vurdarajooloo followed him to the Police Office, crying, as any son of his age would have done, who saw his father similarly situated, (and Gopaul Rajoo followed him half way.) He there beheld him treated as a felon, but still held his peace as to the criminating knowledge of the prisoner's complicity of which he was possessed. His mouth was closed until he came to be interrogated at the Inquest, and when time had been afforded for the concoction of a story. This taciturnity, Your Lordship's Petitioners submit, is most unlike what might be expected from a native, who had a clue to the authors of his father's murder. And the same remark applies likewise to the silence of deceased's brothers, who surely must have talked at least with their friends and neighbours, of the dark suspicion that haunted them, between the time of their seeing Narasoorajoo dragged away senseless to the Thannah, and that of their appearance before the Inquest? It does not seem, however, that they spread any accusing report, or disputed the justice of the imputation on the strength of which deceased was seized, until the cause of his death came to be enquired into afterward.

3. That on the 7th of October, when Narasoorajoo was lying in Hospital, the Peons who had taken him up laid an information before the sitting Magistrate at the Police Office, at report time, regarding the theft with which he stood charged, and likewise placed before the Bench the articles alleged to have been stolen. Sooboraya Graminy and Summundum were then in attendance as Prosecutors. Hearing from the Peons that the accused was unwell and in Hospital, the Magistrate bade the Peons retain charge of the articles, and Soobaraya Graminy and his son were desired to attend the Police Office again. Neither Varadarajooloo nor his two uncles, nor the deceased's mother were *then* heard of. Nothing whatever transpired up to that time, which could lead to a supposition that any criminal counter-charge was about to be laid against the six prisoners, and much less one involving facts of a capital nature. The names of four of them were not even mentioned. There is no proof that any denial of the imputed larceny of Narasoorajoo, or any allegation touching violence and manslaughter or murder, proceeded from his relatives until after his death, and Your Lordship's Petitioners submit that this is a highly material feature of the case for the defence.

4. That, reviewing what has been above advanced, in connection with their previous Petition on behalf of these unfortunates, your Petitioners humbly beg your Lordship in Council to direct that the Depositions taken by the Coroner and Police Magistrate may be laid before your Lordship, and contrasted with each other and with the evidence given at the trial, in order to the discovery of the truth, which they firmly believe will tend to exculpate the prisoners, in the degree that it is known.

And Your Petitioners

WILL EVER PRAY,

(Signed) CONNOOR IYAHSAWMI, Moodelliar.

(„) T. SUBAPUTTY, Moodelliar,

and several other Native Inhabitants of Madras.

Fort St. George, Judicial Consultation, 17th February 1857.

No. 37. Read also the following letter from the Honorable Sir W. W. BURTON, Knight, Puisne Judge of Her Majesty's Supreme Court of Judicature at Madras; to the Right Honorable the Governor in Council, &c., &c., dated 12th February 1857.

MY LORD,

I have the honor to acknowledge the receipt of your Lordship's letter of the 9th Instant, enclosing the Memorial of several inhabitants of Madras, praying for a mitigation of the Sentence passed upon Soobaroya Graminy and others, who were convicted at the last Madras Sessions held before me, of the murder of one Narasoorajoo, desiring to know whether in my opinion there exist any grounds for entertaining the application of the Memorialists.

I regret to say that there are in my opinion no grounds for interfering with the Sentence either as regards the Law, or facts of the case.

If any reason exist for such interference, it must be found only in the severity of the Sentence: it was intended to be severe, inasmuch as the offence was very great; and was made to fall equally on all, inasmuch as all were equally guilty.

The Law applicable to such a case is very clear: if several persons combine to do an unlawful act, and in the prosecution of that act, a blow which causes death be given by one of them, it is in law the blow of all; the arm of him who immediately inflicted it, being but the instrument, and then whether the offence amount to murder or manslaughter, all are equally guilty.

It will be murder if the blow be inflicted unlawfully, intentionally, with such an instrument and on such a part of the body, and with such force, as that death is likely to ensue, and does ensue from it.

It will be manslaughter if the blow were inflicted undesignedly, or intentionally, but with an instrument and on a part of the body, and with such slight force as that death is not likely to ensue, but nevertheless does ensue from it. Here the circumstances rebut the presumption of malice, which in the former case the law implies; and the case of the prisoners was unfortunately one of the former character.

They were all combined and engaged together for an unlawful purpose, in pursuance of which the deceased was inveigled into an empty house, falsely charged with theft, beaten and ill-used by all the prisoners, and by one of them a mortal blow was given by a heavy weapon with great force, so as to fracture the skull, and render the unfortunate deceased immediately insensible, from which insensibility and wound, he never recovered in the slightest degree, and of which he eventually died.

The Memorialists may justly doubt your Lordship's credence of such an improbable tale as the prosecution disclosed, but I believe and the Jury believed that it was nevertheless perfectly true that for some offence, which must remain a mystery, the deceased was inveigled into the house by the first Prisoner Soobaroya whose case is attempted to be distinguished from the rest, and by his two sons, that there a false charge of theft was made against him, that he was there pinioned, beaten, dragged, and illused by all of the prisoners, six in number, which ended in a fatal blow being given. The man who gave that blow probably went beyond the intention of the rest, but they were all parties to the ill-usage, and are equally responsible for that part of it.

But improbable as such a conspiracy must at first sight appear; the Jury were justified in finding it to be true, and I am justified in believing it.

For the Defence of the prisoners by its entire failure, supported the case for the prosecution.

The Memorialists admit the ill-usage and the beating, and the cause of death which indeed cannot be denied: all took place at the hands of the prisoners or some of them. But their defence was that the deceased had committed a theft of some trifling articles in the house of the first prisoner Soobaroya, that he had escaped to the roof, and from thence over other roofs to the roof of an empty house, where they took him with the stolen articles, and there pinioned him and ill-used him, to a certain extent, but that he received the injury of which he died accidentally, that his insensibility arose from drunkenness only.

Now the prisoners were defended by Counsel and Attorney, who must have advised them that it was necessary to prove that a theft had been committed in Soobaroya's house, that there was a way by which the thief might have escaped to the roof, and from that to the place where he was

Fort St. George, Judicial Consultation, 17th February 1857.

said to have been taken, and then how it became necessary, the deceased being as they stated insensible from drink, for six men to pinion him, drag him down stairs head foremost, and ill use him in the way which they admit doing: and lastly it might be expected, as the deceased received his death wound whilst under their hands, that they should shew by what accident, or how short of design, it was inflicted.

No evidence whatever was given on any one of these points: which might have been proved by every inmate of Soobaroya's house; no attempt was made to prove that a theft had been committed, or that a thief could have escaped from that house to the roof, or how the deceased actually did receive his injury if not as the evidence for the prosecution showed.

Soobaroya Graminy indeed aroused the whole street by cries of "thieves! thieves!" and knocking at the neighbours' houses, thereby making it appear that there was a gang of robbers, and making a great alarm; which was of course, no proof of the fact of there being any thieves or if one, more than one, but carries to my mind the conviction that this was a part of the plan of the prisoners, to make it be believed in the neighbourhood, that there was that cause for alarm which he pretended, and this shews his entire complicity in the transaction.

There were doubtless some discrepancies in the evidence for the prosecution, but none that should cause it to be discredited, the mother and son of the deceased who were the principal witnesses gave very clear testimony indeed, and were both exceedingly intelligent, calm and collected, and unshaken in their evidence. The female was contradicted on a small point by her Deposition before the Magistrate, but the answer she gave led me to doubt whether that Deposition were to be absolutely relied on, for, I am sorry to say, that the amount of the business at the Police Office, and the mode of taking Depositions does not always impress my mind with the fullest confidence in their correctness; but the contradiction was not so important as to discredit her whole testimony.

Again the boy is reported in his Deposition to have stated before the Magistrate that Mooneysawmy Naidoo was the person who struck the fatal blow, whereas in Court he said it was Mooneysawmy Moodelly, (another of the prisoners.)

Which was the correct version it would be useless now to inquire, the Magistrate or rather his Clerk might have put down the wrong description instead of the right in the Deposition, and the boy might be perfectly right nevertheless.

However the doubt thus imported into the case, saved the life of Mooneysawmy Moodelly, whom I should certainly have left for execution, if there had not been some colour of doubt.

But it should be remarked that there was no evidence of this contradiction given on the trial: it caught my eye alone before the case closed, and I gave the prisoner the benefit of it.

To follow the course taken by the Memorialists upon the evidence, and to shew the fallacies they present to your Lordship, would occupy more time and space than I think it needful to bestow on the case, or your Lordship would seem to require: serious yet as it undoubtedly is, because a great deal of the argument they submit is taken from documents which were not in evidence in the case, and cannot legally be imported into the consideration of it.

I may point out as instances of this, the Depositions before the Magistrate (except those small portions given in evidence) and the Depositions before the Coroner, neither were in evidence.

I transmit herewith to your Lordship my notes of what actually appeared in evidence; they shew the whole case, and cannot be disputed.

I beg particularly to draw your Lordship's attention to the evidence of Dr. Kellie, at page 53, and to ask you to contrast it with what the witness of the prisoners Moorogapah Graminy says, at page 60.

Your Lordship will find the strongest contradiction between them, but doubtless Dr. Kellie's account was the true one, and, your Lordship will also observe, what kind of evidence was produced by the Prisoners, in lieu of what might easily have been given, and would undoubtedly have been given, if their story had been true.

It was however beyond a doubt in my mind, false, nor would it have much served their purpose, had it been true, for such violence and such treatment of a simple thief, and he according to their account, insensibly drunk, could have found little excuse in the Law, and had the prisoners

[illegible]

transpired up to that time, which could lead to a supposition that any criminal counter charge was about to be laid against the six prisoners - and much less one involving facts of a capital nature. The names of four of them were not even mentioned. There is no proof that any denial of the imputed lasciviousness of Paracorrojo, or any allegation touching violence and manslaughter, or murder, proceeded from his relatives until after his death, and your Lordship's Petitioners submit that this is a highly material feature of the case for the defence.

That, reviewing what has been above advanced, in connection with their previous petition on behalf of these unfortunate, your Petitioners humbly beg your Lordship in Council to direct that the depositions taken by the Coroner and Police Magistrate may be laid before your Lordship, and contrasted with each other and with the evidence given at the trial, in order to the discovery of the truth, which they firmly believe will tend to exculpate the prisoners, in the degree that it is known.

And your Petitioners
Shadons
will ever pray
14th February 1857.

Commore L. J. Lawrence Esq.

Thos. J. J. J. J.
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45
Judicial Department
No. 261.

From The Hon. Sir M. W. Burton Kt.

Prisone Justice of the
Supreme Court
Dated 12th February 1857.

For Orders.

Govt. I shd say. cannot
comply with the request of
the memorialists to interfere
with the decision.

My At

My At
The Judge should be
informed of the wish to be memorialists
informed of the wish to be memorialists

17.

Ind. Departt

(1201)

Extract from the Minutes of Consultation
Dated 17th February 1857.

Read again Memorial
from certain Native In-
habitants of Madras
dated 2nd and recorded

Read further address
from the same parties
under date the 15th
idem

in Dy to Cons. 10th Feb/57

Read also letter
from the Honorable the
Prime Justice of the
Supreme Court.

H
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H
M

Resolves 12th February

Resolved that the
Memorialists be informed
that the Government having
duly considered their
representations in the
matter of Soobooroyah
Grammy and others
sentenced at the last
Madras Session to
transportation for life
for the murder of
Narasoo Rajoo

75
Marasos Rajoo see no grounds
for mitigation of punishment
under Act XVIII of
1855.

Ordered that the
following letter be dis-
patched.

To The Prince Justice of M. M.
Supreme Court of Indicate
at Madras.

(Here enter 17 February 1857)

JF

Copy to Common Lyah Saamy Mood?

J. Sabapathy Mood?

& certain other Native Inhabitants
of Madras

Jud. Depart.

No. 202

To The Honorable Sir W. W. Burton Knight
Prison Justice of S. M. Supreme Court
of Judicature at Madras.

Honble Sir,

We beg to thank
you for your letter of 12th
inst and to return
your notes in the case
of Soolaraya Grammy
and others sentenced to
transportation for life
at the last Madras
Sessions for the murders
of Varado Rajoo.

2. We have informed
the Memorialists that
we see no grounds for
mitigation of punish-
ment.

To G. George
17th February 1857

We have &c
J. J.

recd 17th

Recd. Secy. L. & C. 29th Jan
16 of 1857

Recd. Secy. L. & C. 29th Jan
16 of 1857

On Decr 17th 1857

Judicial 1857 Departs

No. 201

Extracts Minis. of Govt

28th 17th Feb 1857

36039

Just. St. to Esq of 9 June
We 16 of 1857

Page 21

Dep. At. to Esq of 10 May 1857

Approved

Dec. 20th 1857

Ch. Geo. = 17th Feb 1857

Judicial 1857 before 14

No 292

20

St. Louis de la Nouvelle

Am. Justice of 18. 1857

Supreme Court

March

17 February 1857.

Feb 1857