

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 943	Press
69-70	Mis.
Dated 28-8-1957	19/57

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Fort St. George, Judicial Consultation, 4th August 1857.

No. 69. Read the following Extract from the Proceedings of the Foujdaree Udalt, dated 31st July 1857, No. 42.

Read again Calendar of case No. 30 of 1856, on the file of the Session Court of Chittoor.

Read final Return, dated 14th May 1857, from the late Acting Session Judge of Chittoor, to the Precepts of the Foujdaree Udalt, under dates the 4th March and 30th April 1857, on the conduct of the trial of case No. 30 of 1856, on the file of the Session Court of Chittoor.

1. The Court of Foujdaree Udalt observe, that the late Acting Session Judge, Mr. Sullivan, having been called upon, by Precept, under date 4th March 1857, to submit such explanation as he may have to offer regarding his investigation of Calendar case No. 30 of 1856, admits the commission of the errors noticed by the Court of Foujdaree Udalt, but deprecates censure on the grounds of his inexperience of Judicial business, in which line he states he has never sought employment.

2. On a full consideration of the explanation furnished by Mr. Sullivan, the Court of Foujdaree Udalt regret to be compelled to observe that the faults ani-

*Calendar in case No. 30 of 1856.

Extract from Proceedings of the Court of Foujdary Udalt, under date 4th March 1857.

Final Return to do, from late Acting Session Judge, dated 14th May 1847.

madverted on, in their proceedings, are not those of inexperience, but have evidently resulted from carelessness, as to the discovery of the real facts of the case. They therefore resolve, under Section XXIV, Regulation VIII of 1802, to submit the records noted marginally* for the consideration of the Right Honorable the Governor in Council.

Ordered that Extract from these proceedings be forwarded to the Acting Chief Secretary to Government, for the purpose of being laid before the Right Honorable the Governor in Council.

Ordered also that extract from these proceedings be forwarded to R. J. Sullivan, Esq., late Acting Session Judge of Chittoor, at Madura, for his information.

(True Extract.)

(Signed) GEORGE ELLIS,

Register.

Extract from the Proceedings of the Foujdaree Udalt, under date the 4th March 1857.

Read again Calendar of case No. 30 of 1856, on the file of the Session Court of Chittoor.

Read also again Return dated the 28th July 1856, from the Acting Session Judge of Chittoor to the Precept of the Court of Foujdaree Udalt, calling upon the Acting Session Judge to explain the facts proved against the 1st prisoner in Calendar No. 30 of 1856.

Read also again Miscellaneous Petition presented on the 3rd November 1856, by Mr. J. H. P. Wilson, Pleader, on behalf of the heirs and relations to the prisoners, from No. 1 to 20 in Calendar No. 30 of 1856, of Zillah Chittoor.

Read also again Return dated 1st December 1856, from the Session Judge of Chittoor, to the Precept of the Foujdaree Udalt, under date the 17th November, directing the submission of certain correspondence and depositions referred to in Miscellaneous Petition No. 216 of 1856.

Read also again Return dated 28th January 1857, from the Subordinate Judge in charge of the Session Court of Chittoor, to the Precept of the Foujdaree Udalt, under date the 5th Idem, calling for translation of all the evidence relating to the 9th to 15th and 19th and 20th prisoners in Calendar No. 30 of 1856, on the file of the Session Court.

1. The prisoners 1st to 15th and 19th and 20th, were charged with having proceeded in company with a large armed gang, attacked with open violence the house of the prosecutor, and having beaten him, robbed him of property valued at Rupees 2359-6, the 2nd to 15th and 19th and 20th, as well as the 16th, 17th and 18th, were also charged with knowingly receiving a portion of the plundered property.

2. The late Acting Session Judge concurred with the Law officer in the conviction of the prisoners 1st to 15th and 19th and 20th, and sentenced them respectively to 14 years' imprisonment with hard labor in irons. He also concurred with the Law officer in the acquittal of the 16th, 17th and 18th prisoners, and directed their release.

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3. On perusal of the Calendar, the Court of Foujdaree Udalut remarked, that the abstract of the evidence would induce the belief that the 1st prisoner gave up some articles of the stolen property, but that the sentence and Futwah appeared to negative this, and they accordingly called upon the late Acting Session Judge to explain the facts proved against this prisoner.

4. In his Return, the late Acting Session Judge stated that "the facts proved against the prisoner consisted in his admission of the crime before the villagers, as shewn by the evidence of the 1st, 2nd and 3rd witnesses, and his subsequent confession before the head of Police which was duly proved by the 15th and 16th witnesses. This when viewed in connection with the circumstance that the person to whom the 1st prisoner acknowledged having given plundered property, had absconded, together with his (the 1st prisoner's) crimination by the other prisoners, led the Acting Session Judge to convict the 1st prisoner."

5. The Court of Foujdaree Udalut being of opinion that the proof against the 1st prisoner's Police confession (retracted before the Session Court) was not sufficient to warrant his conviction, acquitted him, and directed his unconditional release.

6. A petition having been presented on behalf of the prisoners, 1st to 20th, the Court deemed it necessary to call for translation of all the evidence relating to the 9th to 15th and 19th and 20th prisoners.

7. On a review of these proceedings, the Court of Foujdaree Udalut observe, that the conviction of the 1st prisoner on his bare uncorroborated confession, shows that the late Acting Session Judge and Mooffy attached a most exaggerated importance to this species of evidence.

8. They also observe that, the sentence of the Acting Session Judge, as given in the Calendar, contains such mistakes as proves the case to have received but little attention. Thus at para. 3, it is stated that the 1st, 2nd and 3rd witnesses deposed that all the prisoners confessed, whereas it is clear these witnesses knew nothing about the 9th to 20th prisoners' confessions, as they were not present when the 9th to 20th prisoners were apprehended, and are alleged to have confessed.

9. Again in para. 4 it is stated, the 9th and 10th witnesses proved "the confessions and delivery of property by prisoners from 9th to 20th, except the three females, 16th, 17th, 18th," but the Calendar and 10th witness' Session deposition shew he (10th witness) was not present at the 13th and 14th prisoners' delivery of property, &c.

10. The commencement of the 5th para. would indicate that the 4th and 5th witnesses identified all the property, but the very Calendar shews that this was not the case, whilst these two witness' depositions contain such expressions as these (4th witness) "I feel it difficult to tell whom they belong to, inasmuch as they are found in separate lists." "I cannot identify the articles of property inasmuch as each of them is tied up in a separate bundle." (5th witness) "I am unable to identify the articles of property inasmuch as they are arranged in separate Nos."

11. The above palpable errors are cited to prove that the Acting Session Judge has given so little attention to the case, that his recorded opinion deserves little weight.

12. In that portion of the record relating to 9th to 15th and 19th and 20th prisoners, which has been called up, the alleged proof against these prisoners is shewn to be that they verbally confessed to the 9th, 10th and 13th witnesses, and gave up articles of stolen property proved to belong to the prosecutor.

13. The examination of these witnesses reflects most seriously on the Acting Session Judge, they do not detail the circumstance, which first induced suspicion against these prisoners, or the circumstances of their apprehension, or what induced them to confess directly they were apprehended, or whether their confessions were given voluntarily. Nor were these witnesses asked any questions which would test the value of their evidence as to the alleged confessions and delivering up of the property produced in Court. Some facts respecting these confessions are however perfectly clear, they were never reduced to writing, and were retracted directly, these confessing got out of the power of the Mysore peons. The evidence to the 9th to 15th and 19th and 20th prisoners' confessions is utterly worthless.

The 9th witness deposed that the 14th prisoner gave up the property from under ground, in the back yard of his house, the 13th witness that he did not from Castor Oil trees.

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14. The value of the evidence of the 9th, 10th and 13th witnesses, as to the finding of the property is destroyed, first, because they could not clearly identify the articles each prisoner produced; secondly, because the 4th and 5th witnesses could not identify the property with any certainty as shewn in para. 10 of these proceedings, and lastly, because the jewels being "pounded up into small fragments," it was not possible for even the owner to state to which of 2 or 3 ornaments they belonged, so that identification was clearly impossible.

15. Under these circumstances, the Court of Foujdaree Udalut were of opinion that the evidence, as taken before the Session Court, was altogether insufficient for the conviction of the 9th to 15th, and 19th and 20th prisoners, and they directed their unconditional release.

16. The Court of Foujdaree Udalut observe that, the Acting Session Judge dispensed with the evidence of the 6th, 7th, 8th, 11th, 12th and 14th witnesses as unnecessary, without assigning any reasons for so doing.

17. The careless manner in which this trial has been conducted, reflects great discredit on the late Acting Session Judge.

18. They accordingly resolve to forward the Calendar and the above record to Mr. Sullivan, and to call upon him for such explanation as he may have to offer in regard to his conduct of this trial, on which the Court of Foujdaree Udalut have considered it necessary to animadvert.

Ordered that Extract from these proceedings be forwarded to R. J. Sullivan, Esq., late Acting Session Judge of Chittoor, by Precept returnable within X days from and after its receipt.

(True Extract.)

(Signed) GEORGE ELLIS,
Register.

1. In final Return to the Precept which accompanied extracts from the proceedings of the Foujdaree Udalut, under date the 4th March and 30th April respectively, relative to his conduct of the trial of case No. 30 of 1856, on the file of the Sessions Court at Chittoor, and in substitution of the returns hitherto made by him thereto, the late Acting Sessions Judge has now the honor to submit the following explanations.

2. The first remark of the Foujdaree Udalut, in para. 3, of their proceedings of the 4th March 1857, points out the legal insufficiency of the evidence for the conviction of the 1st prisoner.

The late Acting Judge now perceives, that as his confession required corroboration, the fact of the party to whom he pointed as having received the property from him, having absconded, was not a sufficient corroboration.

3. The late Acting Session Judge has next to advert to the observations of the Court upon the Calendar of the case as conveyed in paras. 8, 9, 10, of their proceedings of the above date, and must admit, before doing so, that the sentence, whatever may be its actual errors, is deficient in clearness and perspicuity.

4. The first inaccuracy noticed, is manifestly a clerical error, instead of "the 1st, 2nd and 3rd witnesses prove delivery of the property by the prisoners from 2 to 8 inclusive, and also allow that all the prisoners confessed," it ought to have been written "all those prisoners confessed," that this was meant, is evident from the commencement of the next para, where it is pointed out that it is the 9th and 10th witnesses who take up the chain of evidence as to the confessions of the prisoners, and who depose to the confessions of the prisoners from 9 to 20.

5. The next error, that adverted to in para. 9 of the Court's proceedings, may, the late Acting Judge would submit, be attributed rather to an omission of what he had in his mind, than to any confusion or error existing there at the time. Instead of merely saying "the 9th and 10th witnesses depose to the confessions and delivery of property by prisoners from 1 to 20, he should have added "save the 13th and 14th." That this is what he meant, may, he thinks, be fairly presumed from the concluding part of the same para, in which he goes on to say "the 13th witness strengthens the case (or deposes) against the 13th and 14th prisoners," thereby excluding them from the scope of the evidence given by the 9th and 10th witnesses.

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6. In para. 10 of the proceedings the Court animadvert on the general assertion made in para. 5, of the Calendar: "that the property was identified by the 4th and 5th witnesses." Whereas a reference to the record shows that they felt a difficulty in identifying it, which in fact amounted to their not identifying it.

The late Acting Judge would beg to be allowed to point out that the property produced before the Court, was in a very singular state, the greater part of the ornaments having been broken up, the remark that the 4th witness "felt a difficulty," appeared to the late Acting Judge very natural, more particularly as the witness did swear that the greater part of the property belonged to the prosecutor. The difficulty felt by the witness was not in giving that testimony, but in separating and identifying the different articles. That *this* was his meaning, though ill-expressed, would appear more clearly from the deposition of the 5th witness.

7. In the 13th, 14th and 15th paras. of their proceedings, the Court observes on the insufficiency of the evidence given by the 9th, 10th, 13th witnesses, for the conviction of the prisoners from 9th to 15th, and 19th and 20th, and animadvert on the manner in which such was taken, as incomplete and unsatisfactory. With what he *ought to have done*, so clearly pointed out by the Foujdaree Udalut, the late Acting Judge can only say that he much regrets the same course did not occur to him at the time. The deficiencies in *his* examination, compared with that to which it is evident the witnesses would have been subjected by Judges as experienced as those of the Foujdaree Udalut, are very evident. The reasons which actuated the late Acting Judge were that the 9th, 10th and 13th witnesses never pretended to depose to more than the apprehension of the prisoners with the property in their possession. Should the late Acting Judge ever preside over such a trial again, it will be his anxious endeavour to profit by the lesson now given. On the present occasion he would hope, that the Judges of the Foujdaree Udalut will do him the justice to believe that his mistakes arose not from *carelessness*, which could alone account for them in an *experienced* Judge, but from a want of practice and habit.

8. The late Acting Judge begs to say, that he will return by banghy-post all the records, which he has received either through the Sudr Udalut or direct from Chittoor.

9. In conclusion, the late Acting Judge would beg to deprecate the censure of the Court for any defects which their greater experience may detect in his proceedings, on the grounds that having had but little experience in Judicial business, and never having sought employment in that line, he has notwithstanding on four several occasions, within a brief period, been required by the exigencies of the public service, to take his seat on the benches of as many Session Courts.

The Judges of the Foujdaree Udalut must well know that to conduct a trial in which 20 prisoners stand at the bar, would tax to the uttermost the skill and talents of the most able and experienced Judge, and will therefore not be surprized if one pretending to no such qualification shall be found to have failed.

Given under my hand, this 14th day of May 1857, at Kodikanal, Madura district.

(Signed) R. J. SULLIVAN,

Late Acting Session Judge of Chittoor.

(True Copy.)

(Signed) GEORGE ELLIS,

Register.

No. 70.

ORDER THEREON, No. 943; dated 3rd August 1857.

The Government regret to observe the inefficient manner in which the trial adverted to by the Foujdaree Udalut was conducted, and while making allowance for the Judicial inexperience pleaded by Mr. Sullivan, they are of opinion that greater attention and care would have prevented some of the defects pointed out in his proceedings. Mr. Sullivan is now employed in a different Department, and Government will only further remark, that the disapprobation which he has incurred on this occasion will, they trust, lead him to conduct all Judicial business which may hereafter devolve upon him, Magisterial or Revenue, with exactitude and care.

(Signed) E. MALTBY,

Acting Chief Secretary.

Judicial Department

No 943

Extract Mins of Cons. D/3rd August 1857.

The Govt regret to observe the inefficient manner in which the trial adverted to by the F. U. was conducted, & while making allowance for the Judicial inexperience pleaded by Mr. Sullivan, they are of opinion that greater attention & ~~greater~~ care would have prevented some of the defects pointed out in his proceedings. - Mr. Sullivan is now employed in a different Dept. Govt will only further remark that the disapprobation which he has incurred on this occasion will, they trust, lead him to conduct all Judicial business which may hereafter devolve upon him Magisterial or Revenue, with exactitude & care.

The Court of Foujdaree Udalut } Dated 3rd Aug 57

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Abstracts of Records

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