M.R.O. 1—32,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 125-6	Press ~~His.~~
35-37	
Dated	25-1-~~19~~ 1938

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 26th January 1858.

No. 35. Read the following letter from the Advocate General; to the Chief Secretary to Government, Fort Saint George, dated 12th January 1858.

SIR,

I have the honor to forward for the information of the Right Honorable the Governor in Council the following report of the proceedings, during the first Criminal Sessions of 1858, in those cases where I considered it my duty to prosecute.

2. Those cases were six in number; the Queen, *v.* Danoran an Artillery man, for shooting with intent to murder; *v.* White, a horse Police-man, for manslaughter: *v.* Parasooramen, a horse-keeper, for a rape on a child under four years of age: *v.* Gholam Ghouse, and Shaik Munnoo, for instigating to rebellion by posting up seditions placards; and *v.* Henderson and Purdon, Railway Engineers, for manslaughter of a Native bricklayer working under them.

3. Danoran pleaded guilty and was sentenced to penal servitude for life.

4. White was found guilty, but recommended to mercy by the Jury; on which ground alone, and with great doubt, as he expressly said, of the propriety of his so far yielding to the Jury's recommendation, the Chief Justice sentenced him to only nine months imprisonment in the House of Correction, with hard labor, a very light sentence certainly for two very cowardly and brutal assaults, the second and fatal one being almost unprovoked, and so aggravated that the Chief Justice himself said it would have amply warranted a true bill for murder, which he intimated the Grand Jury ought to have found, and a conviction thereupon.

5. Parasooramen was found guilty, and sentence of death recorded, but the Chief Justice intimated that he should commute it to transportation: he has been since sentenced to seven years' transportation. The Chief Justice was probably influenced in thus commuting the sentence by the facts appearing in the child's statement before the Magistrate, which certainly seem as if, until actually hurt, she was a consenting party.

6. Shaik Munnoo and Gholam Ghouse were both tried and convicted under Act XI of 1857, and were each sentenced to transportation for life to the Tenasserim Coast. These are I believe the first cases where indictments have been preferred under this Act, and as the Act had never received Judicial construction, and is certainly not drawn as an Act of Parliament would have been, I deemed it right to indict the prisoners also for publishing seditious libels, lest they should escape by technical objections to the wording of Act XI of 1857. As I anticipated, many objections were taken to that Act, which received much criticism both at the bar, and from the Chief Justice, but after hearing my reply the Chief Justice ruled that the Act supported the indictment upon the evidence given. I am not however at all clear that he would have so ruled, had the objections been put in a different form. The 1st Section of the Act mentions the following offences, viz., to "rebel," or "wage war," &c., or "attempt to wage war," or "instigate or abet rebellion or waging war," but though it specifies the "*attempt*," to wage war, it omits to specify the "*attempt*," to instigate or abet rebellion or waging war. Moreover the phrase "instigate rebellion," is not quite grammatical, it should be "instigate any *person to rebel*," or "*to* rebellion." Persons may be instigated, but not a rebellion.

7. Now the facts, in each of these two cases, disclosed an "*attempt* to instigate" the Moosulmans of Triplicane generally to rebellion, but certainly no one person was *actually instigated*, for the placards were torn down and seized by the Police before any one else had seen or could have seen them: and had the objection been pointed expressly to this fact, I am by no means sure that it would not have prevailed. It would certainly be prudent to amend the Act at least in this particular.

8. In Shaik Munnoo's case the evidence for the Crown was clear and conclusive. In that of Gholam Ghouse it was by no means so, and the Chief Justice also in his charge took a very unfavorable view of it; and if the Jury had acquitted the prisoner, I do not think I should have felt justified in trying him on the indictment for a seditious libel, and submitting the same evidence—I refer to the evidence of the three Peons who arrested him—a second time to a Jury. The Jury however convicted him.

9. The trial of Messrs. Henderson and Purdon lasted nearly fourteen hours, when after a most careful and elaborate charge from the Chief Justice; in which he dwelt with great severity

on the conduct of the prisoners, which had, it seemed, in his opinion clearly caused the death of the deceased, the Jury after a very short consultation, and much to the surprise of those present, particularly of the legal profession, returned a verdict of not guilty.

10. The evidence disclosed not, certainly, any ground for supposing that the prisoners intended to do any serious bodily harm to the deceased, but, as certainly, an habitual and unhesitating resort on the part of the Engineers to personal violence, flogging with horsewhip and huntingwhip, and not a mere passing cut, but seizing and holding the men (sometimes by the Peons, sometimes by the Engineers themselves) while the Engineers flogged them, that was perfectly outrageous; and not only might, but probably would, have led to their being knocked on the head by the workmen in a body, but for the guns and pistols which the Engineers seem to have had always at hand.

11. The workmen, such at least of them as were strangers, as many if not the majority were, seem to have no idea who the Police of the District were, nor where they could be found. If the Peons mentioned in the evidence as having, at the prisoners' commands, pursued and seized the workmen and brought them back to be flogged by the prisoners, if these Peons were Police-peons, they ought in my opinion to be summarily dismissed, and their successors carefully instructed in their duty. If these men were Police-peons, the workmen must have believed that there was no protection for them. The occurrences of the morning of the 18th July, and the consequent suspension of the works for 8 days, if unknown to the Police, argue great supineness on their part; if these occurrences were so known, it shows something worse that none of the Police watched the case of the deceased, or took notice of his death, so as to have a *post mortem* examination of his body until the fourth day, when decomposition had advanced so far as to render an examination almost impossible, and practically almost useless.

12. The whole course of the evidence showed the case to be, as the Chief Justice both said and showed that he felt it was, one eminently demanding a full close and serious investigation, and as I observed Mr. Dyke in Court during the trial, I cannot doubt but that he must have been convinced of the very grave error, indeed errors, that he committed in dealing with the charge; 1stly, in unnecessarily and improperly postponing the examination of the father's four witnesses for two days, an error but for which probably none of the others would have occurred, for I feel quite satisfied that had these four men been examined on the 27th they would have corroborated the father's charge; whereas their profession of ignorance on the 29th coincides too nearly with the circumstance of the defence having cost the prisoners the monstrous sum of twelve hundred Rupees, not to lead to the gravest suspicion as to how the interval of time and the money were employed: 2ndly, in not examining the medical witnesses: 3rdly, in dismissing the charge without taking any steps to obtain the further evidence which the father's information ought to have shewn him was easily procurable.

13. Mr. Dykes I think must, after seeing the Grand Jury return a true Bill, after hearing the whole of the evidence, and the Chief Justice's charge, have felt convinced of the grave errors he committed, and that he had thereby in fact rendered it incumbent on the Government to take the steps they did, injustice to the Native population, and as a necessary proof of the determination of Government to ensure to their Native subjects that legal protection, and impartial administration of justice, which is unquestionably their due.

(Signed) THOS. SYDNEY SMYTH,
Advocate General.

No. 36. ORDER THEREON, No. 125; dated 25th January 1858.

1. Resolved that the paras. 6 to 8 of the letter recorded above be forwarded to the Member, for Madras, of the Legislative Council of India, and his attention drawn to the remarks of the Advocate General on the defects in Act XI of 1857.

2. Resolved also that copies of paras. 9 to 11, be furnished to the Magistrate of Salem and to the Consulting Engineer, for communication to the Agent of the Madras Railway Company.

Mr. Brett will report on para. 11, and state whether the Peons therein alluded to are Government or Railway servants.

(Signed) T. PYCROFT,
Chief Secretary.

Ordered that the following letter be despatched.

No. 37. From T. PYCROFT, Esq., Chief Secretary to the Government of Fort St. George; to the Honorable DANIEL ELIOTT, Esq., Member for Madras, of the Legislative Council of India, dated 25th January 1858, No. 126.

SIR,

I am directed by the Right Honorable the Governor in Council to forward the accompanying Extract (paras. 6 to 8) from a letter of the Advocate General, dated 12th January 1858, reporting on those cases which he deemed it his duty to prosecute during the first Criminal Sessions for 1858 of Her Majesty's Supreme Court, at Madras, and request your attention to the defects pointed out by that Officer in Act XI of 1857, under which two of the parties were tried.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Judicial Department.

No. 25

Extract from the Minutes of Consultation

Dated 25 January 1858.

Read the following Letter from the Advocate General.

(Here enter 12th January 58 -)

1. Resolved that Nos 5 & 8 of the Letter recorded above be forwarded to the Members for Madras, of the Legislative Council of India, and his attention drawn to the remarks of the Advocate General on the defects in Act XI of 1857.

2. Resolved also that copies of Nos 9 & 11 be furnished to the Magistrate of Salem and to the Consulting Engineer

for communication to the Agent of the Madras Railway Company. Mr Brett will report on para 11 and state whether the steps therein alluded to are Government or Railway servants.

I request that the following letter be despatched.

To

The Member for the Madras Presidency,
of the Legislative Council of India

(Here enter No)

Copy to Magistrate of Salem
(words struck out)
" Consulting Engineer (initialled)
for Railways

Desp'd 29th

12 Copies No 9 of
Sent to Bombay per Steamer the 5th February
and Bengal & N.W. Provs

Rec'd 20th

4—

Judicial Dept.

No 126

Daniel Elliott Esq

Member for Madras of the Legislative Council
of India

Sir,

I am directed by the Right Honble the Governor in Council to forward the accompanying extract (para 6 &c) from a letter of the Advocate General dated 12th January, 1838, reporting on those cases which he deemed it his duty to prosecute during the 1st Criminal session for 1837 of the Supreme Court at Madras, and requesting (words struck out) attention to the defects pointed out by that officer in Act XI of 1837 under which two of the Parties were tried.

Wm Mc Gregor, Sy
26 January 1838

Judl. Dept. to Cons. 26th Jany
Judicial 1858. Department

Judl. Dept. to Engr. 30th June
1858 - Para 28

No. 125

Extract Mins. Cons.

Dated 25th January 1858

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