

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 228

Press

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18-19

Dated

22-2-1888

Not to be folded or roughly handled

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Fort St. George, Judicial Consultation, 23rd February 1858.

No. 18. Read the following letter from C. WHITTINGHAM, Esq., Magistrate of North Arcot; to T. PYCROFT, Esq., Chief Secretary to Government, Fort St. George, dated 18th February 1858, No. 10.

SIR,

I have the honor to state for the information of Government with reference to my letter of the 10th Instant, that the Acting Session Judge has taken a different view of the nature of the evidence in that case, from that taken by the Acting Criminal Judge who committed it, and has acquitted the nine Sepoys, and the Cutwal of the 3rd Extra Regiment who were charged with plundering some grain shops in the town of Raneepet, copy of the decision of the Acting Session Judge is herewith forwarded.

2. The Acting Session Judge objects to the evidence of some of the witnesses, because they deposed to having seen one or two shops plundered, but not those shops which adjoined their own. If positive evidence was given that one or two shops were plundered, it seems unreasonable to have rejected it, because it did not extend to other shops plundered at the same time. Those who are in the habit of dealing with native testimony would rather consider this limitation of the evidence to be a point in favor of its credibility. It is possible, that in such a scene of confusion, the owners of shops should have been so occupied with their own misfortune as to have been unable to state what was occurring in those shops that adjoined their own.

3. The evidence regarding the assault said to have been committed by the 1st and 3rd prisoners might break down without affecting the evidence that went to show, that those prisoners were present aiding and abetting the plunder.

It may be difficult to show who struck a certain blow in a crowd, while it may be easy to prove that certain persons were present aiding and abetting that crowd in the commission of illegal acts. One offence is instantaneous, the other more or less protracted.

4. The Acting Session Judge also objects that there was little moon at the time, and that the prisoners were identified principally by the light of a lamp in each shop. This objection would have weight if the defendants had been unknown, or but little known to the shopkeepers, but as the defendants resided in the place, and must have been in the constant habit of frequenting the grain shops, it is not easy to believe that the same degree of light, which enables the shop-keepers to transact business, would be insufficient to ensure the recognition of familiar faces.

Case No. 6 of the Calendar for 1858, sent up by the Police Ameen of Raneepett.

Prosecutors.

1. Esuff Saib.
2. Pacha Saib.
3. Hasimsah.
4. Coodoobaddeen.

Prisoners.

1. Moottiyaloo.
2. Chinnien.
3. Veerasawmy.
4. Syed Rajah.
5. Laul Mahomed.
6. Mahomed Cawn.
7. Lutchmunsing.
8. Shaik Omer.
9. Abdool Nabee.
10. Rungiah Naiken.

Prisoners one to nine are Sepoys and the 10th Cutwal of the 3rd Extra Regiment.

The prisoners 1 to 10 are charged with having at half past 7 o'clock in the evening of the 19th January 1858, in company with a number of other persons, not apprehended, (about sixty in all) armed with sticks, attacked by open violence the shops of the prosecutors, situated at Mottoo Bazar attached to the town of Raneepett, in the tolook of Caverypauk, and Zillah of Chittoor, and with having beaten the 3rd prosecutor and plundered from the said shops doll, grain and other articles valued at Rupees 314-0-3.

Fort St. George, Judicial Consultation, 23rd February 1858.

Remarks.—1. I concur in the futwah of the Mahomedan Law Officer which acquits the prisoners of the charge.

2. It appears from the evidence of the witnesses, all of whom are bazar men and gave their evidence very unsatisfactorily, that the prosecutors' shops were suddenly attacked shortly after dark by a large crowd of persons numbering according to the evidence of some of the witnesses from 100 to 150 persons and that they carried away with them considerable property, but notwithstanding four shops were attacked, the same persons according to the evidence, are stated to have been concerned in plundering each shop. Some of the witnesses deposed to having seen one or two of the shops of the prosecutors attacked, but they do not account for not having seen the other shops attacked which adjoined their own shops. The 3rd prosecutor deposed to the 1st and 3rd prisoners having entered his shop and to the 1st prisoner having beaten him with a stick, but the 2nd witness who deposed to having witnessed the attack upon the 3rd prosecutor's shop declared that he could not identify the person who struck the 3rd prosecutor, and that the 3rd prosecutor told him that some one had beaten him, thereby showing that he was not positive as to the offender. The 5th witness confirmed the 3rd prosecutor's statement before the Court, but before the Police it is observed, that he declared that it was the 3rd prisoner who struck the 3rd prosecutor and particularly stated that he did not see the 1st prisoner strike him. The evidence of the said witness before the Police in regard to the persons who entered the 4th prosecutor's shop is directly at variance with his statement before the Court. The evidence also of the witnesses as to the share which the 10th prisoner had in the crime is at variance with their Police statements, whilst the 10th prisoner adduced the evidence of a Native Officer a Jemadar of the Regiment to show that he was not present at the time the prosecutors' shops were attacked, the said witness gave his evidence very clearly, and he declared that he went with a guard to the prosecutors' shops, shortly after the disturbance occurred, and that the prosecutors then declared that they could not identify the persons who plundered their shops, considering the great number of persons assembled, the great confusion which prevailed at the time, that there was little moon at the time and that the prisoners were identified principally by the light of a lamp in each shop, the Acting Session Judge is of opinion that the prisoners were not clearly identified by the prosecutors as the parties who robbed their shops and that the evidence from its many inconsistencies and contradictions is not entitled to any credit. The prisoners are therefore acquitted of the charge and ordered to be released forthwith.

8th February 1858.

(Signed) J. H. GOLDIE,
Acting Session Judge.

To the Magistrate of North Arcot for his information.

(True Copy.)

(Signed) C. WHITTINGHAM,
Magistrate.

No. 19.

ORDER THEREON, No. 228 ; dated 22nd February 1858.

Ordered to be communicated to the Military Department in reference to Extract Minutes Consultation, 15th February 1858, No. 210.

(Signed) T. PYCROFT,
Chief Secretary.

N^o 228.

Ordered to be communicated to the
Military Department in reference to
Ext. Min. Cons. 15th February 1858 No. 210.

Fort St. George,
22nd February, 1858.

Order for the
release of the
prisoners.

Copy to Military Dept. { Disptd 25th
Mag. of North Arcot }

12th March 1858