

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 618	Press
11-12	Mis.
Dated 5-5-19	19-1859

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
from 4th to 10th May 1859.*

No. 11. Read the following letter from T. CLARK, Esq., Political Agent of Poodoocottah; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated Madura, 13th April 1859, No. 60.

With reference to the Extract from the Minutes Consultation of Government, dated 16th December last, I have the honor to forward a memo. with translate from the Criminal Court at Poodoocottah, explaining all the points noticed by the advocates in behalf of the 31st prisoner in Criminal Case No. 54 of Annundah.

2. It would appear therefrom that the decision was confirmed in appeal by His Excellency and that the prisoner in question has been long known as a leader of gang and has on two previous occasions undergone punishment in Trichinopoly, once by the Court and on another occasion by the Magistrate.

3. The whole documents connected with the case are submitted to Government by Banghy in three parcels, together with the original and appeal decisions as per list accompanying.

Translate of a Yadast, dated 12th February 1859, No. 12, addressed by the Criminal Court to the Hoozoor Office.

1. With reference to your Excellency's Yadast of the 29th January 1859, No. 1, forwarding copies of Minutes Consultation of Government under date the 16th December 1858, having reference to the appeal of the 31st prisoner in case No. 54, of the year Annunda on the file of this Court, and of a Memo. from the Political Agent, dated the 21st December 1858, No. 380, calling for a full report and explanation on the several points raised by the Barrister and Attorney of the Petitioner in the petition of appeal in question, and especially, on the 3 points and the alibi therein noted as well as on the points on which the conviction of the said 31st prisoner rests, we have the honor to submit our explanations as follow:—

2. The particulars set forth in paras from 1 to 7 of the Petition in question do not appear to be of a nature requiring explanation.

3. In para. 8th of the petition wherein a description of the situation in life of the prosecutor Moottoocaroppa Chetty, is given, our character is unjustly and without the least ground attached by representing us to be his debtors, while in reality, we have the honor to inform not one of us has ever had any kind of pecuniary connexions with him; and we are very sorry to find that even the learned Barrister and Attorney of the Petitioner have allowed such a groundless imputation a place in the petition of appeal, while not strictly relevant to their purpose.

4. In para. 9th it is stated as a defect in the prosecution that the witnesses for it are the relatives, servants, connexions and Villagers of the prosecutor and detectives. Though it should be admitted that some of the witnesses for the prosecution are of the classes above alluded to, yet we beg to advance that the testimonies of such persons are not, as far as we know, restricted by any laws from being admissible; nay, they have also been expressly declared legal by Regulation VI of 1829, Clause I, Section II of that Regulation empowering the Judges to pass sentence on all persons convicted before them notwithstanding any objection taken to the deponents by the Mahomedan Law Officers on the grounds of such personal exceptions.

5. It is alleged in para 10th by the Petitioner that his brother the 31st prisoner is not stated by any witness to have been seen at the house of the prosecutor or in or near his Village either at the time of the robbery or at any period of time near thereto; for which, we beg to inform that the conviction of the said prisoner is not based on the fact, of his having accompanied the gang to the house of the prosecutor but he was convicted and punished as a leader of that gang in having assembled it for the purpose of committing the robbery in question.

6. In para 11th the Petitioner classes the evidence as against the said prisoner under three heads, viz.

1. Of his having been seen in the tope.
2. The statement of other prisoners.
3. Property found in the house, and endeavours to take exception to each.

7. As to the 1st point, it is fully proved by the witnesses noted in the margin that the said 31st prisoner was seen by them on a certain day in the month of Chit-tray of the year Annunda corresponding with the month of April 1855,

Record No. 171, Chinnamoot-
toomalavaram, 1 No. 173,
Itamasawmy mungalam, 2.

*Proceedings of the Madras Government, Judicial Department,
from 4th to 10th May 1859.*

in a Mango Tope, to the North of the Village Thottaputto, in company with certain other persons (many of whom are named by the same witnesses) holding a dispute with the prisoner that he had no right to have a greater share of the property; which from the representations of one of the disputing party, and an acquaintance of the 2nd witness as per margin they, the witnesses came to understand, were those plundered at the prosecutor's house.

8. These witnesses the Petitioner represents in para. 12th to be the detectives employed by the prosecutor and whose evidence as to identity, they having no previous knowledge of the prisoners, we have declared to be neither probable nor credible and also as men of bad characters who have since been proved to have been principals in the robbery in question. It does not appear that these witnesses had been employed by the prosecutor as detectives on his behalf at the time they saw the said 31st prisoner in the tope, it being plainly deducible from the record, that the prosecutor has subsequently engaged them as such and endeavoured to apprehend the robbers on the information given him by the 2nd witness regarding what he had seen and learnt in the tope. Every acts, of a criminal nature being perpetrated privately and in a manner as to evade observation, it is only at the instance of those who, by chance, happen to know any thing of it that the crime should be detected and the criminal brought to trial; to disbelieve therefore the testimony of such persons on the ground of their having been the detectors would be to bar the detection and punishment of the evil-doers. Under such circumstances, the evidences of those witnesses admitting them to have subsequently become the detectives on behalf of the Prosecutor, appeared not in our opinion, to be unworthy of credit; and they have been admitted in our judgment, to operate against the prisoners so far as the identification of them, as in the case of the said 31st and some other prisoners who are represented to be of previous acquaintance to the said witnesses, appeared satisfactory to the Court. It is not hitherto proved, as the Petitioner would assert, that these witnesses have been in any wise concerned in the robbery in question.

9. As to the second point, the statements of other prisoners have not been, as stated in para. 13 of the petition, made an adminiculum of evidence against the prisoner, but only incidentally adverted to in the concluding part of our decision to show that the proofs bearing against the prisoner make as believe that he has taken a prominent part in the robbery, in having, as stated by some prisoners before the Police, assembled the gang and instigated the perpetration thereof.

10. As to the 3rd point, that of property found in the house. The Petitioner states in para. 14 that the only evidence for the same is that of the said detectives and that the same is in itself, contradictory, incredible and inconclusive. We trust on the contrary, that the proofs bearing on this point would appear sufficiently strong from the following details of the same. It

Record No. 171 Chinnamutti
malavaram..... 1
No. 244. Narayanan..... 2
„ 278 Sobbaraya Iyen, 3

is fully proved by the witnesses noted in the margin, that on due search being made on the 8th October 1855, corresponding to 24th Perattasy of the year Ratchasa, a plate of gold making part of an ornament called Chundraharem and bearing the initials of the prosecutor was discovered in the house then occupied jointly by the prisoner and his brother the Petitioner. Of these witnesses, though the 1st is a detective, the other two are the servants of the State, the second being the Police Peon entrusted with the service of the warrant against the prisoner and the third Maniagar of a Vuttum sent by the Police for assistance. The testimonies of these witnesses are not only, in a great measure, conclusive and satisfactory in themselves but are also amply corroborated by the search account as per margin bearing the attestation of several of the prisoner's own Villagers such as Moonsiffs, Puttadars, Ambulgars, merchants &c., as well as by the statements* of those attesters given before the Police.

* Vide depositions, No. 337, 388, 339, 340 and 341.

11. As for the defence of the prisoner mentioned in paras 15 to 17 we beg to inform that the prisoner has indeed stated, as alleged in para 16 of the petition, that he set out for Bangalore on the 1st Auvany of the year Ratchasa corresponding to 15th August 1855, that he returned thence in the month of Tye (February 1856,) that he has, in the meantime, executed a deed of debt and that having pulled down his own house in the month of Viasy of Aununda or May 1855, to re-build it, has since taken lodgings in a Salay or hut of an Ammen Covil. The witnesses cited by the prisoner have also given testimonies confirmatory of his statements. But this de-

*Proceedings of the Madras Government, Judicial Department,
from 4th to 10th May 1859.*

fence of an alibi put forth by the prisoner is not in the least calculated to convince, as argued in para 17 of the petition, that he was defacto at Bangalore either at the time of the robbery or when he is stated to have been seen in the Tope, both of which facts having taken place in Chittray some months prior to the time the prisoner states to have left his Village; and neither his plea of having pulled down his own house and taken lodgings in a salay is of any avail to the prisoner; for, it is fully proved, on behalf of the prosecution, that the property found in the possession of the prisoner was discovered in the house then occupied by him; and it is also clearly shewn by the deposition noted in the margin under para 10 that it was a place temporarily engaged by the prisoner, his own house having been pulled down, to be rebuilt.

12. This defence of an alibi the prisoner has pleaded to refute another point proved against him, *i. e.* his having attempted to come to a compromise with the prosecutor, which circumstance appears to have been suppressed by the Petitioner and will be detailed below in para. 15.

13. Our reasons for discrediting the testimony of the witnesses for the prisoner would, we hope, appear the most cogent, and consistent with the principles of justice from the following details of the grounds on which the prisoner was convicted. They consist of the following heads, viz.

First. The prisoner's having been seen in the Tope contesting for the division of the plundered property.

Second. Part of the property robbed having been found in the lodgings of the prisoner.

Third. His having endeavoured to effect a compromise with the prosecutor.

Fourth. The disproof of the Prisoner's plea of having set out for Bangalore on the first of Auvany.

14. As for the points first and second, we trust that enough has already been stated above in paras 7, 8 and 10 of this reply while explaining on the objections raised by the petitioner; and beg to advance that these very circumstances when coupled together appear, in our opinion, sufficiently strong to warrant the conviction of the accused.

15. The third point *i. e.* the negotiation of the prisoner with the prosecutor, has also been sufficiently proved. The particulars of this point are as follow. The prisoner finding that warrants were out for his apprehension, applied himself to Ramasamy Mungalan a detective, begged him to prevail upon the prosecutor to cancel the warrant and promised, in return, not only to restore to the prosecutor or his Agent whom the detective could bring to him his share of the plunder but also to make over to him the rest of the gang with the properties in their possession. The detective brought the case to the notice of the prosecutor who sent with him an Agent with instructions to get so much of his properties as may be recovered through the means of this prisoner, and at the same time to use every measure for his apprehension and of all other persons concerned in the robbery. It has fully been proved by the witnesses noted in the margin that the prisoner having at the interview thus effected between him and the prosecutor's Agent, called together the rest of the gang (many of whom were subsequently apprehended, and convicted) requested them to produce the articles in their possession to which they all agreed, that the prisoner having then obtained a solemn affirmation from the said detective and Agent on the matter of rescuing

Record No. 173, Ramasamy
Mungalan..... 1
No. 211, Vachamagaly Chetty..... 2
No. 282, Sadayen..... 3
No. 388, Moottoocurooppa Pundaran..... 4
No. 389, Moottoocadaveran. 5
No. 390, Ramasamy Pillay. 6

him, told them after making an account, that the property connected with robbery and under his control amounted in value to Rs. 4,500, of which some having been sent out for sale he would make over so much of them as then remained undisposed of and money for the rest; and that at last going to his house with the detective under pretence of bringing the articles deposited there effected his escape through a back-yard. It is further deposed by the said witnesses, that the prisoner having sent for the 32nd prisoner a gold-smith, demanded of him the payment of Rs. 100, alleging the same as due from the proceeds of jewel connected with robbery and which had been given to his charge for disposal. Of these witnesses, the 1st and 2nd are respectively the said detectives and agent of the prosecutor, the third and sixth are persons deputed by the prosecutor for the assistance of the agent and the two remaining have been selected by the prisoner himself as mediators at the interview.

16. The statements of the above witnesses are also fully corresponding with the particulars admitted by the 32nd prisoner above alluded to, who though at his arraignment pleaded not guilty to the charge, has when put upon his defence made ample confessions of his guilt.

*Proceedings of the Madras Government, Judicial Department,
from 4th to 10th May 1859.*

17. The alibi pleaded by the prisoner was only to refute this point. But when compared with the strong proofs adduced for this point on behalf of the prosecution, the testimonies of the witnesses for the prisoner as per margin who have greatly contradicted each other as to the place in which they had all jointly taken lodgings at Bangalore, appeared to us to be of no weight at all.

18. Now as regards the fourth point, we beg to state that from the reports of the peons noted in the margin, which were written in due course of business and which contain an assertion of the said 31st prisoner having been on the 17th Auvany of the year Ratchasa or 31st August 1855, seen in a jungle near his Village at the head of his party arrayed in all kinds of offensive weapons; it would plainly appear that the prisoner's defence of having set out for Bangalore on the 1st of the said month of Auvany is false.

19. This prisoner is a famous gang leader and one that has, as appears by his own statement, undergone a sentence of two years' imprisonment in the Zillah of Trichinopoly and also held to security for good behaviour for a period of 1 year by the Magistrate of the same District and it would not be difficult for a man of his character to procure witnesses to confirm his statements from among his own adherents who may at all events be intent at his rescue.

20. These grounds having brought in us a conviction that the prisoner has taken a prominent part in the robbery in question, by having, as stated by some prisoners before the Police, which statements though retracted before us have been amply proved by the attesting witnesses, assembled the gang and instigated the perpetration thereof; he was sentenced to 14 years' imprisonment with hard labour in irons under Clause III, Section IV, Regulation XV of 1803.

21. The said Judgment has also been confirmed by your Excellency in Appeal.

22. We have also according to the instructions conveyed in your Excellency's Memo submitted herewith as per the accompanying list of papers the whole record of the said case, No. 54, with copy of our Judgment in the same, the original being entered in a book.

(Signed) VENKUT ROW, 1st Judge.

(„) SOONDARACHARIER, 2nd Judge.

(True translate.)

ANNASAWMIAH, Sirkele

No. 12.

ORDER THEREON, 5th May 1859, No. 618.

Resolved that the petition, received on behalf of the 31st prisoner in Criminal Case No. 54 of Annundah, be returned with an Endorsement to the effect that Government see no cause for their interference.

(Signed) T. PYCROFT,

Chief Secretary.

20
My dear Pycroft
The Magistrate is subject
to no supervision as
regards Criminal
Trials. There is nothing
that I know of to prevent
his Court sentencing a
man to death, but
it is an understood
thing that imprisonment
for life is the highest
punishment his Court

will inflict

We have no treaty
with the Rajah. Therefore,
as we have no war
have allowed him
to a domestic Court
a Criminal jurisdiction
within his Territory,
he is theoretically the
most independent
Prince in India.

Practically the Agent
of the British authorities
whenever anything was
going wrong. When his
brother in law was sentenced
to 14 years imprisonment
for sedition, and it was
known that he had
procured, I with the
sanction of Gov. Munro
to be made, and
eventually got the Rajah
to pardon him.

The Rajah has been

could money

In fact he was originally
a mere Police - who rose
to importance during the
Comet Wars - rendered an
excellent service - was
killed in Genl. Macleod's
time - and from his
very insignificance allowed
to exercise certain powers
without question which
had have been denied to a
Rajah of consequence
by an act of the Raj in
answer to a request
from his Government

When Resident in
Rajpootana is on
the 15th Decr

Yours very truly

R. P. C. M.

No. 610.

Resolved that the petition, received on behalf of the 31st Prisoner in Criminal Case No. 54 of Annundah, be returned with an endorsement to the effect that Govt. see no cause for their interference.

Fort St. George
5th May 1859.

There is nothing in these papers etc. etc.

11 1/2
10 3/4
10 1/2
10 1/4
10 1/8
10 1/16

To the Pol. Agent at Pondicherry - with the following orig. Papers -
1 Tamil Vadam - 1 Tamil Original Decision - 1 do. Appeal
Decisions and three parcels of Tamil Documents -
* Dispatched by Brangley - 10/5.

2 1/2
2 1/4
2 1/8
2 1/16
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