

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 2045

Press
~~Mis.~~

153-154

Dated 16.12.1962 #

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
16th December 1862.*

No. 153. Read the following Proceedings of the High Court of Judicature at Madras, dated 28th November 1862, No. 35.

Read again Criminal Petition presented on the 22nd September 1862, by Alexander M. Ritchie, Esq., Vakeel on behalf of Carooppa Gounden and another, 2nd and 3rd prisoners in case No. 69 of 1862, Zillah Coimbatore.

Read also letter dated the 17th instant, from the Session Judge of Coimbatore, submitting the translation of the Proceedings in the above case called for in the High Court's Proceedings of the 4th October 1862, and stating that the sentences passed on the above Prisoners are suspended.

1. The three prisoners brought to trial in the above case, were arraigned under Section 25, Act 18 of 1854, and being convicted by the Session Judge, with whom the Assessors concurred, have been sentenced to rigorous imprisonment for a period of seven years.

2. The proceedings of the trial have come under review by the High Court on an appeal from the 2nd and 3rd prisoners, who were heard on the 4th ultimo by their Counsel, Mr. A. M. Ritchie.

3. Their consideration of the complete record of the proceedings taken before the Acting Head Assistant Magistrate and the Session Judge of Coimbatore, does not enable the High Court to arrive at the conclusion of the prisoners' guilt which has been formed by the Session Judge. The evidence against the accused is mainly that of the 3rd and 4th witnesses, the first of whom in the Session Court deposes to having one Saturday evening, the day preceding the date of the offence with which the prisoners are charged, overheard the 2nd and 3rd prisoners observed the one to the other, that it was useless to carry chairs thence, as they could "get them there and see about it to-morrow morning." Assuming that this deponent spoke the truth and that the prisoners' observation had reference to an accident from some iron chairs being placed on the line, which nearly occurred on the morning following the conversation so overheard; and throwing entirely out of consideration the improbability of two men bent on an evil act of the kind imputed to them, being so incautious as to speak loudly of what their intentions were, the High Court observe that this witness' testimony is materially affected by the variance found in it when compared with that given by him before the Acting Head Assistant Magistrate where he declared that the conversation which passed about the chairs was between the 2nd and 3rd prisoners and also the 1st prisoner. In regard to this discrepancy, the Session Judge has put no question to the witness, so that it stands in the record in no wise reconciled by any explanation the witness may have had to offer, and under such circumstances the High Court consider that the prisoners are entitled to the benefit of the doubt arising from it.

4. The testimony of the 4th witness is to the effect that on the morning of the accident he saw the three prisoners carrying four iron chairs towards the line of rail on which he observed that they fixed three, leaving one of the four lying on the ground unfixed. Doubt arises in respect of this witness also, from the difference observable in the two statements he has made relative to the number of chairs the 1st and 3rd prisoners were carrying. But this doubt is increased on a consideration of the evidence given by the train guard, W. Reid, (1st witness) who has declared that two iron chairs were cut through by the Engine wheels, and that further on he found *two* others on the rail a yard apart from each other, thus disproving the assertion of the 4th witness that three had been fixed and one left on the ground. The little credit due under these circumstances to the deposition of the 4th witness is still further diminished by the statement of the 2nd witness, the line watcher, who has deposed that on the morning of the occurrence in question, he had not seen any people on the line of rail.

5. Under this view of the testimony on which alone the prisoners have been punished by the Session Judge, the High Court are of opinion that their conviction cannot be sustained. Accordingly they resolve to annul the sentences passed on the 2nd and 3rd prisoners and to direct that they be released from Jail.

6. In the absence of an appeal, the High Court are unable similarly to deal with the sentence passed on the 1st prisoner. Being, however, of opinion that the evidence brought against him is as insufficient for his conviction as that affecting the 2nd and 3rd prisoners is for theirs,

Proceedings of the Madras Government, Judicial Department,
16th December 1862.

they further resolve to recommend to the Government, under Section 54 of the Code of Criminal Procedure that the sentence passed against the 1st prisoner be also remitted.
(True Extract.)

(Signed) C. F. CHAMIER,
Registrar.

To the Chief Secretary to Government.

No. 154.

ORDER THEREON, 16th December 1862, No. 2,045.

His Excellency the Governor in Council requests that the translation of the evidence in the case referred to may be transmitted to Government.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McMootry.

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Proceedings of the High Court of Judicature at
Madras, 28th November, 1862.

Read again Criminal Petition presented on the 22nd September 1862, by Alex^r. M. Ritchie Esquire, Vakool on behalf of Carooppa Gounden and another, 2nd and 3rd Prisoners in Case No. 69 of 1862 Zillah Coimbatore.

Read also letter dated the 17th instant, from the Session Judge of Coimbatore, submitting the translation of the Proceedings in the above case called for in the High Court's Proceedings of the 4th October 1862, and stating that the sentences passed on the above prisoners are suspended.

1. The three Prisoners brought to trial in the above case, were arraigned

under Section 25 Act 18 of 1854, and being convicted by the Session Judge, with whom the assessors concurred, have

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2. The proceedings of the trial have come under review by the High Court on an appeal from the 2^d and 3^d Prisoners, who were heard on the 11th sitting by their Counsel, Mr. A. M. Ritchie.

3. Their consideration of the complete record of the proceedings taken before the Acting Head Assistant Magistrate and the Session Judge of Coimbatore, does not enable the High Court to arrive at the conclusion of the Prisoners' guilt which has been formed by the Session Judge. The evidence against the accused is mainly that of the 3^d and 4th witnesses, the first of whom in the Session Court deposes to having one Saturday evening, the day preceding the date of the offence with which the Prisoners are charged, overheard the 2^d and 3^d Prisoners observe the one to the other, that it was useless

given by the train guard, W. Reid (1st witness) who has declared that two iron chairs were cut through by the engine wheels and that further, on he found two others on the rail yard apart from each other, thus disproving the assertion of the 4th witness that three had been fixed and one left on the ground. The little credit due under these circumstances to the deposition of the 4th witness is still further diminished by the statement of the 2^d witness, the line watcher, who has deposed that on the morning of the occurrence in question, he had not seen any people on the line of Rail.

5. Under this view of the testimony on which alone the Prisoners have been punished by the Session Judge, the High Court are of opinion that their conviction cannot be sustained. Accordingly they resolve

resolve to annul the sentences passed
on the 2^d and 3^d Prisoners and to direct
that they be released from Jail.

6. In the absence of an appeal,
the High Court are unable similarly
to deal with the sentence passed on
the 1st Prisoner. Being, however, of an
opinion that the evidence brought
against him is as insufficient for
his conviction as that affecting the
2^d and 3^d Prisoners is for theirs, they
further resolve to recommend to the
Government, under Section 54 of the
Code of Criminal Procedure, that the
sentence passed against the 1st prisoner
be also permitted.

/True Extract/.

C. D. Chamiel

Registrar.

To The Chief Secretary to Government.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
Proceedings of the High Court
of Judicature at Madras.

(Kero enter 28th November ⁷/₂ (N_{3.5})

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Judicial 1862 De la Roche

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Proceedings of the High Court of Judicature at Madras

L. O. A.

Heater 28th

Received of _____ \$ _____

1862.

We commend to your
under section 54 of the
Code of Criminal Proce-
= dure, that the sentence
passed upon the Petitioner
be done in compliance
with said Code Prob & C.
We submitted.

Wills and Orders

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Under § 57 of the Code

of Criminal

June, 22. the Over-

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passed around the

1st Prisoner in Case
No. 5762 7.00 a 1st

Combustion

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R. 9. 1.

2045

Pro: Sec
Jurisdiction 1862. Department.

No. 2045.

PROCEEDINGS OF GOVERNMENT.

Dated 10 Dec 1862

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