

## MADRAS RECORD OFFICE.

Government of Madras.

*Judicial* DEPARTMENT.

G.O. No.

2011

Press  
Mis.

209-211

Dated

23-12-1863

19

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,  
23rd December 1863.*

Read the following papers :—

No. 209. From C. A. ROBERTS, Esq., Session Judge of Chittoor; to A. J. ARBUTHNOT, Esq., Chief Secretary to Government, Fort Saint George, dated 18th December 1863.

I have the honor under Section 54 of the Criminal Procedure Code to submit, for the con-

\* Calendar No. 81.  
1st Prisoner Dasari Venkatramudu son of Papanna.  
2nd " Dasari Venkatramudu son of Sanjivi.  
3rd " Papadu.  
4th " Mukara Ramudu.  
Calendar No. 83.  
1st Prisoner Ganapatinani Ravanappa.  
2nd " Chalappa.  
3rd " Mala Venkatigada.  
4th " Ediga Venkatasadu alias Venkatasami.

deration of Government, a strong recommendation that the sentences passed upon the eight\* prisoners in Calendar Nos. 81 and 83 of 1863 of this Court should be remitted.

2. The Jury in each case convicted against the summing up of the Court.

3. The directions to the Jury entered in

Calendar No. 81 detailed clearly the grounds upon which my present recommendation is based; they were to the following effect :—

"The Court after fully summing up the evidence, pointed out to the Jury that a very large amount of property was missing; that the articles produced, Nos. 1 to 7, were of so trifling a value, so broken, and so difficult of identification that such evidence must be received by them with great suspicion; that the cloths, Nos. 14 to 16, which there is only the first witness' statement to believe to be his, were, he acknowledges, stated by him to be missing after they had been found in fifth prisoner's house, and that therefore very little credit could be given to that portion of the evidence; that the confessions stated to have been made by prisoners 1 to 4 before the Subordinate Court must be received with much suspicion; that it was difficult to understand how they should have thus acknowledged their guilt and produced these fragments of gold and silver and criminated themselves on first apprehension, especially as the 1st witness had previously and without success charged two other parties of five and six men each with the offence, one of whom, an influential man, was still at large and in the village when the present prisoners' houses, &c., were searched; that they, the Jury, must also remember the very unsatisfactory way in which the 1st witness gave his evidence, and the testimony to character of the prisoners borne by the 3rd witness, the village Munsiff; and that if the above detailed reasons induced them to disbelieve the statements for the prosecution they must give their verdict in favor of the prisoners; but that if they, the Jury, were convinced that the charge was brought home, they must convict the prisoners accordingly.

"The Jury, however, by a majority of four out of five, convicted the first four prisoners and pronounced the fifth and sixth not guilty."

4. The entry of the Court's directions to the Jury [in Calendar No. 83 is brief, but the summary of evidence gives a clear idea of its nature and value. I beg to annex copies of both.

"The 1st witness states that his house had been attacked by gang robbers twice within the last four months; that on the second occasion, that of present complaint, at midnight, about twenty days since, he happened to have left the house for necessary purposes, when it was entered; that through the back door he, hiding under a tree close to the wall of the house, watched for a time while the robbers disguised and armed with torches, clubs, &c., were breaking into the granaries, and committing all kinds of damage; that he at once identified the four prisoners whom he had long known, one, the 1st, being his cousin; that he subsequently ran off for assistance and while in company with the other villagers, the robbers being disturbed by their shouts ran off, passing within 40 or 50 yards of them, and that he pursued them for a certain distance calling out the names of the four he recognized. He adds that nothing was lost on this occasion though the robbers were two gadeas in the house, and that when complaining to the Munsiff of the village the same night he named the prisoners.

"The 2nd witness says that he looked on to the front yard of the house over a wall and identified the four prisoners beating the cattle, &c., and specifies how they were disguised and that he too has long known them; that he subsequently joined the 1st witness and others, and

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that when the robbers ran off they passed about four yards from witness and his companions, so that by their torches they were easily identified, and that he joined in the pursuit for a short distance and at the time mentioned their names.

"The 3rd witness states he lives opposite to the 1st and repeats the above statements as to the attack on the house, but will not swear to the identity of the prisoners, though he believes them to have been among the robbers.

"The 4th witness relates story of previous witness as to seeing robbers run off within 10 yards of him, as he stated, and identifies prisoners though with certain differences in his description of their appearance at the time, as was the case with all the witnesses.

"The 5th witness, Village Munsiff, states he arrived the night of the attack and found 1st witness' house had been much damaged; that 1st witness had named the prisoners to him; and adds that he knows 2nd prisoner, who bears a good character.

"The Vakeel on behalf of prisoners 1 to 3 states that the charge is owing to a quarrel and suit about land between 1st witness and 1st prisoner, and that there are five or six witnesses to prove that the prisoners were elsewhere on the occasion in question. He proceeded to call the said witnesses, all of whom were stated to speak to the same point precisely, but the statements of the 1st were so incredible that the Court declined to hear any more. The 4th prisoner also denied the robbery, stating that he was elsewhere at the time."

"The Court after summing up the evidence pointed out to the Jury the various discrepancies in the statements of the witnesses for the prosecution; that the identification of the prisoners on the occasion was very questionable, especially with their alleged disguises; that their appearance was respectable; that the statement of the 1st witness to the effect of the prisoners and other robbers being in his house 45 minutes, and leaving without carrying any thing off was especially suspicious; but that if nevertheless they believed the statements of the prosecution they must convict the prisoners of the charge brought against them."

The statement of the prisoners' 1st witness, I may mention, was so absurdly improbable that it would only have been wasting the time of the Court to hear more witnesses to the same effect, but the prisoners' failure to prove an alibi on the occasion in question could not, in this instance, be held to support the evidence for the prosecution.

The Jury were unanimous in convicting all four prisoners.

5. The finding of the Jury in both these cases was to me matter of painful consideration. My own conviction was that the charges were not proved; at the same time I felt that it was a matter of opinion, and my sentences were passed under the impression that three years' rigorous imprisonment was the lowest punishment which could be awarded for "dacoity," described in these cases as a robbery or an attempt at robbery, by night, by large gangs of men with torches and arms or clubs.

6. I hesitated to set aside the finding of the Jury by inflicting a nominal punishment; but after long deliberation, I submitted to the Chief Justice and Judges of the High Court a recommendation that the sanction of Government should be obtained to reduce the abovementioned punishments from three years to three months, explaining my reason for so doing, viz., that the recorded opinion of the Jury might not altogether be set aside.

7. In reply, I have been informed that the Judges have no concern in this matter; that the mere reduction of the sentence would be an inappropriate relief; but if I am of opinion that the punishment should be wholly remitted, that I should address the Government with a view to obtaining a pardon for the convicted persons under the Section before quoted.

8. I have no hesitation in urging this request, as the more I think over these cases the stronger is my conviction against the guilt of these unfortunate men, and moreover the period specified in my letter to the High Court must have elapsed before the reply from Government can be received to the present application.

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No. 210. From C. A. ROBERTS, Esq., Session Judge of Chittoor; to A. J. ARBUTHNOT, Esq., Chief Secretary to Government, Fort Saint George, dated Chittoor, 19th December 1863.

I have the honor under the provisions of Section 54 of the Criminal Procedure Code to submit, for the favorable consideration of Government, the case of Ganibanda Gangadu, *alias* Badur Gangadu, 5th prisoner in Calendar No. 45 of 1863, of this Court.

2. The petitioner was convicted by a Jury on the 21st July last of Dacoity and sentenced by my predecessor to ten years' transportation. He is now in the Penitentiary at Madras, under orders for Port Blair. In the interval he appealed to the High Court of Madras, and was, it is represented, referred to this Court.

3. An examination of the record confirms the statements made on behalf of the prisoner as follows:—That the evidence on which he was convicted was his identification among a mob of forty robbers on a dark night by three witnesses, none of whom, as they admitted, had ever seen him before; that the statements of the two chief witnesses for the prosecution, the 1st and 2nd, differ on a material point; that the evidence of the 2nd is moreover self-contradictory and otherwise incredible; that the remaining witness, is a relative of the 1st, and simply stated that he identified the eight prisoners without any further particulars; that none of the stolen property was in any way traced to the prisoners; that the Judge charged the Jury that the evidence against the 5th prisoner (petitioner), and the 8th consisted only of their identification, and finally that the 8th prisoner in this case, against whom precisely the same evidence was recorded as against the petitioner, was acquitted by the Jury.

4. As already stated, the above pleas are borne out by the record, but it should be explained that the acquittal of the 8th prisoner must be traced to the testimony of a witness produced by him who stated that he, the 8th prisoner, was absent at a distance from the village where the crime occurred on the date. The evidence that refuted the statements of the witnesses with regard to the 8th prisoner must tend, to some extent at least, to invalidate their testimony to the same effect, against the petitioner.

5. Under the above circumstances, I consider the evidence upon which the prisoner was convicted so far from sufficient to establish his guilt that I feel it my duty to lay his case before Government, and would urge that the sentence passed upon him may justly be remitted, and the prisoner released, and that pending the consideration of my recommendation, the Commissioner of Police be instructed to take no further steps in carrying out the orders of Government with reference to the petitioner's transportation. His appeal has been delayed long beyond the prescribed period, but the High Court having already waived this objection, I trust it may be no bar to the consideration of his case.

No. 211. ORDER THEREON, 23rd December 1863, No. 2011.

The Governor in Council requests that the Sessions Judge of Chittoor will submit the notes of the evidence in the cases referred to in the foregoing letters.

2. The Commissioner of Police will defer shipping the prisoner in case No. 45 of 1863 until further orders.

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

Exd. T. McMoorty.

Judicial Department  
Proceedings of the Madras Government  
Read the following letters from the  
Sessions Judge of Chittoor.  
(Here enter 18<sup>th</sup> & 19<sup>th</sup> Decr 1863. Nos)

Order thereon 23<sup>d</sup> December 1863. N<sup>o</sup> 2011.

The Governor in Council  
resolves that the Sessions  
Judge of Chittoor will submit  
the notes of the evidence in  
the Cases referred to in the  
foregoing letters.

2. The Commissioner of Police  
will defer shipping the  
prisoner in Case N<sup>o</sup> 45 of 1863  
until further orders.

Wm  
1863

Wm

To  
The Civil & Sessions Judge of Chittoor }  
The Commissioner of Police } despatch 24<sup>th</sup>  
The Honble the Judges of the High Court }

*Serial 186 . Department.*

*No. 2011.*

PROCEEDINGS of GOVERNMENT.

*Dated 23 December 1881.*  
*W. H. M. / 104.*