M.R. O. 1—32,000—16-10-25.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 248 Press ~~Mis.~~

123-124

Dated 17.2.1863 ~~19~~ .

4/5

Not to be folded or roughly handled

No. 123. Read the following:—

(No. 16A.)

In the High Court of Judicature at Madras,
22*nd January* 1863.

PRESENT.

THE HONORABLE MR. JUSTICE FRERE.
THE HONORABLE MR. JUSTICE HOLLOWAY.

Case No. 74 of 1862 on the file of the Session Court of Mangalore.

This case having been referred for confirmation of the sentence passed by the Session Judge, and judgment having this day been given, affirming the sentence of death passed against the 1st prisoner in this case; it is ordered that the record be forwarded to Government, bringing to their notice that the Session Judge has recommended mitigation of punishment in the case of the 2nd, 3rd and 4th prisoners; and that the Court concurs in the propriety of that recommendation.

By the Court,
(Signed) C. F. CHAMIER,
Registrar.

To the Chief Secretary to Government.

From R. CHATFIELD, Esq., Session Judge of Mangalore; to C. F. CHAMIER, Esq., Registrar of the High Court of Judicature, Madras, dated Mangalore, 12th January 1863, No. 3.

1. I have the honor to submit for the confirmation of the High Court, a sentence of death passed by me in Case No. 74 of 1862 on the Calendar of the Session Court.

2. The 1st prisoner is charged with having murdered one Pakulya *alias* Gabroo, and the four others with having aided and abetted the 1st in the commission of the offence.

3. The evidence of several witnesses shows that the deceased went to a certain hill to cut grass and was prohibited by 5th prisoner and several women who possessed no exclusive right or title to the hill or its produce. On his declining to listen to the prohibition the women called the other prisoners who came at their invitation from the adjoining huts.

4. Prisoners 2, 3 and 4 seized and beat the deceased with their hands and fists, whilst prisoner 1 with a heavy club, which he wielded in both hands, struck him a severe blow on the head which at once felled him to the ground. Prisoner 1 ran off and, if the 7th witness is to be believed, prevented his immediate capture by intimidatory language and actions. Before his death the deceased spoke to the Village Inspector (7th witness) accusing the prisoners 1, 2, 3 and 4, of being his murderers. It is doubtful whether he ever accused the 5th prisoner or how the witnesses are to be trusted when, amidst noise and confusion, they say they heard him encouraging the others to commence or persevere in the assault.

5. The prisoners are all members of one family, the four first being brothers and nephews of the 5th. There is no room to doubt the deceased died from the blow inflicted by 1st prisoner whilst being held and beaten by prisoners 2, 3 and 4, who are thus aiders and abettors in the murder, but as regards the 5th prisoner there is nothing to show he was implicated in the crime beyond prohibiting the deceased to cut grass, and so originating a dispute which terminated fatally.

6. The Assessors convict all the prisoners of the charge preferred and concurring in the verdict so far as regards the four first, I sentence them under Section 302, the 1st prisoner to the punishment of death, and the prisoners 2, 3 and 4 to transportation for life.

7. Being of opinion that the charge is not proved against 5th prisoner I order his release.

8. Having passed the only sentence which, in my opinion, I was authorized to pass under Section 302, I consider it, in regard to the 2nd, 3rd and 4th, after weighing all the circumstances of the case, too severe, and would beg to recommend under Section 55 of the Penal Code, that it may be commuted from transportation for life, to rigorous imprisonment for seven years.

Proceedings of the Madras Government, Judicial Department,
17th February 1863.

We affirm the sentence of death against the 1st prisoner in the usual form, and we resolve to forward copy of this letter to Government, bringing to their notice that the Session Judge has recommended mitigation of punishment in the case of the 2nd, 3rd and 4th prisoners and that we concur in the propriety of that recommendation.

H. F.
W. H.

22nd January 1863.

No. 124. ORDER THEREON, 17th February 1863, No. 248.

Under Section 55 of the Penal Code, His Excellency the Governor in Council commutes into rigorous imprisonment for seven years the sentence of transportation for life passed against Hamade, Hassane, and Abdula, the 2nd, 3rd and 4th prisoners in Case No. 74 of 1862 on the Calendar of the Sessions Court of Mangalore.

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

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FROM CIRCULATION
WITH REMARKS.

Exd. T. McMoorty.

Sessions

No. 248 of 17th Feby 1863.

Under Sec 55 of the Penal Code, His Excellency the Governor in Council commutes into rigorous imprisonment for seven years the sentence of transportation for life passed against Hamada, Hassane, and Abdula, the 2d, 3d, & 4th Prisoners in Case No 74 of 1862 on the Calendar of the Sessions Court of Mangalore.

The Hon'ble the Judges of the High Court with Sir Lo. Peel, Kenny, Morgan & C.

a Sessions Judge of Mangalore, Pym Mr. a Inspector Genl. of Jails.

I do not like to interfere with the recommendation of the Judge who tried the case, but I suppose Government will do what they think right in the matter. The 2d & 3d Prisoners were mere boys & the 4th Prisoner, I think, ought not to be executed.