

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	202	Press
		<u>Mis.</u>
104-105		
Dated	17-2	18.6.4

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*Proceedings of the Madras Government, Judicial Department,
16th February 1864.*

No. 104. Read the following letter from C. DALE, Esq., Government Pleader, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Madras, dated 11th February 1864, No. 34.

With reference to the Proceedings of Government, under the date and number noted in the margin, I do myself the honor of reporting, for the information of the Honorable the Governor in Council, that the Case No. 5 of 1864,

6th February 1864, No. 121, Judicial Department.

from the Sessions Court of Calicut, came on for hearing this morning before the High Court, when their Lordships, the presiding Judges, expressed their opinion that the conviction of the prisoners could not be upheld, and reversed the sentences on both the prisoners.

2. The Judges had perused the record previous to the hearing, and from the observations that they dropped occasionally, it was evident they had formed a very strong opinion in favor of both prisoners.

3. Both prisoners were represented by professional men; for the 1st prisoner it was contended there was no reliable evidence; the discrepancies, which were numerous, were pointed out, and it was submitted there was not a shadow of a case made out against that prisoner, and of that opinion seemed to be the Bench. The Vakool for the 2nd prisoner discreetly left his client's case in their Lordships' hands.

4. I had carefully gone through the record and analyzed the evidence; and as regards the 2nd prisoner, I did not entertain a doubt that the conviction by the Sessions Court was correct, and ought to be upheld: the only error being that the Judge should have sentenced him to be hanged; and so I submitted to the Court.

5. As regards the 1st prisoner, the case could not of necessity be so clear; and there had been so much delay in the witnesses mentioning their knowledge regarding the part which he (the 1st prisoner) had taken in the murder; some of whom had even gone so far as to say before the authorities that they had no suspicion of the party who had committed the crime, that I saw from the first that the Judges might feel hesitation in convicting the 1st prisoner of murder, whereby his life would be forfeited. The widow of the deceased stated she was afflicted by fear of the 1st prisoner, and she admitted that from that feeling she directed the sons of the deceased, boys of 13 and 15, not to mention the name of the 1st prisoner; and her servant stated he also acted upon those directions, and not being directly interrogated to the point by the authorities in the earlier stages of the inquiries he remained silent; the other witnesses were not connected with the family, and probably did not think it incumbent on them vicariously to mention to the Police circumstances which they had witnessed; indeed it is probable, that until suspicion had fallen on the 1st prisoner, those circumstances which really were of no importance, abstractedly, might not have occurred to their minds.

6. I felt it was a case deserving of the very deepest consideration, and I accordingly brought every point before their Lordships; with what result I have already shown.

7. I apprehend that unless the witnesses were considered totally untrustworthy, everybody reading the evidence would feel morally convinced; the parties who committed the crime had been tried before the Sessions Court. Judges, however, are not justified in acting on mere moral convictions; and if they entertained any doubt, the prisoners were entitled to the benefit of such doubt. The case must be decided from the effect which the evidence left on the minds of the Judges. It is not a matter of opinion or of speculation.

8. It is hard to judge; but a perusal of the evidence did not leave on my mind a conviction unfavorable to the veracity of the witnesses. I think, however, a more careful style of examination might have elicited the evidence in a more conclusive form, and many apparent discrepancies between the evidence given before the Magistrate and before the Sessions Court might have been cleared up. It also struck me that on many points further evidence of the acts of the prisoners might have been obtained and adduced on the trial.

No. 105. ORDER THEREON, 17th February 1864, No. 202.

The Governor in Council directs that the foregoing letter be communicated to the Magistrate of Malabar, and that the sum of Rupees 175 be paid to Mr. Dale in remuneration for his services.

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

Edw. J. Talbot.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
letter from the Government
Pleader.

Here enter 11 February 1864 No. 36.

Order thereon 17 February 1864 No. 202.

The Governor in
Council directs that the
foregoing letter be com-
municated to the Magis-
trate of Malabar and
that the sum of Rs. 175
be paid to Mr. Dale in
remuneration for his
services.

To The Magistrate of Malabar }
Civil Paymaster }
and General }
Pleader }
11 Feb 64

Proc M. 157
6.2.64

104-45

Judicial Watch Department

No. 202

PROCEEDINGS OF GOVERNMENT

Dated 17 February 1964

Atk 1652
11/2/64

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