

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 359	Press
152-153	~~Mis.~~
Dated 14. 3. 1864	~~10~~

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Not to be folded or roughly handled

14th March 1864.

No. 152. Read the following letter from the Honorable T. S. SMYTH, Advocate General, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 22nd February 1864.

I have the honor to submit, for the information of His Excellency the Governor in Council, the following report of the cases in which I conducted the prosecution at the late fatiguing Sessions.

2. They were six in number, viz., Nos. 3, 6, 7, 10, 32, and 41 in the Calendar.

3. No. 3 was the case of George Hardy, in the Mofussil Police, committed for murder, culpable homicide, and for inflicting grievous bodily harm; but the case was so clearly destitute of all the elements essential to the two former offences that, at the suggestion of the presiding Judge, Sir Adam Bittleston, the Grand Jury threw out the two first counts of the indictment, and found a true bill for inflicting grievous bodily harm only. The prisoner was ably defended by Mr. Mayne, and acquitted, and properly, in my opinion, by the jury. The evidence nevertheless did, in my opinion, clearly establish that the prisoner had given the deceased, Yellugadu, a slight kick, consequent upon an apparently aggravated report made to him by Police Constable Yadava Seshagiri (No. 916) who had improperly, and without orders, or any cause whatever, arrested and detained Yellugadu, merely because he objected to the arrest, on suspicion, of his five friends who were speedily released as not being the parties of whom the Police were in quest. In fact Seshagiri seems to me the party chiefly to blame for the whole matter, and I would not let him be called as a witness for the Crown partly for this reason, and partly on account of the very bad character given to him by his superior, Captain Bowen, who was present, throughout the case. The kick in question, slight as it was, was clearly sufficient, according to the Medical evidence of the *very* diseased condition of Yellugadu's spleen, to have ruptured it. The rupture was the cause of death; it was such, Dr. Doyle said, as *might*, from the diseased condition of the spleen, have been caused by a fall; and Seshagiri would, if called, have sworn that the deceased did fall; but this, from many circumstances, I believe not to have been the truth. This is one of many instances of the extreme danger of laying hands at all, however lightly, upon any native; and all Europeans lately arrived should be strongly cautioned upon this point by their superior officers. The very recent arrival at Fort Saint George of a Regiment fresh from England induces me to add this suggestion. I ought to add that when I said I considered Hardy had been *properly* acquitted, I only meant *legally*. I had in mind the peculiar terms of Section 322 of the Penal Code. Mr. Mayne argued with great force that, looking to all the circumstances, especially to the high character given to Hardy by Captain Bowen for gentleness, and popularity among the natives, the jury could not suppose that he "*intended* to cause," or "*knew* himself to "*be likely* to cause grievous hurt." Had he been indicted under the plain and simple English common law for manslaughter, instead of the rubbishy hair-splitting refinements of the Penal Code, I am of opinion that the same jury, upon the same evidence, would have been directed by the Judge that the offence clearly amounted to manslaughter, and would have found that this offence was clearly proved. Involuntary manslaughter is "where a man, doing an *unlawful* act not amounting "to felony, by *accident* kills another." I would add, with reference to this case, that I appeared in it for the Crown merely because the prisoner was a Police officer. It never was a part of the Advocate General's duty to prosecute in all cases of murder, but my predecessor and myself undertook to do so merely to assist the Court. Now that the Court has the assistance of a public Prosecutor, particularly so able a one as the Honorable Mr. J. B. Norton, the personal intervention of the Advocate General, unless in peculiar cases, seems no longer necessary here, any more than that of the Attorney General in England.

4. No. 10 was a case where one Vencataroyaloo Chetty was indicted with Vencatachella Pillay, a Peon and Bailiff of the Small Cause Court, for instigating and abetting the latter to give false evidence in a judicial proceeding, that is to say, by swearing in an *ex parte* trial before Runganada Shastri, Esq., one of the Judges of that Court, that he had served a summons upon a defendant where in truth he had not done so: the object being in furtherance of a conspiracy to terrify Vencataroyaloo's former mistress, who had discarded him, into returning under his protection, by arresting her, which was actually done, and by dragging her to Jail, which was attempted, and only defeated by her paying down some 360 Rupees, a sum which not every native woman could raise in

half an hour. The facts were clearly proved, the prisoners found guilty, and sentenced to rigorous imprisonment. Had the prisoners been indicted simply for conspiracy under the English law no difficulty could have arisen, but the ends of justice ran some risk of being defeated under the provisions of the Penal Code, owing to the difficulty of proving, 1st, that Vencatachella Pillay had been sworn or affirmed at all; and, 2ndly, that he had been sworn in a judicial proceeding. This was owing to the unusual, and as it seems to me very irregular and illegal, mode in which Runganada Shastri affirms, or swears, the Bailiffs, not in each case, but *en masse* at the beginning of each day—the person who administers the oath, sometimes in person, sometimes by his Deputy, not taking any note that will enable him to say that any particular Bailiff was sworn by him on any particular day, or with reference to any particular case. The offence in question from all I hear is no uncommon one. The Chief Judge, Mr. Steele, is, I believe, fully aware of this, and on the watch for an opportunity of making a wholesome example. I should mention that Runganada Shastri was in Court, and I believe became fully sensible of the error of the practice he had adopted.

5. The next case, Pooliah Chetty's, was one of offering a bribe to a Government servant in the Stamp office, to furnish a false certificate. The evidence against him quite broke down, and showed the charge to have been trumped up by Theroovengada Charry, the Deputy Accountant in the Stamp office; possibly, because the prisoner refused to give so large a bribe as he wanted, but certainly with the further view of thereby clearing his own damaged character in the estimation of Mr. Norfor, Superintendent of Government Stamps. Mr. Norfor, it seems, had suspected this man and others of purchasing promotion in the office, and had at last induced him to confess that he had done so. A hint of this transpired, it seems, at the Police, and Mr. Mayne, for the defence, worked upon this till he made Theroovengada Charry repeat the confession in open Court. He confessed he had paid Mr. Clarke, now in the Police but formerly in the Stamp Office, and brother of our excellent Police Magistrate Mr. T. G. Clarke, a sum of Rupees 250 for his promotion, in addition to about Rupees 300 paid to others on Mr. Clarke's account, being the balance then due to these men by Mr. Clarke, of the purchase money for his promotion. This of course will necessitate an inquiry into the charge thus extorted from the witness (for it was literally dragged out of him) against his late superior Mr. Clarke. Indeed the inquiry, if practicable, might well be extended further, for I believe there is little doubt that the system pervades almost every Government Office at Madras—the *tariff*, I understand, being 10 months' pay of the purchased appointment.

6. The next case was No. 10, that of David P. L. C. Connor, late Superintendent of the Press in the Accountant General's Office. He was indicted, and on the clearest evidence convicted, of forging and uttering a bill, really for Rupees 461-13-0, which he had altered into Rupees 661-13-0, and of thereby cheating Government out of Rupees 200. The bill in question he managed to obtain and destroy after suspicion was excited. He tried, in vain, to throw suspicion upon McKertish, the Foreman of the Press, and upon Soobroya Chetty, the cash-keeper, and was severely rebuked for this attempt by Sir A. Bittleston, who sentenced him to 18 months' rigorous imprisonment.

7. The fifth case, No. 32, was that of C. Rajahgopaul Chetty, the Shroff in the Income Tax Department of the Deputy Collector of Madras, who was convicted under Section 409, Penal Code, of criminal breach of trust, in using monies in his charge as Shroff. He gave a false account, when questioned by Rungasawmy Iyer, saying, he had lent the money to Mr. Morison, but he brought the whole sum next morning, and it is to his credit, and really looks as if he never intended to cheat Government, that he never attempted to falsify his accounts; and it was his own accounts that proved the case against him. He is a very young man, and I am induced, but for the falsehood he told, to believe he did really suppose that, as he had given security in Government Paper, he was at liberty to use the funds in his hands up to the limit of his security. Of this opinion were the jury, who recommended him to mercy, and also the Judge, who, on the ground I have above mentioned, sentenced him to only eight months' rigorous imprisonment.

8. The sixth and last case was No. 41 in the Calendar, that of Monoosawmy and Chengle royalo, *employés* in the Mint, for theft (Section 381, Penal Code) of some silver Discs, not yet stamped as Rupees. Both were clearly guilty, and being convicted were sentenced to 18 months' rigorous

imprisonment. The only remarkable feature in the case was the exposure of the futility of the so-called precautions taken at the Mint to prevent theft. The younger hands only are thoroughly searched on leaving; the elder only go through a form which in reality is no precaution at all in this country, where the turban and cummerbund afford such opportunities for concealment. I should add that Mr. Christian's evidence also showed an inability in the Mint Department here to ascertain the exact loss by waste which surprised me. I believe at the Mints in London and Calcutta this is ascertained, by machinery, to within a very small fraction.

No. 153.

ORDER THEREON, 14th March 1864, No. 359.

The remarks of the Advocate General in the case of George Hardy will be communicated through the Military Department to His Excellency the Commander-in-Chief, with a view to the issue of such orders as His Excellency may deem proper in regard to the expediency of European troops being specially warned on their first arrival of the danger of using violence of any description towards natives.

2. The Governor in Council presumes that the practice adverted to in paragraph 4 of the Advocate General's letter as having been observed by C. Runganada Shastri, 3rd Judge of the Court of Small Causes, of swearing the Bailiffs *en masse* at the beginning of each day has been discontinued.

3. Adverting to the remarks in paragraph 5, it is observed that reference has already been made to the Commissioner of Police, in the Revenue Department, regarding the bribe alleged to have been given to Mr. Clarke. Lieutenant Colonel Wilson will report the result of any inquiry he may have instituted in this matter.

4. D. P. L. C. Connor, late Superintendent of the Press in the Accountant General's Office, having been convicted on the charge of forgery, which formed the subject of the correspondence noted in the margin, the Governor in Council authorizes the Accountant General to write off

From the Acting Accountant General, 12th December 1863,
No. 291.
Order thereon, Public Department, 23rd December 1863,
No. 1433.

the sum of Rupees 200, embezzled by Connor, to Profit and Loss.

5. The remark in paragraph 7 will be communicated to the Revenue Department.

6. Paragraph 8 will be referred to the Mint Master for his remarks.

(True Extract.)

Chief Secretary.

Exd. J. Tulloch.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter
from the Advocate General.

(N.E. 22nd February 1861.)
No 346.

Order thereon, 14th March 1861, No. 359.

The remarks of the
Advocate General in the
case of George Hardy will
be communicated through
the Military Department
to His Excellency the Com-
mander-in-Chief, with
a view to the issue of
such orders as His Excellency
may deem proper in
regard to the expediency
of European troops being
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arrival of the danger of
using violence of any
description.

MD
Wm
H

Description towards Natives.

2. The Governor in Council presumed that the practice adverted to in para 4 of the Advocate General's letter as having been observed by C. Runganada Sastri, 3^d Judge of the Court of Small Causes, of swearing the Bailiffs en masse at the beginning of each day has been discontinued.

3. Adverting to the remarks in para 3, it is observed that reference has already been made to the Commissioner of Police in the Revenue Department regarding the bribe alleged to have been given to Mr. Clarke. Lieutenant Col. Wilson will report the result of any enquiry he may have instituted in this matter.

Connor.

From the Acting Asst. General
12 Dec. 1863, No. 241
Pr. Secy. thereon 23 — do — 1863
Police Dept.

4. D. O. L. C. Connor, late Superintendent of the Press in the Accountant General's office, having been convicted on the charge of forgery which formed the subject of the correspondence noted in the margin, the Governor in Council authorizes the Accountant General to write off the sum of Rs. 200. embezzled by Connor, to profit alone.

5. The remark in para 1 will be communicated to the Revenue Department.

6. Para 8 will be referred to the Mint Master for his remarks.

	Para of Report	Para of Order
To the Military Deptt	3	1
" Inspectors Genl of Police	4	2
" Judges of the Court of Small Causes, Madras.	5	3
" Revenue Deptt	6	4
" Commissioner of Police	7	5
" Accountant General.	8	6
" Civil Paymaster.		
" Revenue Deptt		
" Mint Master.		
" Advocate General.		

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