M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 914 Press ~~Mis~~

26-27

Dated 21 — 6 — ~~19~~ 1864

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 21st June 1864.

Read again letter from the Sessions Judge of Cuddapah, dated 2nd May 1864, No. 272, recorded in Proceedings of Government, Judicial Department, No. 702, dated 14th May 1864.

No. 206. Read also the following letter from P. P. HUTCHINS, Esq., Acting Registrar of the High Court of Judicature at Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 11th June 1864, No. 41.

I am instructed by the Chief Justice and Judges of the High Court to acknowledge your letter of the 14th ultimo, No. 702, requesting their opinion upon the recommendation of the Session Judge of Cuddapah, that the power vested in Government by Section 54 of the Code of Criminal Procedure should be exercised in favor of the 3rd, 4th and 5th prisoners in Session Case No. 50 of 1864.

2. The trial in this case was by Jury, and no appeal would be admissible except on a matter of law. Before therefore expressing an opinion in favor of a remission of the sentences, it ought to appear clearly that the verdict of the Jury was wrong.

3. At the time of the trial the Session Judge was perfectly satisfied with the verdict. This is evident from the Calendar in Case 50, as well as from the Calendar of Case No. 40 of 1864, in which the 4th witness, Soobadoo, was charged with having given false evidence in stating that he was present at the time of the dacoity. So satisfied was the Judge with the verdict in case No. 50, that he at once discharged Soobadoo, recording in the Calendar "that after the exposé in the trial "of the prisoners in Case No. 50, it was useless to put this prisoner on his trial, especially on the "evidence sent up by the Subordinate Magistrate" who had committed him.

4. The Session Judge has since held some inquiry, and his recommendation now rests on two grounds, of which the first is, that the 3rd, 4th and 5th prisoners were not "immediately denounced" to the village authories. This was no doubt a very material circumstance for consideration, but it was clearly put before the Jury at the trial; and it appears that these prisoners were charged before the Sheristadar, immediately on his arrival on the morning of the 17th.

5. The Judge's second ground is that Soobadoo and the other witnesses had falsely stated that he, Soobadoo, was present at the house when the dacoity took place. This the Judge rests upon his supposed discovery, since the trial, that Soobadoo's presence at the house was not mentioned to the Sheristadar on the 17th. There are doubtless circumstances tending to the inference that he was not mentioned; but there are other circumstances having a contrary tendency. When Soobadoo was examined before the Subordinate Magistrate (Tahsildar) on the 23rd, no question was put as to his not having appeared before; and, further, the Village Moonsiff and Head Constable contradicted upon oath the statement of the Sheristadar that he was not told of Soobadoo having been present. The conduct of the Subordinate Magistrate in releasing *all* the prisoners, which at the trial appeared to the Judge so extraordinary and led to the subsequent inquiry, still seems quite unaccountable. Whether Soobadoo was mentioned on the 17th is thus left in doubt.

6. But supposing he was not mentioned, it does not follow necessarily that he was not present in the house as stated upon the trial. The omission to name one of the inmates present upon the occasion cannot be viewed in quite the same light as the omission to name an accused party, and the prisoners 3, 4 and 5 were, at the trial, as distinctly identified by the witnesses who spoke to them, as the other prisoners. The 4th and 5th prisoners were identified by the 2nd witness, who is said to have had the best opportunities of seeing, and not by Soobadoo at all, and the 3rd prisoner, to whom Soobadoo speaks, was also identified by two other witnesses, the 2nd and 3rd.

7. Under the circumstances of this case, the High Court are unable to advise that the verdict of the Jury should be set aside, and the sentences upon these three prisoners remitted.

8. In conclusion, I am to state that the Court are not unanimous in holding this opinion, two of the Judges being in favor of a pardon being granted to the three prisoners, and that one of the three Judges, who concur in the conclusion expressed in paragraph 8, desired it to be distinctly understood that his opinion is founded only upon the insufficiency of the new matter.

No. 207. ORDER THEREON, 21st June 1864, No. 914.

The Governor in Council having carefully considered the remarks of the Session Judge and of the Honorable the Judges of the High Court on the case of the three prisoners referred to in the foregoing letters, sees no sufficient grounds for over-ruling the verdict of the Jury.

(True Extract.)

Chief Secretary.

To the Sessions Judge of Cuddapah.
„ Honorable the Judges of the High Court.

Exd. J. Tulloch.

the Governor, that the Governor in Council must definitely decline to grant the remission of a portion of their sentences as solicited by them.

2. Mr. Rohde will also inform the prisoner Ramus that Government are not prepared to forward the Memorial addressed by him to the Secretary of State, impugning the justice of the sentence passed upon him.

3. The four other petitions received with Mr. Rohde's letter of the 4th instant, will be forwarded to the Right Honorable the Governor General of India.

(True Extract.)

Chief Secretary.

To the Inspector General of Jails.
Military Department.

Exd. J. Tulloch.

Judicial Department. 12

PROCEEDINGS of the **MADRAS GOVERNMENT.**

Read again letter from the Sessions Judge of Cuddapah dd 2d May /64 No 272, records in Pros: Ldo: & despatch

Read the following letter from the Ag Registrar of the High Court

Read letter 11th June /64, No 41

Order thereon 21st June 1864 No 914.

The Governor in Council having carefully considered the remarks of the Sessions Judge and of the Honble the Judges of the High Court on the case of the prisoners referred to in the foregoing letters, sees no sufficient grounds for overruling the verdict of the Jury.

To the Sessions Judge of Cuddapah
& Honble the Judges of the
High Court

24/6

1864. *Department.*

No. 714

PROCEEDINGS *of* GOVERNMENT

Dated 21 [illegible] 1864