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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1186 Press ~~Mis.~~

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Dated 26. 8. ~~19~~ 1925

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JUDICIAL DEPARTMENT.

No. 1186.

To

THE HONORABLE SIR C. H. SCOTLAND, KNIGHT,
Chief Justice of the High Court of Judicature,
Madras.

HONORABLE SIR,

I am directed by His Excellency the Governor in Council to forward the annexed copy of a letter from the Magistrate of Malabar, representing certain circumstances connected with a case in which five persons have been sentenced to imprisonment by the Session Court of Calicut, on a charge of robbery.

2. Adverting to the circumstances stated by Mr. Ballard, the Governor in Council would be disposed to consider the expediency of remitting the sentences passed upon the prisoners, as suggested by Mr. Ballard; but before doing so he would be glad to have the opinion of the Honorable the Judges of the High Court on the evidence.

I have the honor to be,
Honorable Sir,
Your obedient Servant,

FORT SAINT GEORGE,
26*th August* 1865.

Chief Secretary.

From G. A. BALLARD, Esq., Magistrate of Malabar, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Calicut, 3rd August 1865, No. 99.

I have the honor to bring the following case to notice, for such orders as Government may see fit to pass.

*1. Kadayakel Pokar.
2. Koriat, *alias*, Choriatha Mamod Adji.
3. Karuthe Eddathe Komu.
4. Allatur Narayanen.
5. Allambata Kunnen.

2. Five prisoners* were committed to the Session Court, Calicut, by the then Sub-Magistrate of Tirurangadi, in March last, on a charge of house-breaking by night with intent to commit theft, and dishonestly receiving stolen property.

3. The evidence given before the Court was briefly as follows:—

† Shangaren Kutti Nayar.
‡ Thus numbered in the Court:—
No. 1. A neck-lace with 14 long gold ornaments, and a gold bead.
„ 2. 12 gold beads.
„ 3. 14 do.
„ 4. 2 do.
„ 5. 1 gold ring.

The Prosecutor† stated that, during his temporary absence, his house was entered on the 14th March last, and certain female ornaments‡ taken from a box therein.

The first witness for the prosecution deposed to having been in Prosecutor's house on the night in question, and said that, though the inmates were not disturbed during the night, the ornaments were missed in the morning.

The 2nd and 3rd witnesses deposed to having seen the 1st, 2nd and 3rd prisoners near, and the 4th coming hurriedly from the Prosecutor's house on the night abovesaid.

The 4th and 5th witnesses (Deputy Constables) depose to having found the ornaments above-said—No. 1 with the 5th prisoner, who said he had received it from the 1st prisoner, who admitted having pledged it to 5th prisoner; No. 2, with the 2nd prisoner; Nos 3 and 4, with the 3rd prisoner; and No. 5, with the 4th prisoner. They say prisoners confessed at the time of search.

4. The prisoners all pleaded "not guilty," and utterly denied confession of guilt.

The 1st prisoner stated all along that he received ornament No. 1 in pledge from the niece* of the prosecutor, some little time previously to the date of the charge, and that he (1st prisoner) pledged it in turn to 5th prisoner, and the 5th prisoner all along corroborated this statement.

* Kunhi Kutti Amma.

Otherwise, the prisoners, 1 to 4 inclusive, adduced witnesses to prove *alibis* on the night of the alleged crime.

5. I would observe that there is nothing whatever against 5th prisoner, save possession, which he never denied, and which he accounted for as abovesaid.

6. The Session Court found all prisoners guilty, and sentenced them as noted.

1st to 4th prisoners inclusive, to five years' rigorous imprisonment, each.
5th prisoner, one year's do.

7. I heard rumours that there had been very foul play, soon after the sentence, but it was not till last month that I happened to hear such circumstantial accounts as induced me to make some particular inquiries. I ordered the 1st Class Sub-Magistrate of Ernad, whose character for ability and integrity is very high, to take occasion to go to the spot and make inquiries. I spoke to many others in different ranks and positions, and the result has been conviction in my own mind that grievous wrong has been done.

There are variations in the story of course, for it is the talk and scandal of the locality, but I believe the facts to be nearly as follows:—

8. The niece of the prosecutor in the case under notice, Kunhi Kutti Amma abovesaid, is a young Nayar woman of loose character, though her amours are carried on under a certain veil of secrecy.

She was in the habit of visiting a Railway Station Master of the vicinity, and, it seems, used to be conducted to him occasionally by the 1st and 4th prisoners.

Whether by accident or design, the 2nd and 3rd prisoners met this girl on one of her night trips, and threatened her with exposure; to avoid which, she agreed to pay silence money. The 1st prisoner was to arrange matters, and one of the girl's ornaments (No. 1 of the alleged stolen property) was given him to raise money on for the purpose. Some misunderstanding arose. The matter began to be talked about in the neighbourhood, and the girl's relatives were very indignant at the scandal.

She is said to have sought counsel from an influential friend or friends in the Police. Ornament No. 1 was already with the 5th prisoner through the 1st prisoner. This offered a basis; and on this the charge of robbery was concocted and worked out.

It is said the other ornaments were really placed in the houses of the 2nd, 3rd, and 4th prisoners at the time of the search.

9. Now I can quite believe that it would not be impossible to get witnesses to support or deny each step of the original charge, or of the story I have just sketched, if exertion were made to do so.

It is not on individual witnesses that I place much reliance one way or the other, in such a case as this; but to the wide spread conviction that the account I have given is in the main true I can most strongly testify,—and considering that the prisoners are men of no wealth, influence or standing, I have no doubt myself that the public conviction is in the main perfectly correct.

10. It may be asked, why did not the prisoners appeal? I can only suppose they did not do so perhaps from ignorance, but most probably from poverty and hopelessness, considering the set against them, of being able to effect any good by appeal.

11. I took a few depositions a few days ago, which go to show that the girl was seen at night, about a fortnight previous to the date of the alleged robbery, with the prisoners, apparently when on the way to the Station Master's house, and that she did pledge an ornament, or ornaments, to the 1st prisoner subsequently. As I wished to represent what I had heard to the Session Judge, and show him something tangible on the subject, I was desirous that he should examine the depositions just mentioned, and if he saw ground for moving in the matter that he should represent the case to the High Court.

The Judge, however, says that he considers he has no power to move in any way, even if he desired so to do, and declines moving, either by examining further, or becoming the medium of representation in the matter.

12. I am fully aware that it is most undesirable the sentences of our Courts should be lightly interfered with; but in such a case as this, when the voice of a whole countryside cries out that the Court has been made an instrument for the gratification of revenge, I cannot but think the advantages of re-considering a sentence counterbalance any disadvantages that can arise from so doing.

13. I have, therefore, thought it right to lay the matter before Government, for such notice as they think fit to take. I believe the ends of Justice would be best served by Government unconditionally* remitting the whole sentence passed on the prisoners.

* Under Section 54 of the Criminal Procedure Code.

Exd. J. H. Burns.

Judicial 3V

No. 1675

From The Magistrate of Malabar.

Dd 3. August 1865.

For Orders

I would send a copy of the Magistrate's case with the depositions, Mr Cooke, and, as requested, he submit a copy of the Calendar of the trial, would also call on him to offer any observations on the matter and form of the Magistrate which may seem to him proper with respect to the Prisoners but Mr Cooke may have formed.

Mr Cooke should be consulted particularly as to his wishes in disposing of the case he allowed any weight to the Evidence of the Police officers as to the confessions said to have been made at the search of their houses (by the 2 to 4 Prisoners) and if so why he did so. — For in point of fact there seems to be nothing

ch all against whose interest such confession shall have been taken and the said confession duly proved according to law under Section 148 of the Criminal Procedure Code can be used against the Prisoner.

Should the Court after reading the Ballads tendered, and all the circumstances of the case, be of opinion that the publication of the said Ballads is likely to lead to breach of the peace or disturbance of the public tranquility, it will be competent for the Court to bind down the parties to keep the peace under Section 106 of the Criminal Procedure Code.

Issues 1 to 5.

Issue No. 6.

I have no direction to make the reference as suggested by Mr Phillips, but I have a great dislike to retry cases on hearsay evidence such as that brought forward by Mr Ballard. — It is clear, that under the laws of defence now suggested that the men in question did procure the jewels under threats of prosecution: it is clear that they were a set of blackguards who would attempt any thing to extort money from the prisoners, and I have not the least disposition to relieve them from the penalties which they have brought on themselves, and from which if innocent they might have relieved themselves by an appeal

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No 99.

Malabar Magistrate's Court
Calicut 3rd August 1865.

From

G. A. Ballard Esqre
Magistrate of Malabar.

To

The Honble A. J. Arbuthnot
Chief Secretary to Government
Fort St George.

Sir,

I have the honor to bring the following case to notice for such orders as Government may see fit to pass.

1. Hadayakel Bekar.
2. Koriat alias Cheriatha Mamod Aji.
3. Karuthe Edathe Komu.
4. Allatur Narayanen.
5. Allambata Kunnen.

2. Five * Prisoners were committed to the Sessions Court Calicut by the then Sub Magistrate of Tirurangadi in March last on a charge of Housebreaking by night with intent to commit theft & dishonestly receiving stolen property.

3. The evidence given before the Court was briefly as follows:

* Shangaren Kutte Nayar.

The Prosecutor stated that during his temporary absence his house was entered on the 14th March last, and certain female ornaments taken from a box therein.

* Thus numbered in the Court.
No 1. a necklace with 44 Long Gold ornaments & a Gold bead.
" 2. 12 Gold beads.
" 3. 14 Do
" 4. 2 Do
" 5. 1 Gold ring.

The first witness for the prosecution deposed to having been in Prosecutor's house on the night

in question; and said that tho' the inmates were not disturbed during the night the ornaments were missed in the morning.

The 2nd & 3rd Witnesses deposed to having seen the 1st, 2nd & 3rd Prisoners near, and the 4th coming hurriedly from the Prosecutor's house on the night above said.

The 4th & 5th Witnesses (Deputy Constables) depose to having found the ornaments aforesaid No1 with the 5th Prisoner who said he had received it from the 1st Pris[r], who admitted having pledged it to 5th Pris[r]. No2 with the 2nd Pris[r]. No3 & 4 with the 3rd Pris[r], and No5 with the 4th Pris[r]. They say Prisoners confessed at the time of search.

4. The Prisoners all pleaded "Not guilty" and utterly denied confession of guilt.

The 1st Pris[r] stated all along that he received ornament No1 in pledge from the niece of the Prosecutor some little time previously to the date of the charge; and that he (1st Pris[r]) pledged it in turn to 5th Pris[r], and the 5th Pris[r] all along corroborated this statement.

× Kunhi Kuttiamm

Otherwise the Prisoners 1 to 4 inclusive endeavoured to prove Alibis on the night

night of alleged crime.

5. I would observe that there is nothing whatever against 5th Pris[r] same possession, which he never denied and which he accounted for as above said.

6. The Sessions Court found all Prisoners guilty & sentenced them as noted.

1st to 4th Prisoners inclusive to 5 years Rigorous imprisonment each.
5th Pris[r] 1 years D[o].

7. I heard rumours that there had been very foul play, soon after the sentence - but it was not till last month that I happened to hear such circumstantial accounts as induced me to make some particular enquiries. I ordered the 1st Class Sub Magistrate of Ernad whose character for ability & integrity is very high to take occasion to go to the spot & make enquiries. I spoke to many others in different ranks & positions - and the result has been conviction in my own mind that grievous wrong has been done.

There are variations in the story of course, for it is the talk & scandal of the locality, but I believe the facts to be nearly as follows.

8. The niece of the Prosecutor in the case

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under notice, Kunhi Kutti amma aforesaid, is a young Nāyar woman of loose character tho' her amours are carried on under a certain veil of secrecy.

She was in the habit of visiting a Railway Station Master of the vicinity and it seems used to be conducted to him occasionally by the 1st & 4th Prisoners.

Whether by accident or design, the 2d & 3d Pris^rs met this girl on one of her night trips and threatened her with exposure to avoid which she agreed to pay silence money. The 1st Pris^r was to arrange matters, and one of the girls' ornaments (No 1 of the alleged stolen property) was given him to raise money on for the purpose. Some misunderstanding arose. The matter began to be talked about in the neighbourhood and the girls' relatives were very indignant at the scandal.

She is said to have sought counsel from an influential friend or friends in the Police. Ornament No 1 was already with the 5th Pris^r tho' the 1st Pris^r. This offered a basis, and on

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It is not on individual witnesses that I place much reliance one way or the other in such a case as this. But to the wide spread conviction that the account I have given is in the main true I can most strongly testify. And considering that the Prisoners are men of no wealth influence or standing I have no doubt myself that the public conviction is in the main perfectly correct.

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11. I took a few depositions a few days ago which go to show that the girl was seen at night, about a fortnight previous to the date of the alleged robbery, with the Prisoners, apparently when on the way to the Station Master's house, - and that she did pledge an ornament or ornaments to the 1st Prisoner subsequently, - as I wished to represent what I had heard to the Sessions Judge & show him something tangible on the subject. I was desirous that he should examine the depositions just mentioned & if he saw ground for moving in the matter that he should represent the case to the High Court.

The Judge however says that he considers he has no power to move in any way even if he desired to do, - and declines moving either by examining further, or becoming the medium of representation in the matter.

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12. I am fully aware that it is most undesirable the sentences of our Courts should be lightly interfered with. But in such a case as this when the voice of a whole countryside cries out that the Court has been made an instrument for the gratification of revenge I cannot but think the advantages of reconsidering a sentence counterbalance any disadvantages that can arise from so doing.

13. I have therefore thought it right to lay the matter before Government for such notice as they think fit to take. I believe the ends of justice would be best served by Government unconditionally* remitting the whole sentence passed on the prisoners.

I have the honor to be,

Sir,

Your most obedient Servant;

Magistrate.

*under sec 54 of the C. P. Code.

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No. 1186. Judicial Department.

To The Honorable Sir C. H. Scotland Kt.
Chief Justice of the High Court of
Judicature. Madras.

Hon'ble Sir,

I am directed by His Excellency the Governor in Council to forward the annexed copy of a letter from the Magistrate of Malabar, representing certain circumstances connected with a case in which five persons have been sentenced to imprisonment by the Sessions Court of Calicut on a charge of robbery.

2. Adverting to the circumstances stated by Mr Ballard, the Governor

Recd 5th Sept.

Judicial Dept.
From The Magistrate
Malabar
To The Chief Secretary
to Govt. with Letter
dated 29th Augt.
Recd 5th Sept.
No 99.

J. L. No. 1186

Letter

submitting for such orders
as Govt may see fit to pass
a Case in which 5 Persons
have been sentenced by the
Sessions Court Calicut on a
Convict charge of Robbery.

Vol. 1210. 205

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the Judges of the High
Court on the Evidence.

Fort Saint George
26th August 1865.

Rec'd 5 Sept.

Thos Lawe
Judicial 1865 Dpart.

№ 1126.

To
The Honble
The Chief Justice & the
Judges of the High Court of Judicature
Madras.

Dated 26 August 1865.

Rec'd 2 Sept.

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