

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	651	Press Mis.
<i>13-14</i> Dated	2-5-	19. 1865

Not to be folded or roughly handled

9/9

Read again letter from the Acting Session Judge of Salem, dated 9th March 1865, No. 4, and recorded in Proceedings of 4th April 1865, No. 526.

No. 13. Read also the following letter from H. E. SULLIVAN, Esq., Acting Session Judge of Salem, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Salem, 8th April 1865, No. 5.

In compliance with the order of Government, contained in their Proceedings under date 4th April 1865, No. 526, I have the honor to submit the original notes of the Judge therein called for.

2. A reference to the finding and sentence, recorded in the notes after the defence will show, that the Judge differed from the Assessors in convicting the accused; but there is no record to show the grounds of the Assessors' finding. In nine cases out of ten, none are assigned, and they are never recorded.

No. 14. ORDER THEREON, 2nd May 1865, No. 651.

The attention of Government was attracted to the case referred to in the foregoing papers, by a reference which was made to it in a letter from the Deputy Inspector General of Police, which came before Government in the Railway Department, and from which it was evident that that Officer considered that the prisoner had been erroneously convicted. The prisoner in question was charged with having put stones on the rails on the Madras Railway, and, on conviction by the Session Judge, was sentenced to transportation for seven years. It is stated in the Calendar that the Session Judge convicted the prisoner, in concurrence with the Assessors; but, on reference to the Session Judge's notes, it appears that the Assessors did not convict the prisoner, and that the conviction was recorded, and the sentence passed, in opposition to their verdict.

2. On perusal of the record, the Governor in Council sees strong grounds for distrusting the evidence upon which the conviction rests. The conviction is based mainly on the evidence of the 1st witness Budden, the line watchman, who deposed to having seen the prisoner in the act of placing stones on the rail. This witness' statement is that he saw the prisoner in the act, he being at the time a quarter of a mile distant; that it was then growing dark; that he pursued and caught the prisoner, who, however, successfully resisted and got away from him; that he did not think of going to the village Moonsiff, in whose service the prisoner was, and reporting what had occurred, but contented himself with telling what the prisoner had done to the 2nd witness Narappa Naidoo, who accidentally came up while he and the prisoner were struggling and bade them to desist, and afterwards reporting the matter to the 3rd witness, a Railway cooly maistry, by whom it was reported to the permanent way Inspector. The omission of the 1st witness to call in the aid of the village Moonsiff is the more suspicious that he had been receiving special orders carefully to look out for stones, chairs, pots, &c., placed as impediments on the line of rail; and it is still more extraordinary that the 3rd witness should have made a similar omission, when it appears that he did go to the village Moonsiff to complain of a far less important matter, the theft of a sleeper.

No 889 of 1865: Salem, 21

to
in

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See the notes written by me a few days ago, when the complete record of the trial first reached the office of the C. Secretary, I stated at length my reasons for believing (1) that the charge was false throughout and result of a conspiracy; (2) that gross injustice had been done by the Supreme Court's sentence of transportation for seven (7) years; (3) that the Court showed in its proceedings and recall from exile the unfortunate victim of the S. S. S. our comprehension of the merits of the case.

big belief as then stated had been
formed under the impression that,
such as the case was, there, still,

„ Session Judge of Salem.
„ Inspector General of Police.

in regard to the Person's guilt, has
been a concurrence of opinion between
the S. Judge and the Apeiron.

~~There~~ That lead in the 8th Column of the
Calendar submitted by the S. Judge to
the High Court, that he & his Apeiron
had concurred, and it had been
very noted - that, on reference to the
transcript of the S. Judge's notes of
the trial, it appeared that he and
the Apeiron had not concurred.

The contradiction was pointed out
by the Honble Mr. Fyfe and the Honble
the original notes taken by the S. Judge
Mr. J. W. Cherry, ~~was called up~~ in his own
writing, were called up.

On perusal of these, it is quite
clear that the entry in Col 8 of
the Calendar is in error. It is also
clear that the S. Judge believed

and that the Apeiron who assisted
at the trial, disavowed the testimony
on which the S. Judge adopting his own
view of ~~the testimony~~, continued to
transmit. For several years, a man whom
the Apeiron reported as innocent.

Under these facts, I am now
strengthened in my belief, that
there has been a gross miscarriage of
justice; and I would now, for the sake of
the person named in the 60th by
Section 54, Code of Criminal Procedure,
declare, that the power herein
awarded to the Person of the S. Judge
sentence is remitted & order him
to be set at liberty.

The Court House, I think be informed
that on a revision of the 60th of the
entire record of the trial, it has been
discovered that the entry in Col
8 of the Calendar, No 154 of 1862, as
to a concurrence between the S. Judge and

The report, is not borne out by the
facts of the trial recorded in the S.
Judge's own handwriting.

It may be well, I think, for the
Court, to suggest for consideration of the
House, whether it will not make the
rule of practice, if it be made an un-
changeable rule, that the report be
assumed to be a specific opinion
regarding the guilt or innocence of the
person, and that such opinions being
reduced to writing, be placed with
the record of the case.

19.4.65.

W.D.

I have gone through in record of the
case and cannot but think that the
evidence on which the accused has
been convicted is very suspicious,
and when in addition to this I find
that the assessors, whose judgment

in a matter depending on the credi-
-bility of native testimony is peculiarly
on the whole, did not concern with the
Judge in his conviction, I am led
to the opinion that this is a case in
which the Govt. may properly exercise
the power vested in them by the law,
to pardon the prisoner. Moorey appears
and recall him from exile.

I concur with the Hon. Mr. Phil-
lips in that it may well be suggested
for the consideration of the High Court
whether it should not be made a rule
that the assessors in a Criminal trial
shall invariably have their finding

as to the guilt or innocence of a
prisoner put in writing under their

signature or mark with such
document shall form part of
record of the case -

with in deed. It is when the
Judge & Assessors after the
points on which they disagree &
the reasons on both sides are
also to be entered in the record &
recorded - but perhaps
cannot be insisted on
in regard to the same

April 20/61

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

And the following

letter.

From Mr. Justice de Saumarez dated 24 March 1865
& recorded in No. 4526.

From — do — dated 8 April 1865, No. 5.

On 2nd May 1865 No. 651.

The attention of
Government was attracted
to the case referred to in the
foregoing papers by a
letter which was received
from the

Attorney General, which came before
the Government in May
1865, and from
which it was decided that
the

W. J. de Saumarez
17
J. P.

the prisoner had been
erroneously convicted.
The prisoner in question was
charged with having put
stones on the rails.
Madras 10 was in the
conviction to the
Judge was sentenced to
transportation for seven years.
It is stated in the Circular
that the session judge
convicted the prisoner in
consequence with the ses-
sions, but on reference to the
session judge's notes
it appears that the
did not convict
and that the conviction
was recorded and
passed in
the year
2
and the
conviction was strong
in distrusting the

upon which the conviction
rests. The conviction is
based mainly on the
evidence of the 1st witness
Hadden, the line watch-
man, who deposed to
having seen the prisoner
in the act of placing stones
on the rail. This witness'
statement is that he
saw the prisoner in the
act he being at the time
a quarter of a mile distant,
that it was then growing
dark, that he pursued
and caught the prisoner
who, however, successfully
resisted and got away
from him, that he did
not think of going to the
Village Magistrate, in whose
office the prisoner was,
and reporting what had
occurred, but contented
himself

himself with telling what the prisoner had done to the 2nd witness Karappa Kaidoo, who accidentally came up while he and the prisoner were struggling and bade them to desist, and afterwards reporting the matter to the 3rd witness, a Railway ~~Cook~~ ^{Master}, by whom it was reported to the present train Inspector. The omission of the 1st witness to call in the aid of the Village Munsiff is the more suspicious that he had been receiving special orders carefully to look out for stones, chairs, pots &c. placed as impediments on the line of rail. And it is still more extraordinary that the 3rd witness should have made a similar omission when it appears that

that he did go to the village himself to complain of a far less important matter, the theft of a sleeper.

3 On the other hand it appears to the Governor in Council very improbable that the prisoner would have placed the stones on the rail in view of the line watchman, supposing that there was light enough for that individual to see him; but on this last point the evidence is by no means satisfactory. Indeed from the statement of the 2nd witness it would seem that there was not at the time sufficient light to enable the 1st witness to see anything like the distance he alleges.

The prisoner in his defence asserts that the charge has been got up by the 2nd witness out of animosity

himself, and to this defence some corroboration is given by the extraordinary denial by the witness in question of any knowledge of the fact that the prisoner was in the service of the village himself, the latter being a relative of his own.

On the whole, the Governor in Council sees strong grounds for distrusting the evidence, and more especially when he finds that the Apepans, whose judgment in a matter depending on the credibility of a witness testimony is peculiarly valuable, did not concur with the Session Judge in his conviction. He accordingly resolves, in the exercise of the power vested in him by Section 54 of the Code of Criminal Procedure

Procedure, to remit the remaining portion of the sentence which has been passed upon the prisoners. The necessary communication will be addressed to the Superintendent of Port Blair.

5. His Excellency in Council resolves to suggest for the consideration of the Honble the Judges of the High Court whether it should not be made a rule that the Apepan in a Criminal trial shall invariably have their finding as to the guilt or innocence of the prisoner put in writing under their signature or mark, and that such document shall form part of the record of the case.

To the Honble the Judges of the High Court
— Session Judge of Salem.
— District Judge of Polur.

Dec. 10/5/54

General Department.

No. 657

PROCEEDINGS OF GOVERNMENT.

Dated 21st Dec 1861.

Edw. 1861/12/21