

MADRAS RECORD OFFICE.

Government of Madras.

Indrial DEPARTMENT.

G.O. No.	1863	Press <u>Mis.</u>
Dated	23.11.1918	

235-239

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Not to be folded or roughly handled

Read the following papers:—

No. 255. From the Magistrate of North Arcot, to the Chief Secretary to Government, Fort Saint George; dated Chittoor, 13th October 1866, No. 59.

I have the honor to forward copies of Proceedings held before me in Calendar No. 44 of 1866, in which a prisoner, who is both deaf and dumb, and whose name cannot be ascertained, is charged with the offence of lurking house trespass and attempt to commit theft punishable under Section 457 of the Indian Penal Code.

2. The evidence for the prosecution would convict the prisoner, but as I am convinced from his demeanour during the inquiry before me that he is quite incapable of hearing the charge laid against him or of making any defence whatever, owing to the natural defects already noted, I am at a loss to know how to dispose of the case. Such cases are not provided for either in the Code of Criminal Procedure or in the rulings of the High Court.

3. I enclose copy of a letter from the Civil Surgeon at Chittoor, certifying that the prisoner is both deaf and dumb.

4. So far as may be gathered from his gestures, prisoner pleads not guilty. I have deferred passing sentence, and directed that the prisoner be detained in custody pending receipt of instructions.

From the Civil Surgeon, Chittoor, to the Magistrate of North Arcot, dated Chittoor, 10th October 1866, No. 20.

With reference to your letter No. 53 of the 6th instant, I have the honor to inform you that the individual therein alluded to has been under my observation for three days. He is, in my opinion, deaf and dumb. I have no reason to believe him to be feigning. He is certainly not an idiot, and I consider his mental faculties of a standard to necessitate his being held responsible for his actions. His habits are cleanly, and his conduct very peaceable. He is able to make himself understood by gestures, and comprehends the gestures of others.

CALENDAR No. 44 of 1866.

Prosecutor.

J. Venkatroyadu.

Prisoner.

versus. Name unknown, deaf and dumb, caste Dasari.

Prosecutor sworn.—One night, about eight days ago, I was lying down in my house after shutting the door. About midnight I felt some one touching my neck. I awoke and seized the person by the wrist. He broke loose and escaped. I raised an alarm and followed, and caught the thief. As I seized him a stone thrown from outside struck me on the arm. I let go the thief, fearing he had companions. He tried to get over the wall of the enclosure. I cried out, and 1st and 2nd witnesses cried from without "hold him fast we are coming." I held on by him, and 1st and 2nd witnesses came up and helped me to secure him. We then took prisoner to the Village Moonsiff. I lost no property. Prisoner before Court is the man we then caught; when we asked him who he was, he did not answer, but made signs. He entered my house by removing the wooden bar which secures the door. I never saw prisoner before that. I know nothing about him.

1st Witness Papa Naidoo sworn.—Last Monday week; I was sleeping in my house; it is next door but one to prosecutor's house. I heard a cry, "thief," from prosecutor's house. I got up and went there. I found prosecutor standing near the wall holding prisoner; 2nd witness accompanied me; we all helped to secure prisoner and took him thence to the Village Moonsiff. The prisoner before Court is the man we thus seized. I know nothing of him.

2nd Witness Venkatappa sworn.—As the preceding witness. His house one door further off prosecutor's.

*Proceedings of the Madras Government, Judicial Department,
23rd November 1866.*

Prisoner indicates by his gestures that he did not enter the house; that he was starving and was set on and beaten by complainant and witnesses as he was begging. He shows likewise that he gets his living by blowing a horn.

(Signed) J. D. ROBINSON,

Magistrate.

Charge.

I, J. D. Robinson, declare that there is hereby made against prisoner before Court, name unknown, being both deaf and dumb, the charge that he, on or about the 1st day of October 1866, at Ackana Chireepalli, Chittoor Taluk, committed lurking house trespass by removing the bar of the door, and entering at night the house of prosecutor with intention of committing theft, and that he has thereby committed an offence punishable under Section 457 of the Indian Penal Code, and within my cognizance, and I hereby direct that said prisoner be tried on the said charge.

(Signed) J. D. ROBINSON,

Magistrate.

Chittoor, 13th October 1866.

(True Copy)

(Signed) J. D. ROBINSON,

Magistrate.

The Magistrate will ascertain, if possible, whether the prisoner cannot be communicated with by means of writing in his own Vernacular.

FORT SAINT GEORGE,

31st October 1866.

(Signed) J. D. SIM,

Secretary to Government.

No. 256. From the Magistrate of North Arcot, to the Chief Secretary to Government, Fort Saint George; dated Chittoor, 27th October 1866, No. 60.

In continuation of my letter of the 12th instant, No. 59, I have the honor to lay before Government another case of a similar nature, reported on by the Joint Magistrate in his communication dated the 19th idem, No. 166, copy of which is herewith enclosed.

From the Joint Magistrate of North Arcot, to the Magistrate of North Arcot; dated Vellore, 19th October 1866, No. 166.

I have the honor to request that you will obtain the opinion of the Session Judge on the following case:

2. One "Oomay," who is deaf and dumb, has two charges of robbery pending against him, which appear from the evidence to be true; and further from the said evidence, it seems clear that the prisoner knew very well what he was about; further, after keeping him under observation and examining a Medical Officer, this opinion of mine, that the prisoner is responsible for his acts, is confirmed; prisoner being stated to be well able to discriminate between right and wrong, though quite dumb, and so deaf as only to be able to hear loud sounds.

2. The difficulty that has now arisen is this—those deaf and dumb from birth are usually treated as idiots, unless, as Archbold lays down, "it can be shown that he has the use of understanding." Then he may be tried, convicted, &c." This prisoner clearly can so understand, and cannot, therefore, be dealt with under Chapter XXVII, Procedure; at the same time he cannot be convicted without a defence being taken, and this I cannot do, for there is nobody who can communicate with him sufficiently well for me to make him plead and take his defence.

*Proceedings of the Madras Government, Judicial Department,
23rd November 1866.*

Referred to the Government Solicitor for the opinion of the Acting Advocate General.

FORT SAINT GEORGE,
14th November 1866.

(Signed) J. D. SIM,

Secretary to Government.

No. 257. From the Magistrate of North Arcot, to the Chief Secretary to Government, Fort Saint George; dated Ranipet, 3rd November 1866, No. 62.

I have the honor, with reference to the endorsement of the Secretary to Government, dated 31st ultimo, made on my letter No. 59 of 13th October 1866, to inform you, that the prisoner therein alluded to cannot be communicated with as suggested, as he is unable either to read or write.

Referred to the Government Solicitor for the opinion of the Acting Advocate General.

FORT SAINT GEORGE,
14th November 1866.

(Signed) J. D. SIM,

Secretary to Government.

No. 258. From the Acting Government Solicitor, Madras, to the Acting Chief Secretary to Government, Fort Saint George; dated Madras, 15th November 1866, No. 658.

I have the honor to acknowledge the Orders of Government noted in the margin, with enclosures, requesting the Acting Advocate General's opinion as to the investigation and disposal of criminal charges against deaf mutes.

Dated 14th November 1866, and made on letter from the Magistrate of North Arcot, to Government of 3rd November 1866, No. 62.
Dated 14th November 1866, and made on letter from the Magistrate of North Arcot, to Government of 27th October 1866, No. 60.

2. I have submitted the matter for the consideration of the Acting Advocate General; and,

3. I now forward a copy of his opinion, and return the orders and enclosures above noted.

OPINION.

Formerly the course in cases of deaf mutes was to allow the trial to proceed, the Court watching the case on behalf of the prisoner, and in fact defending him. (R. v. Steel 1, Leach 451). But the course now adopted in England is to direct the jury to inquire whether the prisoner is of sufficient intellect to comprehend the proceedings against him. Alderson, B., said, "Upon this issue, if you think that there is no certain mode of communicating the details of the trial to the prisoner, so that he can clearly understand them and be able properly to make his defence to the charge, you ought to find that he is of non-sane mind. It is not enough that he may have a general capacity of communicating on ordinary matters." (R. v. Pritchard 7, C. and P. 304). In that case the jury found the issue in the negative, and the Court ordered the prisoner to be confined in prison during His Majesty's pleasure.

2. I am of opinion, therefore, that in cases like the present the prisoner should be dealt with under Chapter XXVII of the Criminal Procedure Code.

(Signed) J. D. MAYNE,

Acting Advocate General.

15th November 1866.

(A true Copy.)

(Signed) H. J. BROCKMAN,

Acting Government Solicitor.

Proceedings of the Madras Government, Judicial Department.
23rd November 1866.

No. 259. ORDER THEREON, 23rd November 1866, No. 1539.

Ordered that a copy of the Acting Advocate General's opinion be furnished to the Magistrate of North Arcot with reference to his letters dated the 13th and 27th ultimo, and Assistant Nos. 59, 60, and 62, also to all Magistrates of Districts for their information and guidance.

(True Extract)

A. J. ARBUTHNOT,

Chief Secretary.

To the Magistrate of

Edw. J. Talbot

Judicial Department

Proceedings of the Madras Government

Read the following papers

From the Magistrate at North Arcot

/ Dated 13th Oct & 3 Nov '66
Nos 59, 60, 62

From the Dy. Asst. Solicitor

/ 15 Nov -- -- 658

Order. 23rd Nov^r 1866 R^d 1863.

Ordered that a copy of the Acting Advocate General's opinion be furnished to the Magistrate of North Arcot with reference to his letters dated the 13th & 27th ultimo & Assistant Nos 59, 60 & 62, also to all Magistrates of Districts for their information & guidance

JP
W.D.

So Magistrate of all Dist^s 29/11

18-9-08-1
Addenda 1866. Department

No. 1863

PROCEEDINGS OF GOVERNMENT.

21/12/26-2817
21/12/05 1866/69

Date: 28/12/1866

No. 247-200

21/12/1866

1866-200

21/12/1866

20/12/1866