

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	234	~~Press~~
		Mis.
Dated	15-2	1866

156-157

15/14

Not to be folded or roughly handled

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Copy Opinion.

In re Ali Rajah.

I have perused the whole of the depositions and the other papers submitted with them, with a care commensurate to the importance of the subject matter.

2. It is my clear opinion that there is no such evidence of Ali Rajah's complicity with the murderer, as affords any probability of the Rajah's conviction, if placed on his trial on a charge of abetment under the Indian Penal Code.

3. Several observations suggest themselves to me with respect to the evidence. The two witnesses who speak to the murderer having been called in to the presence of Ali Rajah are introduced at a late period of the inquiry. They are not examined till the 8th December. P. Himm Amad on his first examination will not name the witnesses who he says can prove the fact of the murderer leaving the Rajah's house on the Evening of the crime, unless the Rajah is "removed". He does not at that time profess to be acquainted with the names of those witnesses: for he goes on "because I can then make inquiries". This is on the 16th of November. He is again examined on the 17th November the 27th November and again on the 8th December. He then for the first time, (after the 16th) again alludes to the witnesses to prove the fact referred to. But he now

says

says that he did not at first name the Witnesses in his first deposition because he was afraid of their being gained over by Ali Rajah. These two reasons are not consistent: and looking to the facility with which oral testimony is procurable, I think that all that part of the evidence which seeks to convict Ali Rajah with the crime, is open to considerable suspicion.

4. But it is not necessary for me to enter with any minutely into the evidence, because accepting it at its highest possible value, and assuming it to be all true, I am still of opinion that it does not afford a fair probability of a conviction. Nay, I will go further and say that Ali Rajah ought not to be convicted on such evidence.

5. There certainly is the gravest suspicion attaching to him. I fear the probability is, that the murder if not directed by him, was in consequence of his sayings and doings, and possibly that he was not unaware of what would be likely to occur. But a man's life is not to be jeopardized on mere possibilities and probabilities, on inferences, and general report and belief.

6. It is not necessary that there should be any direct evidence of the orders given by the abettor. Such a fact scarcely ever admits of proof, because the communication is almost certain to be secret. It may be inferred, but as the Magistrate puts it the inference must be "irresistible". Mr. Ballard, I observe, considers that in this case the inference is irresistible. Here I differ from him. I am fully impressed with the cogency of the reasoning by which the conclusion of enmity on the part of Ali Rajah is arrived at. But there is an immense Gulf in my opinion between the existence of enmity and directions or persuasions to murder. - at present that Gulf is not bridged. Hereafter it may be, by the production of farther evidence; but at present there

is

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is a hiatus, which it is impossible to get over.

7. Assuming that the Rajah ordered the excommunication of Himy Amad (and the evidence is cogent on this point) that he had an interview with Hussen Kutti before the murder, and that Hussen proceeded from the Rajah's house pretty directly to Himy Amad's house, and there committed the crime; still it by no means necessarily follows that the Rajah gave any orders for the murder, or such orders as would render him responsible for the murder, as the "probable consequence" of their execution, assuming that he did not directly order murder to be committed. A reference to Section CXI of the Indian Penal Code will show the important bearing of this consideration. When a conviction is rested upon circumstantial evidence, all other hypothesis than that of guilt must be irresistibly excluded. The Rajah may have ordered some indignity or annoyance to be put upon Himy Amad and his family (if he gave any orders at all) not involving an assault or trespass; and the inference of any connexion between the enmity of the Rajah and the murder being the result of his orders, so far from being irresistible, might I think be rather characterized as forced. In the absence of any special communication between the Rajah and the murderer, the result of which was the murder, I need scarcely say, that if the crime was merely committed by Hussen, because he fancied he should thereby please the Rajah, or as taking his part in his quarrel, the Rajah is not criminally responsible for Hussen's act.

8. For the above reasons I am of opinion that there is no sufficient ground at present for putting Ali Rajah

on

on his trial under the Indian Penal Code.

9. In answer to the second question, I am clearly of opinion that the case of Ali Rajah does not fall within the scope and purview of the Moplah Act XX of 1859.

10. The events which led to the passing of that Act are well known. I think that in order to constitute an offence under that Act, the crime must be of a fanatic religious, or political complexion.

11. Nothing, I think, can be clearer than that in the present case the crime was entirely free from any such tinge. It was an ordinary murder: nothing more or less. And nothing can be more conclusive on this point, than the fact that the ordinary tribunals and the ordinary law of the land have been found quite sufficient for the conviction and punishment of the principal offender. The Government would, in my humble judgment, and it is my duty respectfully to submit this point, lay itself open to very serious animadversion, if it dealt with the Abettor under the Moplah Act while the Principal had been efficiently dealt with under the Indian Penal Code.

12. If the evidence of the Rajah's guilt were sufficient to bring home the charge to him, there can be no doubt that the ordinary Law of the Land is strong enough to convict and punish him. If there is not such sufficient evidence, that is rather, in my opinion, a justificatory reason for dropping the prosecution, than for straining a point to make him amenable to the very special "Moplah" Act.

13. The words of Section III are no doubt large enough to include any murder but I think we must look at the mischief which the Act was intended to remedy.

remedy, in order to arrive at a true and just construction of its clauses. What that mischief was is notorious. The origin of the Act was not the prevalence of ordinary murders, arising from motives of revenge, cupidity, jealousy and the like; it was the repression of fanaticism that was aimed at, and that alone.

14. The Preamble clearly shows this. It recites that "murderous outrages have been frequently committed by persons of the class of Moplahs, the offenders in such outrages intending therein to sacrifice their own lives; and the general law of the Country is not adequate to suppress such outrages."

15. These words are to my mind conclusive against the construction of the Act now contended for. The Preamble by a judicial rule governing the construction of Statutes, may be looked at, in order to ascertain the intention of the Legislature, when the meaning of any of the enacting sections comes in question, and such section is not perfectly clear in itself. In the words of Lord Tenterden in the Case of *Halton v Cove* (11 B & Ad 538.) "The enacting words of an Act of Parliament are not always to be limited by the words of the Preamble; but must, in many instances, go beyond it. Yet, the words in the enacting part must be confined to that which is the plain object and general intention of the Legislature on passing the Act: and the Preamble affords a good clue to discover what that object was."

16. Being of opinion that Act XX of 1859 does not apply to the present case, a consideration of the last

last question, viz: whether Section VI should be put
in force becomes of course unnecessary.

17th January 1866.

(Signed) John Brnce Norton
Advocate General.

True Copy
A. A. Boylston
Gov^t Sol^r.

N^o 39.

Madras January 19th 1866.

From John Robert Boyson
Government Solicitor - Madras.

To The Hon^{ble} A. J. Arbutnot
Chief Secretary to Government
Madras.

Sir,

1. I have the honor to acknowledge the Proceedings of Government noted in the margin (with enclosures) relative to the Sufficiency of Evidence for the Commitment of Ali Rajah for trial by the Session Court on a charge of having instigated the Commission of certain Murders and as to the Case being one which can properly be dealt with under the provisions of Act XX of 1859.

2. I submitted the papers for the consideration of the Advocate General, and.

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

I have the honor to be,
Sir,

Your most obedient Servant,

J. R. Boyson
Gov^t Sol^r.

Re
Sufficiency of Evidence for the
Commitment of Ali Rajah for
trial by the Session Court on
a charge of having instigated the
Commission of certain Murders
and as to the Case being one which
can properly be dealt with under
the provisions of Act XX of 1859.
(Copy)
Advocate General's Opinion.

7. 1866 A.
A. P. 26.

encl^d N^o 1.
for letter from Gov^t Sol^r to Chief
Secy. to Gov^t N^o 39 dated 19th
January 1866.

Medical Department

N^o 126. From The Government Solicitor
Dated 19 January 1866.

The Aji's opinion on both the questions
submitted to him is just what I expec-
-ted and in accord with the
view which I have held from the first.

The Government should therefore
be directed to relieve Ali Rajah of
any other who may be with him, from
all restraint.

It remains to determine in what
manner he should act towards him,
now that they have abandoned all
intention of proceeding against him
either under the ordinary law or under
the English Act - that is what they
should continue towards him that

14 January 1866. Dept

From the Govt Secy to Govt.

To the Chief Secy to Govt.

Dated 19th Jan^y 1866.
Secy 19

N^o 39.

Enclosure.
N^o 126

Towards Ceylon Adverts.
General's opinion relative to the
sufficiency of evidence for the
conviction of Ali Rajah for
murder by the session Court on a
charge of having instigated the
commission of certain Murders
and also to the case being one
which can properly be dealt
with under the provisions of
Act XX of 1859.

for order

honorary citizenship which as Head
of the Louisiana he has
his right to give. As such he has
the right to have a part of
with for labor to give honor -

It seems to me that all this will
how to be done. I am sure that
for the whole of Ali Riza's life. When
- then they should be decided. When the
suspicion may be decided. When the
occasional arises -

Ali Riza's labors under the
- but suspicion of having directly
investigated this foul murder. There
is "coincident evidence" - see Mr. Norton's
opinion - that he ~~and~~ so far showed
his position and his great influence
on the people of Louisiana that he
advised the recommendation of Kury
Amad, and I fear Mr. Norton again

the probability is that the murder of Mr. D.
- acted by him was a consequence of
his sayings and doings. As a probable
result of the recommendation no one is
the neighborhood of Kury Amad, however
it was a fact to see him when in
the deadly papers with Austin Ratti
Haji. Further to learn from Mr. Justice
- March 24 - that Ali Riza, at the
recommendation of Capt. Blomfield
"he would not a person to assist the police
or to aid them in taking out the matter
to and investigation of this foul
crime."

The first cause in my opinion
continues in fear of and honorary
relations with a man on whom the
suspicion of such blood guilt is
so strongly set -

The Major General of Louisiana is

Now you I think, I directed to inform
Ali Zayal that all the honary dis-
-tinction and appellation hereto-
-for given him are now withdrawn
at once & for ever - and that he will
hence ^{forth} be known & treated only as a
common right. This resolve, and
the reasons which have led to it, is
also to be generally known through-
-out Malacca -

29-1-66

J.P.

I never had any doubts on the
two points - viz. whether to give a general
for his opinion. In respect of the arrangement
now proposed by Mr. Syarif for adoption.
I entirely concur.

22.1.66.

We have dealt somewhat hardly by the Sultan, as we
have kept him imprisoned for a much longer period than
we ought, having dealt with him according to a law
which we now find to be inapplicable to his case. - but
now proposed to deal with him altogether upon suspicion
of guilt, and to ~~withdraw~~ draw from him all those attributes
of Royalty which have hitherto been permitted - I
confess that I am of opinion that this murder was

instigated by him, but this is merely a guess on
my part, as indeed it must be on the part of any
one; and it may admit of a question whether
it would be politically wise or expedient to
deprive him of all marks of respect which
have been paid to him. - It may be that the
Moplahs may consider the indignity as inflicted
upon the race, and not on the individual. &
may make common cause with the Sultan -
in which case his residence in Malacca will
be fraught with inconvenience to the Gov^t if
not with risk - I do not however mean to
object to the adoption of the course proposed by
Mr. Syarif and suggested to by Mr. Phillips - but
I think it would be as well before acting upon it
to ascertain the views of the Sultan on the subject

W.D.

Monday
Judicial Department.

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PROCEEDINGS of the MADRAS GOVERNMENT.

Read against ^{the following} letters from Magistrate of Malabar, of 6th recorded in
Procs. of 15 January 1866. No 39.
of 20th & received in the Pro of 30th Nov/65. No 1707.

Read letter from the Govt.
Solicitor.

of 19th Jan'y. 1866. No 39.

Order thereon. 15th February 1866. No 234.

The Magistrate of Malabar in his letter of the 20th Novr last which was recorded in the Proceedings of Govt. under date the 30th of that month reported that Ali Rajah of Cannanore had been arrested on a charge of instigating and abetting the commission of an atrocious murder which was committed at Cannanore on the night of the 11th Novr by

one

one Hussien Kutti Haji,
the victims being the
sister-in-law, the
daughter and the female
servant of one Kunhi
Arnad, a wealthy Moplah,
who was himself attacked
and severely wounded
by the murderer.

2. The papers above
recorded contain the
reports of the Magistrate
and of the Acting Joint
Magistrate who conducted
the inquiry, and the
opinion of the Advocate
General to whom the
papers were referred,
and who was requested
to give his opinion.

1st as to the sufficiency
of the evidence for the
commitment of Ali Rajah
for

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for trial by the Session
Court on a charge of
having instigated the
commission of the mur-
ders referred to.

& Secondly, whether, ad-
verting to the nature
of the crime of which
Hussien Kutti Haji has
been convicted, viz, the
murder of three persons
of the Mopilla caste, the
case was one which
could properly be dealt
with under the provi-
sions of Act XX of 1859
and if so, whether in
Mr Horton's opinion the
facts established were
sufficient to justify
the deportation of Ali
Rajah under the provi-
sions of Section VI of
the Act in question.

3. The opinion of the
Advocate General is to
the

the effect that while
the gravest suspicion
attaches to Ali Rajah,
there is not sufficient
evidence to justify his
commitment for trial
before the Session Court,
and that the case does
not fall within the
scope and purview of
the Moplah Act ~~xx~~ of 1859.
Ali Rajah has accordingly
been released from
custody, but although the
evidence against him
has not been sufficient
to subject him to the
penalties of the law
in connexion with the
atrocious murder which
he is charged with
having instigated and
abetted, there is, as
the Advocate General
observes

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observes, "Cogent evidence"
of his having so far
abused his position and
his influence over the
Moplahs of Cannanore
as to have ordered the
excommunication of
Kuni Ahmad, and again
to quote from the opinion
of the Advocate General,
"the probability is that
the murder, if not
directed by him, was in
consequence of his sayings
and doings." Under the
circumstances of the
case it is impossible
to attribute the extra-
ordinary fact that during
the fearfully long period
that Kuni Ahmad was
engaged in a deadly
grapple with the
murderer not one
of

of his neighbours stirred
a foot to save him, to
any other cause than
his previous excommu-
nication by Ali Rajah.

4. The near connexion of the murderer to Ali
5. The Govt. cannot Rajah, the established facts
continue in friendly that enmity existed on the
and honorary relations part of Ali Rajah towards
with a man on whom Kuni Ahmed, and that the
the suspicion of blood murderer was seen leaving
guiltiness so strongly Ali Rajah's Palace a very
rests, and the Governor short time before the commission
in Council accordingly of the murder, are additional
directs that the Magistrate links in the chain of suspicion
of Malabar will inte- connecting Ali Rajah with
mate to Ali Rajah the crime.

that the salute of 7 guns
which has hitherto been
accorded to him on his
entering the Cantonment
of Cannanore to pay
an official visit or
leaving Cannanore for
the

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the Laccadives or elsewhere,
will henceforth be dis-
continued, and that in
future no honorary dis-
tinctions of any sort
will be accorded to him.
The Magistrate will
take steps to have this
resolution and the
reasons which have led
to it made known
throughout Malabar.

h/

Magistrate of Malabar
Sept 15

24-6-91

His Royal Highness
Canmar

1871-1877

Journal 1866. Department.

No. 234

PROCEEDINGS OF GOVERNMENT.

4 N. 1. 1/64 Pol. D.

Dated *15th Feb 1868*

Press No. 2755, G. M. - 1411-65-500.

Respecting the
Journal of Canmar.

