

MADRAS RECORD OFFICE.

Government of Madras.

Indivisil DEPARTMENT.

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Dated	4. 6.	19 1866

24-25

Not to be folded or roughly handled

15/9/31

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Proceedings of the Madras Government, Judicial Department,

4th June 1866.

No. 24. Read the following letter from the Magistrate of Malabar, to the Chief Secretary to Government, Fort Saint George; dated Calicut, 11th May 1866, No. 60.

I have the honor to report that, on the early morning of the 9th instant, one Abdulla Koya, a Moplah of Calicut, a sailor, and a man of previous bad character, murdered an old female relative, dangerously wounded another male relative, who has been insensible since the outrage and is not expected to survive, and fired their house, which burned to the bare walls. This was in the heart of Calicut.

2. The Police were early on the spot, and every effort was made to apprehend the murderer, who had been identified by a woman at the time. A man, believed to be an accomplice, was apprehended; but Abdulla Koya could not be found. A little after 5 P. M., however, a woman happened to hit upon him in a drain not a quarter of a mile from the scene of the outrage. In this, he had lain concealed during the day. Immediately he saw that he had been seen he ran out, and with a knife in each hand ran back to the burned house, and climbed a high sago palm which stands in its yard. There he took up his position, and refused to come down.

3. The Police had got immediately on the track; word was sent to the Inspector at the Town Station-house, who, having seen the Assistant Magistrate pass, requested his attendance, and all were soon at the place.

4. Abdulla Koya was perched on the palm tree some 60 feet from the ground. He declared repeatedly he had murdered the old woman in the morning and fired the house. He was called on by the Police to surrender himself, as a Warrant was out against him. The Assistant Magistrate, on his arrival, repeatedly summoned him to come down. The man persistently refused, saying that he would only come down to kill some other persons, one, if not more, of whom he named.

5. The tree Abdulla Koya had mounted is in a small yard near others by which an active resolute man might well manage to escape. The neighbourhood is a mass of close lanes, intricate buildings, and thickly planted gardens, into which if a man escaped in the dark, apprehension would be almost impossible. The man was a powerful ruffian, armed, and desperate, and had declared his intention or desire to commit further outrage.

6. Under these circumstances, the Assistant Magistrate warned the man that, if he did not come down, the Police would be ordered to fire upon him. This warning was deliberately repeated several times, and the muskets were pointed, but without effect.

As it was rapidly getting dark and the man's capture was to be effected at all hazards, the Assistant Magistrate after again deliberately warning Abdulla Koya of the consequence of his refusal to surrender himself, without avail, gave the word to the Police to fire.

They did so, and the man was shot dead, the first shot apparently taking fatal effect, as he never moved or uttered sound after it. His body was brought down from the tree, and yesterday morning I ordered it to be buried by a party of convicts as that of a condemned felon.

Proceedings of the Madras Government, Judicial Department,

4th June 1866.

7. Mr. Overbury's conduct has my entire approval. He acted with judgment and firmness in a case which required both. I consider the conduct of the Police throughout very commendable. They took all precautions to prevent escape, secured the presence of the nearest Magistrate, and only had recourse to their muskets under orders, and when no other course was left open.

No. 25.

ORDER THEREON, 4th June 1866, No. 866.

To be recorded.

(True Extract).

J. D. SIM,
Acting Chief Secretary.

Ed. J. H. Burns.

May 21/66

Overbury Case

My dear Mr. Overbury

I know of no case exactly similar to this under the Penal Code (ss. 97, 113). The Police are justified in adopting any means necessary to effect the arrest, where resistance is offered, or to retake a prisoner who has escaped from custody. Nothing is said in the Code about the means which may be adopted where a person simply flies to avoid arrest. Under the English law, however, a man who has committed a murder, and who flies, may be killed, if his arrest cannot otherwise be effected. and I conceive the law here is the same.

Same. The present case is different from either.
It is neither a case of resistance, nor of flight,
but of a man putting himself into a position
in which it is difficult to get at him. I doubt
much even upon Ballard's own showing that
there was any possibility of his escaping, so
long as the Police chose to remain there and
watch him. If the man had been an ordinary
criminal therefore I should have thought that
the shooting him was wholly unjustifiable. But
he was a Moplah, in that state of desperation
in which we know by experience that a
Moplah stops at nothing. It is possible that
if they had starved him out he might have
got cool, and given himself up quietly. But
they were not bound to wait there indefinitely
on the chance that he would do so. If they
had followed him up the tree, he would cer-
tainly have made resistance, which would have
justified his being shot at once. If they had cut

down the tree, a collision with the same
result would probably have followed. On
the whole therefore I think it comes to this.
Could the Police have arrested Abdullah
Koya without serious danger to their own
lives? I think they could not, and that
they were therefore justified in killing
him.

Yours sincerely
Wm. Mayne

To The Hon
A. J. Abbott

44
I agree with the Magistrate in thinking
that under all the circumstances
represented the Ass^t Mag^r. Mr.
Ombury was justified in the course
which he took - The Police Commissioner
was justified in having acted un-
der his orders -

The man had committed one or
probably two murders and had
found the house in which his victim
lived - He was pursued and handcuffed -
had the dec^d of weapons in his hands -
avowed his guilt and proclaimed
aloud his intention of perpetrating
more murders - That he would
have kept his word, if he could, no
one who knows anything of his plans
and his doings can doubt -

Mr Ballard states expressly - page 5 -
that the man might well have been
- hoped to escape during the night
by means of the high bowing trees
and "man of close larder and intelli-
-cal building". From what I have
observed of Calicut and the towers
on the Western Coast this does not
seem to me improbable.

I find from the Almanac that
on the night of the 9th May the moon did
not rise till 1 A.M. The last phase was
on the 8th.

Had the man continued to effect
his escape during the darkness he would
small probability have murdered the
other persons whose lives he declared
his intention of taking - and would
hardly have been secured by the police

- unless shot at a distance - with out
killing or severely wounding some
of them -

He was armed with two w. knives
for what this weapon is and how it is
used I would refer to Mr Sharps
letter of 25 Sept/32 in page 465 of the ac-
companying volume -

Had he been cut down, the Prob-
-ability who would not have left the top
of it, would have fallen 60 feet &
have been as surely killed as he
was by the bullet of the Police man.

Had he been followed up the
- hill he would no doubt as observed
by Mr Drayton have resisted his
pursuers and probably chopped
them with no small effect with his
w. knives -

The persons killed and wounded by the ^{villain} ~~murderer~~ of his own caste - and the case does not present the usual features of the well known Mopla outrages. Still the man was a Mopla he was a powerful efficient, desperate & fully armed. It is impossible to say where he might have done either in the way of murder or incendiarism had he attempted his escape from the town.

23-5-66.

Abdulla Raja may have been a powerful ruffian as the Moplas hate & hate; - it seems clear he was a cowardly one; but of the desperate character which the Moplas would ascribe to him, I find no clear indications in what has been laid before the Government. - We see he was a coward, for he murdered an aged female relative and dangerously wounded a man also a relative. But instead of acting as desperate determined Moplas generally do, he sneaked away and hid himself, like a rat in a hole, in a drain, from early

morning till evening. Seen by some old woman, he then ran for a second time, ascended a high tree, apparently for the purpose of concealment; but when found and surrounded by a body of Police, he kept them in awe by threats of annihilating persons whom he named, of whom I suspect the Police knew little or cared less. Still, he does not descend from his perch. A really desperate Mopla brought to bay under such circumstances would have come boldly down, and fighting his way through the Police would have effected his escape or secured his martyrdom w. fanatical Moplas are said to do. Moplas of this class do not, however, murder their own aged female relations. The case showed he looked at, I think, as a simple domestic murder. I do not see why we should bring to bear on it considerations, any of the reasoning I should judge in describing of a matter of Mopla outrages.

The Police are not to be blamed for what they did or for what they did not do, as they were controlled by an European

Magistrate, Mr. Overbury: - but as this
functionary made no attempt to secure the person of Abdulla Raja
beyond ordering him to be shot down,
I feel quite unable to concur with the
Magistrate of Quatavor in considering
Mr. Overbury entitled to the same
apprehension as Mr. Ballard was, so
readily bestowed.

The opinion of the Off. Advt. General,
Mr. Mayne, was sought, I concluded
in regard to the law of the case. Of
this, there seems to be none applicable
to India, and that said to prevail
in England, would properly prevail
in this case. It is, only in the event
of its being clearly shown that Abdulla
Raja's capture could not otherwise
be effected than by shooting him
dead.

24.5.66

7M
The question at issue simply is, was the
Assistant Magistrate justified or not
in ordering the police to fire upon the
criminal Abdulla Raja in the tree?
I cannot say that I think he was. I consider
the order to have been precipitate and
perhaps unnecessary.

Abdulla Raja was not one of that
insincere class of apostates among the
Hindus who in a state of self wrought
frenzy direct their daggers against
the unbelievers and call their apostates
and fellow fanatics to arms. He was an
ordinary murderer who had taken and
attempted the lives of defenceless persons in
his own sect and had concealed himself
afterwards. There was no demonstration of
disparate sympathy for him, there could be
none, he was a common enemy, no one would

have aided or harboured him.

When the criminal took refuge in the Tree he was surrounded by a sufficient force of Police directed and controlled by an English Magistrate. Did the Magistrate take all possible means of securing the criminal alive before resorting to the Muskets of the Police or did he not? I told that he did not.

It is urged that night was closing in, that the night was dark, that the tree stood near others by which the criminal might have escaped, that the garden was surrounded by intricate roads and buildings which would have afforded the criminal the means of eluding his pursuers.

These arguments do not convince me. There would have been an easy remedy for the darkness by keeping a fire alive on

the ground (which is constantly done by the natives) or by lighting torches till the moon rose. This is not very easy to fly like an ape from tree top to tree top; such a method of progression must, at least, be a slow one and might have been tracked from below, whenever the criminal alighted on the ground he might have been met and confronted by a superior force.

The tree might have been surrounded and watched till daylight. Hunger and thirst would gradually have exhausted the hapless and the strength of the criminal. He would probably have descended and have been secured at the bottom. If he had rushed on the Police with his knives they might then have fired on him with propriety. Or the Police might

can have directed to cut down the tree. The criminal would perhaps have come down when he felt it tottering. If not he would have fallen with it. It does not follow that he would have been killed. The leaves and branches would have broken his fall. He might have been merely stunned or hurt. The Police would then have apprehended him with ease and safety. He might indeed have thrown his knives at the persons employed to cut down the tree but this is a measure of danger which the police might incur; he could only have thrown them twice.

The first duty of the Police is to capture a suspected criminal alive. With this aim they should spare no exercise of coolness, patience,

and continuance. In doing this they are justified in incurring considerable personal risk. It is obvious that the capture of the living criminal is alike desirable in justice to him and to Society. The criminal may be insane, he may have accomplices, his motives, provocations, and all the features of the criminal act should be accurately known, his punishment ought to be deliberate, solemn and public. If he is killed like a wild beast in a corner without trial half the ends of justice are frustrated. Nothing can warrant such an act but the last and keenest necessity. These considerations should be impressed on the Police

by the Magistracy. The Police should
make it a point of professional honor
to capture a criminal alive.

I cannot approve of the order given
by Mr. Overbury or of the commendation
conferred on him by his Superior. It
appears to me that Mr. Overbury
acted with indiscretion. I am not,
however, disposed to blame him severely,
he is a young officer his error, as I
conceive it to have been, was one of
judgment and he was placed in
a trying and exciting position.

N.

1866

Judicial Department
From Pro. 4 "June 1866
The Magistrate of
Malabar
To The Chief Secretary
to Government
Fort St. George

Dated 11th 3 May 1866
Recd 15-3 May 1866

No 1057
June 1866 No 866

Recorded
Reporting the murder of
a Malabar woman by
one Abdulla Koya who
was subsequently shot
dead himself by the Police
under circumstances stated

24/25

For order