

MADRAS RECORD OFFICE.

Government of Madras.

Justice DEPARTMENT.

G.O. No. 4	Press ~~Mis~~
<i>7.6</i> Dated 3 1	1867.

67

Not to be folded or roughly handled*QMS*

No. 7. Read the following letter from the Session Judge of Berhampore, to the Chief Secretary to Government, Fort Saint George; dated Berhampore, 19th November 1866, No. 168.

I have the honor to submit, for the orders of Government, the record of case No. 62 of 1866, of this Court's file, in which I have passed a sentence of transportation for life upon the prisoner.

2. For the reasons hereunder stated, I beg to recommend that the Government be pleased, under Section 55 of the Code of Criminal Procedure, to commute the punishment to simple imprisonment for a term of seven (7) years.

3. The following is a statement of the evidence and grounds of conviction :—
The prisoner pleads not guilty.

The 1st witness states that, one morning, when he was passing prisoner's house, he saw the prisoner sitting on his doorway crying, and, when he asked him what was the matter, he (prisoner) said that his sister had troubled him very much for food, and that, on the previous night, he had thrown her into a well which he pointed out; that he (1st witness) reported what prisoner had said to the Curnum and Moonsiff, who sent for the Police, and had the dead body of the child taken out of the well.

The 2nd witness (Village Moonsiff) states that, on 1st witness reporting that prisoner had told him that he (prisoner) had thrown his sister into a well, he (2nd witness) sent a message to the neighbouring Station House, and, after the Deputy Constable came, had the body taken out of the well; that prisoner, who was present at the time, said that his sister had troubled him to give her food, and had fouled the house, and that he had, therefore, thrown her into the well.

Second witness further states that prisoner has no relatives living in the village, his parents having died of cholera 5 months previously; that he lives by begging; that he is nine years old; and that the deceased was two years old.

The 3rd witness (Police Constable) corroborates the statement of the 2nd witness.

The prisoner made a free confession of his guilt before the Sub-Magistrate.

Before this Court, he asserts that he left the deceased by the side of the well, and went to stool, and that, when he came back, he found that she had fallen in, and that, when he called some of the villagers (whose names he does not know) to his assistance, they refused to come.

The Assessors are of opinion that the prisoner is not guilty, because he did not repeat his confession of guilt before this Court, but I feel compelled to differ from them. I see no reason whatever to doubt the truth of the confession which the prisoner repeated on three separate occasions—firstly, to the 1st witness; 2ndly, to the 2nd witness; and 3rdly, to the Sub-Magistrate. Moreover, the fact of his endeavouring to excuse himself, in his defence before this Court, by saying that the child fell into the well accidentally, and that some of the villagers, whom he called, refused to come to his assistance, shows his knowledge that he had done wrong, and that he knew the nature and consequences of his conduct.

4. I think this a case in which the maxim "*malitia supplet aetatem*" applies, and I have convicted the prisoner accordingly, and sentenced him to the alternative punishment of transportation for life; but, considering his youth and destitute condition, and the peculiar circumstances of his being left alone with an infant sister

*Proceedings of the Madras Government, Judicial Department,
3rd January 1867.*

whom he had no means of supplying with food, I think that the ends of justice will be satisfied by a more lenient sentence, and I resolve, therefore, to forward the record to the Government, in view to their remitting part of the punishment under Section 55 of the Code of Criminal Procedure, and I would recommend that the sentence of transportation for life be commuted to simple imprisonment for seven years, and that, if, in the meantime, a Reformatory (as contemplated by Section 433) be constituted, he be transferred thereto, to work out the remainder of his sentence.

ZILLAH BERNAMPORE.

SESSIONS FOR SEPTEMBER 1866.

Session Court, No. 62 on the Calendar.

PRESENT.

E. B. Foord, Esq., Judge.

Nittla Pedda Sambiah, aged 40 years. } Assessors.
Kota Rutnum, " " }

Regina— { Prisoner.
Boodiya Behara.

PROCEEDINGS OF THE COURT.

Trial commenced and closed on the 6th September 1866.

Charge.

Boodiya Behara—You are charged that you, on or about the 14th June last 1866, committed murder, by causing the death of one Chinna, and that you have thereby committed an offence punishable under Section 302 of the Indian Penal Code, and within the cognizance of the Court of Session.

Q. Are you guilty or not?

A. I am not guilty.

Taken before me this 6th September 1866.

(Signed) E. B. FOORD,

Session Judge.

Deposition given by Taru Behara, 1st witness for the prosecution.

About two months ago, one morning, while I was going by prisoner's house, I saw the prisoner sitting in his doorway crying. When I asked him why he was crying, he said that his sister had troubled him very much for food, and that, on the previous night, he had thrown her into a well which he showed me, upon which I reported this circumstance to the Curnum and Carjee (Village Moonsiff) who, with the Police, had the body taken out of the well.

Prisoner has no cross questions.

Read over to the witness in Oriya, which he understood, and acknowledged by him to be correct.

Taken down in my presence and hearing, and under my personal direction and superintendence, on solemn affirmation, this 6th September 1866.

(Signed) E. B. FOORD,

Session Judge.

Deposition given by Bussu Podhano, 2nd witness for the prosecution and Carjee of the village of Muridalla.*

Two months ago, one morning, Taru Behara (1st witness) told me that the prisoner had said he had thrown his sister into a well. I went immediately to the well, and saw the body of a child floating therein, and immediately sent a message to Bengoo Nowpada station, from whence the Deputy Constable came. We and some others had the dead body taken out of the well, and found it was that of the prisoner's sister. The prisoner, who was present, said that his sister had troubled him

* Village Moonsiff.

*Proceedings of the Madras Government, Judicial Department,
3rd January 1867.*

by asking him to give her food and by fouling the house, and that he had therefore thrown her into the well. The prisoner's parents died of cholera five or six months ago. Except prisoner, there was no one in his house. He has no relations living in the village, and he lives by begging.

Prisoner has no cross questions.

Answer to the question put by the Court.—I am Carjee (Moonsiff) of the village, and I therefore know the prisoner, who has lived in my village since nine years. He is nine years old. The deceased child was two years old.

Read over to the witness in Oriya, which he understood, and acknowledged by him to be correct.

Taken down in my presence and hearing, and under my personal direction and superintendence, on solemn affirmation, this 6th September 1866.

(Signed) E. B. FOORD,

Session Judge.

Deposition given by Podono Behara, 3rd witness for the prosecution.

Two months ago, I was a Constable in charge of Bengoo Nowpada station. On the 25th June last, on receiving a message from the Carjee of Muridalla, that prisoner had thrown his sister into a well, I, with the Carjee and some others, went to the well in that village, and had the dead body taken out. It was that of a female child. The deceased child was named Chinna.

Prisoner has no cross questions.

Read over to the witness in Oriya, which he understood, and acknowledged by him to be correct.

Taken down in my presence and hearing, and under my personal direction and superintendence, on solemn affirmation, this 6th September 1866.

(Signed) E. B. FOORD,

Session Judge.

Examination of the prisoner Boodiya Behara.

Q. Did you throw your sister Chinna into the well?

A. I put her down at the side of the well one evening before dark, and went to stool, and when I came back I found she had crept and fallen in.

Q. Did you call any one to assist you to take the child out of the well?

A. I called my villagers whose names I do not know, but they did not come.

Q. Have you any thing more to say?

A. No.

Taken down in my presence and hearing, and containing accurately the whole of the statement made by the prisoner, this 6th September 1866.

(Signed) E. B. FOORD,

Session Judge.

Assessors' opinion.

The Assessors are of opinion that prisoner is not guilty.
(True translations).

(Signed) E. B. FOORD,

Session Judge.

EXAMINATION OF THE PRISONER BOODIYA BEHARA BEFORE THE SUB-MAGISTRATE.

Q.—Have you anything to say in your defence?

A.—I threw the child into the well.

Q.—Why did you throw the child into the well?

A.—I threw her into the well because she cried, caught hold of my hands and feet, and troubled me very much for food.

Q.—When did you throw her in?

A.—I threw her into the well one night.

Proceedings of the Madras Government, Judicial Department,
3rd January 1867.

Q.—What became of the child after you threw her into the well?
A.—Nothing.

Q.—Was she alive or dead?

A.—She was dead.

Q.—Have you any witnesses on your behalf?

A.—I have no witnesses on my behalf.

This was taken by me, and it contains accurately what was stated by the prisoner.
24th August 1866.

(Signed) P. NARISIMHULU,

(True Translation).

Sub-Magistrate.

(Signed) E. B. FOORD,

Session Judge.

No. 8.

ORDER THEREON, 3rd January 1867, No. 4.

The Governor in Council concurs with the Session Judge that the circumstances of the case are such as to call for the exercise of the power vested in Government by Section 55 of the Indian Penal Code, and resolves, accordingly, to commute the sentence of transportation passed by the Session Court to one of simple imprisonment of seven years. The prisoner, with reference to his youth, should be transferred to any Reformatory that may be established hereafter.

2. It is presumed that the age, calling, caste, &c., of the prisoner and witnesses are given at the head of their original depositions. In the translations which accompany the foregoing letter those particulars do not appear.

(True Extract).

Chief Secretary.

To the Session Judge of Berhampore.

„ Inspector General of Jails.

302

Sister into a well he (2nd witness) sent a message to the neighbouring Station House and after the Deputy Constable came, had the body taken out of the well, that prisoner who was present at the time said that his sister had troubled him to give her food and had fouled the house and that he had therefore thrown her into the well.

2nd Witness further states that prisoner has no relatives living in the village his parents having died of Cholera 5 months previously, that he lives by begging, that he is 9 years old, and that the deceased was 2 years old.

The 3rd witness (Police Constable) corroborates the statement of the 2nd witness.

The prisoner made a free Confession of his guilt before the Sub Magistrate.

Before this Court he asserts that he left the deceased by the side of the well, and went to stool, and that when he came back

he beat her
with his
hand
and she
died

back he found that she had fallen in,
and that when he called some of the
villagers (whose names he does not know) to
his assistance, they refused to come.

The Assessors are of opinion that the
prisoner is not guilty, because he did not ^{I don't think he}
repeat his confession of guilt before this ^{admitted any}
Court, but I feel compelled to differ from ^{the}
them. I see no reason whatever to doubt
the truth of the Confession which the
prisoner repeated on 3 separate occasions,
firstly to the 1st witness, 2^{ndly} to the 2nd witness,
and 3^{rdly} to the Sub-Magistrate. Moreover
the fact of his endeavouring to excuse
himself, in his defence before this Court
by saying that the child fell into the well
accidentally and that some of the villagers,
whom he called, refused to come to his assistance,
shows his knowledge that he had done wrong
and

406
is 9 years old. The deceased child was
2 years old.

Read over to the witness in Oriya
which he understood and acknowledged
by him to be correct.

Taken down in my presence and
hearing and under my personal direction
and superintendence on solemn affirma-
tion this 5th September 1866.-

(Signed) E. B. Ford

Session Judge.

Deposition given by Podono Behara -
3rd Witness for the prosecution -
2 Months ago I was a Constable in charge
of Bungalow Kumpada Station. On the 25th
June last, on receiving a message from the
Cargie of Muridalla that prisoner had
thrown his sister into a well, I with the
Cargie and some others went to the well
in

in that Village and had the dead body taken out. It was that of a female child. The deceased child was named Chinna.

Prisoner has no cross question.

Read over to the witness in Oriya which he understood and acknowledged by him to be correct.

Taken down in my presence and hearing and under my personal direction and Superintendence on solemn affirmation this 6th September 1866.

(Signed) E. B. Ford

Session Judge.

Examination of the prisoner.

Boodiya Behara.

Q. Did you throw your sister Chinna into the well?

A. I put her down at the side of the well

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Session Judge of Berhampore.

Here, enter 19th November 1866.

Order. 3rd Jan'y, 1867.

The Governor in Council concurs with the Session Judge that the circumstances of the case are such as to call for the exercise of the power vested in Govt. by Section 55 of the Indian Penal Code, and resolves accordingly to commute the sentence of transportation passed by the Session Court to one of simple imprisonment of 7 years. The Prisoner, with reference to his youth, should be transferred to any Reformatory that may be established hereafter.

It is presumed that

that the age, calling, caste
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foregoing letter those par-
ticulars ^{do} are not appear-

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To the Supreme Judge of Porhamore. } despatch
" Chief Justice of India. }

Part of 15- Jan'y.

Indiana 1867. Department.

No. 11.

PROCEEDINGS OF GOVERNMENT.

Dated 3^d January 1867.

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