Confidential No. 106
1891

Confidential.

Judl. Department.
G.O., dated 30. 6. 91
No. 1286
Series. Press.

V.E

First copy sent to Press

Returned for signature

Despatched

[Despatch Abstract.]

M. T. Varada Rao. ~~[illegible]~~. ~~Directing~~ ~~to~~ Passing orders regarding the conduct of — Ag. Hd. Asst. Magte. Tinnevelly in c. cases 20 & 21 of 1890 in the file of his Court and directing that he be reduced to the post of Asst. Collector with the powers of a Magistrate of the 2nd Class & transferred to Malabar the Collr. of which dt. should report on him at the end of a year.

BACK PAPER, NO.

READ AGAIN ORDER OF GOVERNMENT, DATED
18 , No.

FURTHER PAPER, NO. 17. Confidl. OF 1892

ENCLOSURES

Spare copies.

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A = Print in full.
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30th June ~~JANUARY~~ 1891, No. 1286, JUDICIAL.

CONFIDENTIAL.

Please add the additional matter herewith furnished & forward two proofs. The fi "read again" G.O.s already in ty should be rearranged chronologically thus—

1/ G.O. No. 1338 . 11/8/90
2/ — 1101 A - 23/10/90
3/ — 728 - 31/10/90
4/ — 1998 - 12/12/90
5/ — 2059 - 19/12/90
6/

6a
2/7.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ again—

G.O., dated 31st October 1890, No. 728, Public.

Read—the following paper:—

Proceedings of the Board of Revenue (Land Revenue), dated 8th September 1890, No. 5679, Miscellaneous.

FULL BOARD.

Read—petition from Pichu Iyer, late Village Munsif and Union Chairman of Vadakukalladakurichi, Ambásamudram taluk, Tinnevelly district, dated 14th July 1890.

Resolution—dated 8th September 1890, No. 5679, Mis.

The Board cannot go behind the finding of the High Court that the appellant kept back a document apparently with the intent of screening a fellow Brahmin who was accused of murder and ultimately found guilty and hanged. He seems to have been most properly dismissed and may think himself fortunate that he got off so lightly.

2. The Board cannot but regret that the Acting Head Assistant Collector, Mr. T. Varada Rao, so little appreciated the grave character of the appellant's offence as to think it adequately punished by a sentence of six months' suspension. The weakness with which he acted in this case is all the more deplorable, seeing that the Acting Head Assistant Collector, like the munsif and the accused, is a Brahmin. His failure to appreciate the gravity of the munsif's conduct, in shielding the perpetration of a peculiarly base and atrocious crime, could not fail to have produced a most unfortunate impression on the ignorant population of the locality.

3. The Board feels constrained to draw the attention of Government to this case.

(True Extract.)

(Signed) H. A. SIM,
Ag. Secretary.

To the Chief Secretary to Government, Public Department,
with petition and six enclosures, to be returned.

Copy to the Collector of Tinnevelly.

Endorsement on the above, dated 13th September 1890, No. 5643.

Transferred to the Public Department.

(Signed) R. C. C. CARR,
Ag. Under Secy. to Govt.

Order—dated 31st October 1890, No. 728, Public.

His Excellency the Governor in Council agrees with the remarks of the Board of Revenue in para. 2 of their Proceedings, forwarded with the paper read above, and is of opinion that Mr. Varada Rao exhibited a lamentable want of judgment in having considered six months' suspension a sufficient punishment for the conduct of the village munsif in keeping back a document to screen a murderer. Mr. Varada Rao will be informed that he has in this matter incurred the grave displeasure of Government.

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the Revenue Department (with papers returned).

Herewith G.O.
23.10.90. R.H.
[illegible]
([illegible])

G.O., dated 12th December 1890, No. 1998, Judicial.

Read—the following papers :—

Telegram from BAVADI SHAIKH MUHI-UD-DIN ROWTER, Palamcottah, to His Excellency the Governor in Council, Fort St. George, Ootacamund, dated 22nd September 1890.

Despatched memorial your Excellency Saturday. Prompt orders prayed for; otherwise serious consequences may result.

Transferred to the Chief Secretary to Government for disposal.

(By Order.)

(Signed) J. J. SCOTT-CHISHOLME, Major,
Military Secretary,
for Private Secretary.

22nd September 1890.

ENCLOSURE.

Memorial from BAVADI SHAIKH MUHI-UD-DIN ROWTER and others, ryots of Pathamadi and Kesavasamudram villages, Ambásamudram taluk, Tinnevelly district, to His Excellency the Right Honorable the Governor in Council, Fort St. George, Madras, dated 19th September 1890.

The memorialists beg to approach your Excellency with a recital of their unbearable grievances in the firm hope that your Excellency will be pleased to redress their wrongs.

2. That for some time past there have been misunderstandings between the memorialists and other Muhammadan residents of the said villages on the one side and the Brahmin and Vellala residents of the same villages on the other.

3. That matters came to a climax by two false charges of rioting being brought against some of the leading Muhammadan ryots who are signatories to this memorial.

4. That finding that the magistrate of the division in which the memorialists' villages lie was prejudiced against the memorialists, they filed affidavits in the High Court praying for a transfer of the said cases to another district; but their Lordships the High Court Judges refusing the transfer, ordered the said magistrate to commit the said cases to the Court of Sessions, should a *primâ facie* case be made out.

5. That the said cases were committed accordingly to the Court of Sessions, were tried as calendar cases Nos. 43 and 44 of 1890 on the file of the Sessions Judge, and the defendants were acquitted on the 18th and 19th August 1890.

6. That on the night of the 19th August a housebreaking and theft took place in the house of one P. Nagur Rowter, and K. Sodalaimuthu Taven and Kuttai Ramasamy Taver were arrested on the spot and placed in the custody of the village munsif of Kesavasamudram, Venguvier, who figured as a witness for the prosecution in sessions cases Nos. 43 and 44 of 1890.

7. That the said village munsif who inspected the scene of offence on the very night of the offence, purposely delayed sending his report to the police till 12 P.M. the following day with a view to weaken the case for the prosecution.

8. That the police officers who came to hold an inquiry, taking into consideration the considerable delay of the village munsif in sending his report, referred the case as false.

9. That thereupon the taluk magistrate of Ambásamudram came to the village of Pathamadai on the 26th August, after examining the complainant ordered the complaint to be struck off, and on the following day one of the defendants, Sodalaimuthu Taven, preferred a complaint under sections 193 and 211, Indian Penal Code, against the complainant in the theft case and also against some of the memorialists, and it is now pending before the magistrate.

10. That in the meanwhile the feeling between the Muhammadans and the Brahmins and Vellalas has grown so strong that the poor memorialists are subjected to the undermentioned hardships and indignities which are too hard to bear.

11. That the Brahmins and Vellalas, who are influential men, have got together a large body of Maravas and are collecting funds for ruining the memorialists by concocting criminal cases against them.

12. All other castemen are forbidden to hold social intercourse of any kind with the memorialists and their castemen.

13. The memorialists' and their castemen are forbidden from taking water from the public tanks, wells, &c., and should the memorialists castewomen go to such tanks and wells for the purpose of drawing water, they are subjected to gross indignities and abuse.

14. That all artizans are forbidden to do any kind of work for the Muhammadans on pain of having their houses looted by the Maravas should they dare to disobey.

15. That people of all other castes are strictly forbidden to purchase articles from and sell articles to Muhammadans on pain of the same penalties.

16. That field laborers are prohibited from ploughing or reaping or doing any kind of out-door work for memorialists.

17. In fact all kinds of social intercourse, help and assistance which one casteman has from and renders to another is put an end to altogether.

18. Under the circumstances, the memorialists respectfully and most humbly pray your Excellency in Council to be graciously pleased to order the District Magistrate to hold a thorough inquiry into this matter and alleviate the dire distress to which the memorialists are subjected by the conduct of the Brahmin and Vellala ryots of Pathamadai and Kesavasamudram.

Informing Bavadi Sheikh Moidin
Rowter Palamcottah in reply to
his telegram of the 28 October that
his memorial has been transferred to the District Magistrate
Tinnevelly for report

3

Endorsement on the above, dated 13th October 1890.

Referred to the District Magistrate, Tinnevelly, for early remarks.

(By Order.)

(Signed) A. BUTTERWORTH,
Ag. Asst. Secretary.

No. 1948.

Head Assistant Magistrate for early report.

15th October 1890.

(Signed) C. E. HENRY,
Acting Joint Magistrate.

From T. VARADA RAO, Esq., Acting Head Assistant Magistrate, to the District Magistrate, Tinnevelly, dated Tinnevelly, 10th November 1890, No. 348.

I have the honor to report on your endorsement, No. 1948, dated 15th October 1890.

2. In my letter, dated 24th October 1890, No. 340, I have given full particulars regarding the faction in the village of Pathamadai between the Muhammadans and Hindu residents of that village. I have also pointed out that the faction which could have been nipped in the bud assumed undue importance by reason of the Muhammadans petitioning to the High Court and the Government to evade the due course of law.

3. At present the ringleaders of the Muhammadan faction are under trial before me and the taluk magistrate, Ambásamudram, for offences under sections 211, 457 and 380, Indian Penal Code. Recently you have rejected the petition of the Mussulmans for revoking the sanction given by the local sub-magistrate for prosecution under section 211, and I understand that you have also dismissed their application to get the housebreaking and theft cases transferred to some magistrate's file other than the taluk magistrate of Ambásamudram.

4. Regarding para. 5 of the petition, I have reported in my letter quoted above that the acquittal by the Sessions Judge of the defendants in calendar cases Nos. 43 and 44 had a very evil effect upon the factions in the village.

5. In regard to paras. 6, 7, 8 and 9, I have the honor to state that the matter stated therein is the subject of trial before me; pending the disposal of the case, I am unable to state what truth there is in these statements.

6. *Para. 10.*—There is no doubt that there is a faction in the village. The Muhammadans complain that the Brahmins and Vellalas have combined together and are raising funds to ruin them by concocting false cases. On the other hand, the Hindus allege that their temples have been robbed, that their women are insulted by the Muhammadans when washing themselves in the channels, that fish, carrion and rotten hides are thrown into their streets. It is also alleged that passengers going singly on the road are molested. On inqury I find that, although subject to great exaggeration, the counter-statement of the Hindus are in the main true.

7. I went to the village and made personal inquiries regarding paras. 11 to 17 of the memorial. One set of artizans, laborers, &c., produced by the Hindus deny that they have been forbidden to do work for the Muhammadans; another set speaks to the contrary. In my opinion neither faction is strong enough to interdict any class of artizans and laborers from working for the other. The men who speak in support of the memorialists admitted that, notwithstanding the alleged interdiction of the village community to prevent them from working for the Mussulmans, they continue to serve them, as otherwise their chances of livelihood are lost. In view of the above it is impossible to support the allegation that the Muhammadans can get no sort of work done for them.

8. *Para. 13.*—There is a separate tank in the Muhammadan quarters for their use constructed out of local funds.

9. *Para. 15.*—Up to the date of my inquiry I found that Hindus of all caste are purchasing articles from the Mussalmans, who are the chief bazaarmen in the village.

10. My inquiry elicited the fact that, notwithstanding these disputes, the Muhammadans and the Hindus continue to have extensive reciprocal money-dealings as heretofore.

11. In conclusion, I have the honor to state that the memorial is an artifice to throw dust in the eyes of the higher authorities, connived for the purpose of making out that the local magistracy and the police are biassed against the memorialists, and also to prevent by all possible means the termination of the magisterial cases now pending in any way injurious to themselves.

Endorsement on the above, dated 21st November 1890, No. 2161.

Submitted to Government with reference to Government endorsements Nos. 3809 and 3841, which are herewith returned. A copy of the Head Assistant Magistrate's letter, No. 340, dated 24th October 1890, with copy of this office endorsement thereon, No. 2061, dated 3rd November 1890, to the Superintendent of Police, is enclosed.

(Signed) J. P. BEDFORD,
for *District Magistrate.*

From T. VARADA RAO, Esq., Acting Head Assistant Magistrate, to the District Magistrate, Tinnevelly, dated Tinnevelly, 24th October 1890, No. 340.

With reference to your letter, No. 1904, dated 2nd October 1890, I have the honor to state as follows:—On the day of the offence, I proceeded to Pathamadai on a revenue inspection. During the inspection a crowd of about three to four hundred people assembled, consisting mostly of Lubbays. Finishing the inspection, I walked to the square tank at the request of the Lubbays. It was evident to me then from the gesticulations of the parties and the way in which they talked to each other that there were two hostile factions among the Lubbays in the village. From the tank I proceeded along the street to the place where my carriage was standing, followed by the crowd, which was gradually increasing. Meanwhile the Lubbays began to behave very aggressively towards each other and the leaders proceeded to point to each other as the cause of differences in the village and used offensive language towards one another. A shout was raised behind me that somebody was being beaten. I turned round to look and found the whole crowd struggling together in a mass and the whole enshrouded in a cloud of dust. Stones were also pelted at each other and, looking from a distance of ten yards, the crowd presented a body of struggling men. I sent off messengers to the police and accompanied by the village officers retired to a distance. I put down the names of the principal Lubbays present and returned to my house. This is in brief what occurred on the occasion. The next morning the leaders of both factions appeared at my bungalow and expressed their regret for their unseemly conduct and requested to be pardoned. I did not feel disposed, under the circumstances of the case, to regard their conduct the previous evening as excusable and would not interfere with the due course of law. Hence followed their applications without success to the District Magistrate and to the High Court to transfer the case from my file. When I committed the case to the sessions, both parties made a rather astonishing request that I should speak to the Sessions Judge with a view to their being acquitted.

2. Since the decision of the Sessions Judge, I regret to have to state that the Lubbays in Pathamadai have become totally unamenable to all authority. Frequent disturbances and concocted cases are becoming the rule. The Brahmins and Vellalas on the one hand have organized a private fund and are trying in a body to withstand the aggressions of the Lubbays, and the Lubbays on the other hand complain that the rest of the villagers are plotting their destruction. At present there are two cases before me arising out of these complications pending disposal. I am convinced that I shall be able to put down aggression on the part of anybody and quiet the state of things in Pathamadai if time and support are given to me. I am quite sure that the Superintendent of Police, who knows the state of things in the village, will agree with my views.

Endorsement on the above, dated 3rd November 1890, No. 2061.

Forwarded to the Superintendent of Police, with reference to his endorsements on the petitions presented by the Lubbays. The state of affairs has come to such a pass that I think the ringleaders in both parties should be placed before the magistrate with a view to their being bound over to the peace if this has not already been done. If a police report be sent in giving names of witnesses and defendants and the substance of evidence against each party, action will be taken against them under Chapter VIII, Code of Criminal Procedure.

(Signed) C. E. HENRY,
Acting Joint Magistrate in charge.

Order—dated 12th December 1890, No. 1998, Judicial.

The petition will be transferred to the District Magistrate with the remark that the case before Mr. Varada Rao and all the cases arising out of the factious feeling in the villages in question should be taken up and disposed of by himself or some other European magistrate.

2. The petitioners will be referred to the District Magistrate, who has received orders in their case.

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the District Magistrate, Tinnevelly.
Para. 2 to Petitioners.

G.O., dated 11th August 1890, No. 1338, Judicial.

Read—the following paper:—

From J. H. A. TREMENHEERE, Esq., Acting District Magistrate of Tinnevelly, to the Chief Secretary to Government, dated Tinnevelly, 30th July 1890, No. 1547.

I have the honor to request that Government may be pleased, under section 417, Code of Criminal Procedure, to direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal passed by the Head Assistant Magistrate of Tinnevelly in cases * Nos. 20 and 21 of 1890 on his file. There seems to me to have been a disastrous failure of justice in a most important rioting case.

* Records are herewith submitted in a separate packet.

Tenkasi.

2. As the judgment observes, "of the rioting itself, there is no room for doubt. Reports of serious rioting were received on the very night, and the police and the village munsif proceeded to the spot, which is in the heart of the town itself." "A number of men were . . . . . sent to the hospital as having received injuries," namely, four from one faction, one from the other, of whom one vomited blood for six days. According to the first reports some ten men † were engaged $\frac{\text{on one side}}{\text{Kayalpatnam faction}}$ and some fifty ‡ $\frac{\text{on the other}}{\text{Gundukatti faction}}$. The village munsif, an impartial witness (court second witness), says "the cement was all detached" from two of the houses of the smaller faction, which supports the latter's contention that the houses were broken into by force; tiles also were broken on four houses. In short, Government will observe that a very fierce and determined faction fight took place, in all probability involving breaking into houses by night, and this in the large town of Tenkasi. It is clear that the most careful inquiry was needed to arrive at the truth of the complaints that were immediately put in, followed on the 4th April by charge sheets against each faction.

† Of whom three were named.
‡ Of whom 29 were named.

3. Unfortunately, the Head Assistant Magistrate was not sufficiently careful. In case No. 20 against the larger or Gundukatti faction, the police charged 32 persons; this was too large a number to try in one case, for no Court can properly recollect the bearing of minor points against so many persons. In case No. 21, however, against the smaller or Kayalpatnam faction, the magistrate charged as many as 43 persons, although the police had put in a charge sheet against only three, and although the first complaint had stated that the whole faction had consisted of only "some ten men." This seems to me a great error of judgment.

NOTE.—It is true a subsequent complaint put in by different persons named 43 men, but this was put in only on the 30th, *i.e.*, two days after the riot, and the two complaints did not necessarily concern the same transaction.

4. The next serious error was in writing one judgment for the two cases.

5. However, the principal point of my reference is the magistrate's treatment of the evidence of identification. He expends two paragraphs in a mere tabular list of the witnesses who speak against each accused (*the numbers generally vary from six to nine*), and then simply characterizes the identification as worthless. One has the right to expect full reasons for such a conclusion, but these are all he has set out, viz.—

Calendar Case No. 20.—In the first complaint only 29 out of the 32 defendants were named.

Remark—i. The criticism does not touch the case against the 29.

ii. In fact, the complaint runs: "These 29 and others, in all about 50."

Calendar Case No. 21.—In the first complaint only three out of the 42 defendants were named.

Remark—i. And the police charged only these three. The magistrate has first added more and then thrown the case out for the addition.

ii. The first complaint was put in by one man and he complained against those who had beaten him. Next day five more men complained against those who had beaten them.

The injured persons are said to have complained in the first instance to a policeman who is said to have refused to receive the complaint; he was not placed in the box.

Remark.—Section 252: "The magistrate *shall* ascertain the names of any persons likely to be acquainted with the facts of the case and *shall* summon" them.

"The case is made to rest upon a statement upon which no evidence is offered and which does not acquire any force by repetition in argument."

Remark.—Whether or not this applies to not summoning the policeman, it is unintelligible.

Both Cases.—The evidence is interested and biassed.

Remark.—In nine out of ten riot cases it is, but it is the duty of the magistrate to ascertain whether even from biassed evidence the truth can be gathered.

It is not proved that the defendants "each one of them" took part in the rioting.

Remark.—The proof was not necessary. Enough if there is an unlawful assembly, and in prosecution of its common object force is used by any member, then every member is guilty of rioting (Penal Code, section 146). Here is a serious error of law.

6. I believe Government will agree with me that (certainly at least in case No. 20) never were such feeble reasons given for doubting strong evidence of identification. The 29th and 35th defendants in case No. 21 when examined as witnesses 5th and 8th in case No. 20 even admitted their presence; one of them, and four others (three in case No. 20 and one in case No. 21) were actually treated in the hospital for wounds. The $\frac{\text{22nd defendant}}{\text{Case No. 21}}$ also admitted his presence. Really, if magistrates are to treat their responsibilities in this light way they might as well give up writing judgments at all.

7. In neither case has the magistrate touched on the defence evidence, so I suppose he saw no special strength in it.

8. In the face of the glaring defects in the inquiry, and in the judgment, and in view of the strong evidence against most of the accused, supported in many

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instances by the fact that the accused were named in the first very early reports, I confidently request that Government may be pleased to direct an appeal. Of course, it will be within the discretion of the High Court to order a new trial by another first-class magistrate.

Order—dated 11th August 1890, No. 1338, Judicial.

The Government Pleader, Madras, will present an appeal to the High Court under section 417 of the Code of Criminal Procedure against the order of acquittal passed by the Acting Head Assistant Magistrate of Tinnevelly in calendar cases Nos. 20 and 21 of 1890 on his file, and will report the result.

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the Government Pleader, with original letter and records.
„ District Magistrate, Tinnevelly.

G.O., dated 19th December 1890, No. 2059, Judicial.

Read—the following paper:—

From E. B. POWELL, Esq., Government Pleader, to the Chief Secretary to Government, dated Madras, 10th December 1890, No. 1106.

With reference to the Proceedings of Government, dated 11th August 1890, No. 1338, Judicial, I have the honor to report that the criminal appeals* presented against the judgment of acquittal in calendar cases Nos. 20 and 21 of 1890 on the file of the Head Assistant Magistrate of Tinnevelly came on for hearing to-day, and that the High Court set aside the acquittal and ordered a new trial.

2. I have applied for a copy of the judgment, which will be sent to you on receipt.

3. The District Magistrate's letter in original is herewith returned. The other enclosures were returned to the District Magistrate direct.

* Nos. 359 and 360 of 1890 on the file of the High Court.

Order—dated 19th December 1890, No. 2059, Judicial.

Copy of the Government Pleader's letter will be communicated to the District Magistrate, Tinnevelly.

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the District Magistrate, Tinnevelly.

ORDER—dated January 1891, No. Judicial.

(H. E. matter annexed]

Age.
45
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n the file of the Head Assistant Magistrate Tinnevelly

under Section 147. I.P.C.

Judgment.

ection 258 C.P.C.

	DATE OF.					
Age.	Occurrence.	Complaint.	Apprehension.	Commencement of trial	Close of trial.	Explanation of delay.
		3				
45	28-3-90	28-3-90	30-5-90	30-5-90	2-7-90	As there was then no Taluk Magistrate in Tenkasi the defendants were charged before this Court But the cases were sent to the Taluk Magistrate Ambasamudram for disposal. At the instance of the Superintendent of Police the cases were retransferred to the file of this Court. Many of the defendants did not appear on warrants & attachment
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Some petty traders. To get involved

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All the

appeared on 30

Prosecution witnesses were examined on 30 & 31st 5-90 & the case was adjourned to 16-6-90 for cross examination. Cross examination was made on 18, 19 & 20 June 1890. Adjourned to 23-6-90 for examination of defence witnesses. The defence witnesses were examined on 25th 26th & 27th June. Hearing made on 28-6-90. Judgment written on 30-6-90 & pronounced on 2-7-90

(Initialled) T. V.

in the civil courts. Unlike the Mohomeda
in my division they have carefully kept them
faction fights during all these years. Both
include about 60 to 100 families of hones
artisans whose profession is cloth weaving
some petty traders. To get involved in c

to allow me to send the case to somebody
failure for which I beg to be pardoned.

8. I have taken, as perhaps my Dis
may testify, great pains to check rea
my division. As a matter of fact crime
has fallen considerably during the last

Judgment is most unsa Reader foun
grave

Tinnevelly Head Assistan
Dated 10th Ma
C. No 162

From

T. Varada Rao Esquire
Ag Head Assistant Collec
Tinnevelly

To

The Chief Secretary to Government of
through
The District Magistrate
Tinnevelly

Sir,

With reference to memo from the chief Secreta
dated 2nd Febuary 91 I have the honour to subm
Explanation

I beg to admit in the first place that I ou
written a more elaborate and fuller Judgme
respectfully to state that the Judgment was i
accord with my conviction at the time and
Tenkasi there are and have been two factions
mussulmen. They have been fighting f
in the civil ghts

1st Abst

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ll be their ruin and will reduce their wives

en to the verge of poverty by keeping them away

rdinary avocations. On the other hand they are

lling to keep up the factions by civil disputes,

ly one or two leading spirits on either side will

ed to conduct the litigation. As the Magistrate

ision responsible for its welfare and as an

has had 5 years' experience in the District

ars in the Division where I am employed, I

d to use my local knowledge in the case

oral evidence in the case as I pointed out

gment was worthless. The factionists on

alleged that all the factionists opposed to them

nt in the riot. It was impossible in such

conflicting testimony given with bias, perfectly

me by the conduct of each witness in the box, to

ere ; present and who were not

ccurred in the evening. Not a single police

es the spot although

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of the parties themselves to exaggerate the ca

their opponents

5. I tried the case in Tenkasi town itself an

was represented by a competent pleader. My

case, I respectfully beg to submit, substantiat

the requirements of the case. The parties wen

their houses with evident satisfaction at the

prolonged enquiry against them

6. The renewal of the case against them is to

of a ugly dream so far as the parties are

In proof of my statement that the alleged rio

serious and that the parties are peaceful

that there has been no disturbance of any kind

them in Tenkasi although one whole year h

since the occurrence

7. I beg respectfully to submit that my

write a fuller judgment is due to my indisp

the time. I might ~~[illegible]~~ appealed to th

Vr Obedt

ous burglars have been convicted and sent

long periods. Had I sent in two men whom

be honest and peaceful, I felt it would

pletely upset my influence for good in the

I have the honour to be,

Sir,

Your most obedient Servant

T. Varadarlas

Ag Head Assistant Collector &
Magistrate

A 1621/1/91

L-8

In the High Court of Judicature at

Wednesday the tenth day of December,

One thousand eight hundred and ninety.

Present:-

The Honourable Sir Arthur J. H. Collins, Kt.,
Chief Justice.

The Honourable Mr. Justice Shephard.

Criminal Appeals Nos. 359 & 360 of 1890.

The Government Pleader and Public Prosecutor - } Appellant in both.

1. Sekkan Aganmathu Mithen,
2. P. S. Sikanthar,
3. Mytheen Pillai,
4. Valaikkutti Mammatha,
5. Athan,
6. Savil Aganmithen,
7. Paliam Sekkupeerathu Lubbai,
8. Thivan Mythen.
9. Arasu.
10. Mammathu Sahib,
11. Ismail.
12. Nakkishakkappa.
13. Abdul Khadar Khan,
14. Mammathu Sulaman,
15. Mammathu Mytheen,
16. Meera Sahib Parajan.
17. Magammathu Ameer Pakir,
18. Pishai Mamad Magammathu Pillai Parajan,
19. Magammathu Abouther,
20. Saval Hamithu,
21. Kuni Mammathu Abouther
22. Kuni Meera Sahib,

} Accused in calendar Case No: 20 of 1890.

V Over

Mammathu ... im,
24. Munja Mytheen Pillai,
25. Munja Meera Sahib Sarajan,
26. Myratti Kadar Ousfun Sarajan,
27. Meera Sahib,
28. Sukkan Mammathu Abupathir,
29. Sukkur Abdul Khadur Sarajan,
30. Sattuthkuyabai,
31. Sachi Mirasa, and
32. Peruchali Syed Ibrahim Sarajan.

Accused in Calendar Case No: 20 of 1890.

1. Mahammathu Ismal Lubbai Sarajan
2. Mahammathu Asum Sarajan,
3. Sayiba Sarajan,
4. Abdul Khadir,
5. Sheik
6. Moideen Pillai,
7. Pattappa Magammathu Alli
8. Magammathu Assan,
9. Magammathu Ibrahim,
10. Uva Pillai Lebbai,
11. Pakiri Mammathu Sahib,
12. Voochi Kadar Meera Sahib Sarajan,
13. Meera Sahib,
14. Magamathu Segakaran Pillai Labbai,
15. Magamathu Abdul Rahiman,
16. Shaik Abdul Khadar,
17. Moitheen Pillai,
18. Magammathu Kasim,
19. Sayiba,
20. Maguthu Ibrahim Mytheen Pillai Sarajan,
21. Magam Ibrahim,
22. Ochi Syed Agmmathu,
23. M. Resermma Pillai Sarajan,

Accused in Calendar Case No: 21 of 1890.

... judgment is most unsa ...

24. Pali Meera Sa...
25. Abdul Rahiman Sarayan,
26. Sheik,
27. Meera Sahib,
28. Sheik,
29. M. Meera Sahib,
30. Naval Pakiri Sarayan,
31. Magammathu Alli,
32. W. Moideen Pillai Sarayan,
33. S. Mytheen Pillai Saragan,
34. Magammathu Aboupir,
35. Abavupaper Kattu,
36. Pattanam Osmaye,
37. Pattanam Magammathu Ibrahim
38. Pattanam Mammathu Ali,
39. Anju,
40. Pittumman Lubbai,
41. Mammathu Edmoyi,
42 Revaoi and
43. Abdul Kadar.

Accused in Calendar Case No. 21.

Appeals under Section 417 of the Code of Criminal Procedure against the judgment of acquittal passed on the accused in Calendar Cases Nos. 20 and 21 of 1890 on the file of the Head Assistant Magistrate of Tinnevelly.

These appeals coming on for hearing after the Service of Notice on all the accused in appeal 359 and on all the accused except Nos. 17, 18, 30 & 32nd in appeal 360: Upon perusing the Petitions of appeals and the record of the proceedings in the above cases; and upon hearing the arguments of [illegible] Crown, Counsel for the Government Pleader and Public Prosecutor — Appellant

appellant in both Cases; and of Mr. W. G. Wedderburn, Counsel for the accused in appeal No: 359; and of Mr. K. P. Visvanatha Iyer, Vakil for the 1st and 11th accused in appeal 360; the other accused in appeal No. 360 not appearing in person or by Counsel; the Court made the following

Order:— In our opinion there has been a grave miscarriage of justice in these cases. The riot took place on the 28th of March 1890 and many of the accused were named and arrested before the end of that month. Yet the trial did not begin till the 30th May and was not closed till the 2d July. The number of the persons charged and tried in each case made it practicably impossible for any Magistrate to deal satisfactorily with the evidence as touching each of the prisoners. And we cannot understand why the Magistrate did not at once in the beginning of April take up the charges against the accused persons then arrested or some of them. In the Judgment the Magistrate has made no attempt to deal with the evidence as against the several prisoners but has, in a most perfunctory judgment, observed that the evidence of identification is worthless.

4th Vol The

The Judgment is most unsa[illegible]

and we are compelled to express our grave disapprobation of it. If the Magistrate was unable through the physical pain to dispose of the case properly he ought to have made a representation to his superior.

We must set aside the acquittal except as regards the accused Nos. 17th, 18th, 30th & 32d in 360 on whom notice has not been served and direct all the accused to be tried by a competent Magistrate.

By the Court.

(Signed) W. Morgan
Dy. Registrar,
Appellate Side.

(True Copy)

5 & last Mat.

Superintendent

12. 12: 90

Copied by [illegible]

Ex'd. [illegible]

Order

Crl: Appl: 359 & 360/90.

Judl 308/91/1

C3078.

Application made 12.12. 90

Stamps Appl. recd. 17-1- 1891

~~Stamps~~ 1891

Copy ready 20-1- 1891

Do. Delivered 20-1- 1891

S.

SUPERINTENDENT.

No

Government Pleader's

HIGH COURT,

MADRAS, 20th January 1891.

From

E. B. POWELL, Esq.,

GOVERNMENT PLEADER,

Madras.

To

THE Chief Secretary to

Government, Fort St. George.

SIR,

With reference to your Official Memorandum No. 243 Judicial, dated the 19th December 1890, I have the honor to forward herewith a copy of the order in Criminal Appeals No. 359 and 360 of 1890 on the file of the High Court.

I have the honor to be,

Sir,

Your most Obedt. Servant,

E. B. Powell

Government Pleader.

remarks be.

Often on the High Ct's observ... & by everything submitted of the result of the retrial of the case, he after this lapse of time may break down to some extent – but I think I have been reading Vandalrois judgment & consider that it fully deserved the strictures passed on it by the Judges of the High Ct who, when they order the case to be retried by a "competent" Magistrate seem to intimate that V. R is incompetent –

I ~~don't think~~ doubt whether he sh'd be allowed to exercise 1st Class powers & think that he sh'd be reduced to an Asst.ship. – No explanation can alter the tenor of his judgment & of the High Ct's remarks on it.

I don't understand why the order of transfer & degradation has not issued, unless it was kept back till the High Ct's order was received. J. W. G

27/1/91

Yes, this was the reason W

I consider Mr. V. R. should be called upon to explain (if he can) the remarks of the High Court as to the manner in which he conducted the trial.

W.

Judicial No 30

From

The Government Pleader

Madras

CHIEF SECRETARIAT 21 JAN 91

Dated 20th }
Received 21st } January 1891

No. 44

Encls: 1

Forwarding a copy of the Order in Criminal appeals Nos 359 + 360 of 1890 on the file of the High Court.

Hon. Sir -

The question now for consideration is whether Mr. Varada Rao is to be degraded to an Assistantship. Please see remarks of Hon. Members Justice & Bliss in G.O. of 12.12.90 No. 1998.

21 Jan.

22 Jany

I think it would be no harm to move Varada Rao. but I do not see at present any case for degrading him. His judgment in the rioting cases is not now before us, and I have not seen it. Let us call for a copy and also for any remarks Varada Rao may wish to offer with reference to the observations of the H.C. Also, let us have a report of the result of the retrial.

H.C.

24 Jan

I have no objection to a copy of Varada Rao's judgment being called for (inside) xx

c 23/1
R2 2/2

Reference on No. 3[illegible]8 of 1891.

In replying the above should be quoted.

Judicial DEPARTMENT.

CHIEF SECRETARIAT, MADRAS.

Print in full

~~Read the following~~

Reference O/ 13. 2. 91

With reference to G.O. dated 19th December 1890, No. 2059, the District Magistrate, Tinnevelly, is requested to forward at an early date any explanation Mr. Varada Rao may wish to offer with reference to the observations of the High Court in Criminal appeals No. 359 and 360 of 1890 on ~~their~~ its file

file. The District Magistrate is also requested to forward a copy of the Head Assistant Magistrate's judgment in cases Nos. 20 and 21 of 1890 on his file and to report the result of the retrial of the cases ordered by the High Court.

10 Feb. 1891

To

The Dt. Magte., Tinnevelly Despd 13/2/91.

RWR
13/2

1891

Tinnevelly Head Assistant Magistrate

M.R. Varada Rao

From

The Head Assistant Magistrate

Tinnevelly

To

Reference to the Dt. Magte Tinnevelly

Chief Secretary to the Government of Fort Saint George

Through

The District Magistrate

D/ 13.3.91

Tinnevelly

Dated 10th
Despd 10th } March 1891
Received

Enclosures Nil

Submitting Explanation in the Sivakasi rioting

Judl. (1891) Department

C. No.

CHIEF SECRETARY
16 APL 91
GOVERNMENT MADRAS

Submitted to Government -

2 - The paper has been accidentally delayed while in my possession.

3. I trust that Mr Vareda Rao's explanation will ~~may~~ be considered sufficient. He appears to have acted to the best of his judgment in a case where party feeling was very strong -

F.A. Nicholson
District Magistrate.

31st March 1891.

Tinnevelly.

N -

Read current ?

Ref. Dy 11th April 1891

The Dt. Magte is requested to forward, as directed in Refce. on C. No. 308, copy of the Hd. Asst. Magte's judgment in cases No. 20 & 21 of 1890 on his file & to report the result of the retrial ordered by the High Court. ~~The size of stationery on which~~ the Hd. Asst's explanation has been submitted is against the orders ~~of Govt. on this point~~

To the Dt Magte Tinnevelly.

---

757 / 10/3/91

Tinnevelly Head Assistant Magistrate Office

From

The Head Assistant Magistrate
Tinnevelly

To

The Chief Secretary
to the Government of
Fort Saint George

through

The District Magistrate
Tinnevelly

Dated 10th } March 1891
Despd 10th }
Received

RECEIVED
10 MAR 91
F.A. NICHOLSON

Enclosures Nil

Submitting Explanation in the Tenkasi rioting Case

C. C. Nos 20 & 21.

There are two factions in the Tenkasi Town among Lubbays. One called the Kayalpatam faction and the other is called the Gundakatti faction.

2. It appears from the evidence that the Kayalpatam factionists have instituted a suit in the Sub-Court of Tinnevelly regarding the possession of a building in which one side alleges is a Mosque and the other side declares to be only a tomb. I do not intend to say what the building is, a tomb or a mosque, as it is outside the limits of the present enquiry. It is evident however that in the suit the Kayalpatam factionists are opposed by the Gundakatti faction. Not content with the battles fought out in the Sub-Court, the two factions engaged in serious rioting in the Musulman quarter of Tenkasi on 28-3-90.

3. Of the rioting itself there is no room for doubt. Reports of serious rioting were received on the very night and the Police and the village Magistrate proceeded to the spot which is in the heart of the town itself. There was no Taluk Magistrate at the time and the Sheristadar Magistrate is said to have been absent from Head Quarters. The presence of a Superior Magistrate or an Officer of the standing of a Taluk Magistrate would have perhaps not prevented the rioting but would certainly have helped to the discovery and apprehensions of the men really present. The village Magistrate and the Station House officer proceeded to the spot not long after the occurrence but they went after an interval sufficient to allow of the dispersion of the active belligerents on either side. A number of men were sent to the Hospital as having received injuries more or less slight in nature and all that independent evidence testifies to in these cases is that a few houses were slightly damaged in the front.

4. In that last sentence of the preceding paragraph I have exhausted the only independent evidence in the case, viz, regarding the appearance of the houses. There is a very curious contrast noticeable between the depositions of the witnesses for the prosecution in each case regarding the damage caused and the actual damage was confined in sober truth to the breaking of a few tiles in the front of 4 houses and was speedily repaired by the respective owners.

5. There is a good deal of exaggeration in the statements of the witnesses for the prosecution in Each Case. During the Examinations the bias of Each witness was so transparent that it seemed to the Court perfectly hopeless to obtain a word of truth from either side.

6. In C.C. No 20 the number of defendants is 32. In C.C. 21 the No is 43. Thus Each faction has dragged into Court a few families on Each side. I also find that the defendants form several groups, Each group Consisting of the members of a particular family.

7. The riot is said to have occurred between 7 & 9 P.M. on the night of 28-3-90. Each party gives different version of how the riot arose, but as I have already said the Evidence of there having been a riot is conclusive to my mind.

8. The identification in Each Case is as follows:—

Calendar Case No 20.

Defendants.

1. is identified by prosecution witnesses 1 to 9.
2 —— " —— " —— 1 to 9.
3 —— " —— " —— 1 to 9.
4 —— " —— " —— 1 to 9.
5 —— " —— " —— 1 to 5 - 7 to 9.
6 —— " —— " —— 1 to 5 - 7 to 9.
7 —— " —— " —— 1 to 9.
8 —— " —— " —— 1 to 5 - 7 to 9.
9 —— " —— " —— 1 to 5 - 7 to 9.
10 —— " —— " —— 1 to 5 - 7 to 9.
—— " —— " —— 1 to 5 - 8 & 9.
—— " —— " —— 1 to 5 - 7 to 9.
13 —— " —— " —— 1 to 5 - 7 to 9.
14 —— " —— " —— 1 to 5 - 7 to 9.
15 —— " —— " —— 1 to 5 - 8 & 9.
16 —— " —— " —— 1 to 5 - 7 to 9.
17 —— " —— " —— 1 to 5 - 7 to 9.
18 —— " —— " —— 1 to 5 - 7 to 9.
19 —— " —— " —— 1 to 5 - 8 & 9.
20 —— " —— " —— 1 to 5 - 7 to 9.
21 —— " —— " —— 1 to 9
22 —— " —— " —— 1 to 9.
23 —— " —— " —— 1 to 5 - 7 to 9.
24 —— " —— " —— 1 to 5 - 8 & 9.
25 —— " —— " —— 1 to 5 - 7 to 9.
26 —— " —— " —— 1 to 5 - 7 to 9.
27 —— " —— " —— 1 to 5 - 7 to 9.
28 —— " —— " —— 1 to 5 - 7 to 9.

Calendar

Defendants		Prosecution Witnesses.
29	" "	1 to 5 - 8 & 9.
30	" "	1 to 5 - 8 & 9.
31	" "	1 to 5 - 7 to 9.
32	" "	1 to 5 - 7, 8 9.

In Calendar Case 21.

Defendants		Prosecution Witnesses.
1	" "	1 to 10 Except 5.
2	" "	1 to 10 — Do.
3	" "	1 to 10
4, 5, 7, 8, 14, 22, 25, 30, 35	"	1 to 10 Except 5.
6	" "	1, 3, 6 to 10
9	" "	1, 3, 4, 6 to 9
10	" "	1 to 9 Except 5
11	" "	1, 3, 6 to 9.
12	" "	1, 3, 4, 6 to 10.
13	" "	1, 3, 6 to 9.
15	" "	1, 3, 6 to 10.
16	" "	1, 3, 4, 6 to 10.
17	" "	1, 3, 4, 6 to 10.
18	" "	1, 3, 4, 6 to 9.
19	" "	1, 3, 4, 6 to 10.
20	" "	1, 3, 4, 6 to 10.
21	" "	1, 3, 4, 6 to 9.
23	" "	1, 3, 4, 6 to 10.
24	" "	1, 3, 4, 6 to 10.
26	" "	1, 3, 6, 6 to 9.
27	" "	1, 3-4-6 to 10.
28	" "	1, 3, 4-6 to 9.
29	" "	1, 3, 4-6 to 10.
31	" "	1, 3, 6 to 10.
32	" "	1, 2, 3, 6 to 10.
33	" "	1 to 4, 6 to 9.
34	" "	1, 3, 6 to 9.

36	" "	1, 3, 6 to 9.
37	" "	1, 3, 6 to 9.
38	" "	1, 3, 4, 6 to 10.
39	" "	1, 3, 6 to 9.
40	" "	1, 3, 6 to 10.
41	" "	1, 3, 6 to 9.
42	" "	1, 3, 6 to 10.
43	" "	1, 3, 4, 6 to 10.

9. It will not be too strong to characterize the identification as worthless. The Offence occurred on 28-3-90. In Calendar Case 20, the Complaint was presented the next day to the Local Magistrate. In the 1st Complaint of the 32 defendants only 29 defendants are mentioned, the remainder 3 (30-31 and 32 defendants) are not named. In Calendar Case 21 if the evidence for the prosecution is to be trusted information was taken the next day to the station but the Police would not listen to it. In their Complaint presented next day only 3 names are mentioned (4, 5 and 6 defendants) although 43 persons were subsequently charged. In Calendar Case No 21 the prosecution

did not put the refactory Police man who refused to listen to their complaint in the box. The case is made to rest upon a statement upon which no evidence is offered and which does not acquire any force by repetition in argument.

10. I am unable to convict the defendants on the assumption that they & each one of them took part in the rioting. Such supposition being based on the interested and biased evidence of witnesses whose preference for either side is quite patent in the manner of their giving evidence and in the substance of their depositions.

11. I acquit defendants under Section 258. Criminal Procedure Code and resolve to set them at liberty.

Pronounced 2-7-90.
30-6-90.

(Signed) T. Varada Row
Ag. Hd. Asstt. Magistrate.

(True Copy)

Chairman
Special Dy. Magistrate
Tinnevelly Dt.

H.S.

Enclosure in a letter
from the Dist. Magte
d 25-4-91
Tinnevelly

No I

Enclosure in a letter

from the Dist. Magte

Tinnevelly, d/ 25-4-91

No 450

[illegible] 20/9/91

Calendar Case No. 1 of 1891 on the file of Treasury Deputy Magistrate of Tinnevelly.

Offence Rioting armed with a dangerous weapon under Section 148 I.P.C.

Finding accused 1 to 24 and 26 and 27 guilty accused No 25 not proved.

Sentence 4th accused sentenced to three months rigorous imprisonment.
1, 2, 10, 22, 23, 24, 26, & 27 accused each one and half months' rigorous imprisonment.
3, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21st accused each sentenced to pay a fine of Rs 10
in default each to undergo one months rigorous imprisonment 25th accused discharged under Sec. 253 I.P.C.

Judgment.

C. C. 1

Description of accused.							Date of					
Serial Number.	Name.	Father's Name.	Caste or Race.	Occupation.	Residence.	Age.	Occurrence.	Complaint.	Apprehension.	Commencement of trial.	Close of trial.	Explanation of delay.
1	2						3					
1	Sickandar ...	Kadir Taragan.	Mohemedan	Weaving Cultivation	Tenkasi.	40	28. 3. 90	30. 3. 90	21. 1. 91, 3. 2. 91, & 5. 2. 91.	3. 2. 91	25. 3. 91	The case was transferred to the file of this Court on the 3rd January 1891. Summonses were issued for the parties to appear on the 21st January. On which date some of the accused and witnesses did not appear. The Case was adjourned to the 3rd Feby when the 1st and 2nd p. witnesses were examined. Witnesses 3 to 8 were examined on the 4th and the 9 p. w and 9 accused on the fifth and the remaining accused on the 6th Feby. The Case was then adjourned to the 13th Feby owing to Cholera. The apothecary was examined on that date and the pr. wts. cross examined on the 21st and 23rd Feby. Charge was framed against the accused on the 23rd Feby and they were examined adjourned to the 6th March for the examination of the Dw witnesses. The Munsif and 5 defence witnesses were examined on the 6th March 1891 and 5 more defence witnesses on the 7th March 1891.
2.	Mythen Pillai ...	Do	Do		Do	30.						
3.	Mammathusa	Mira Mythen	Do	Weaving	Do	35						
4.	Adam.	Peli chinna Muthu Pillai	Do	Do	Do	20.						
5	Savil Hamid	Asan Pillai	Do	Do	Do	26.						
6.	Thivan Mythen	Chinna Muthu	Do	Do	Do	40						
7.	Arabi	Thevani Taragan	Do	Do	Do	30.						
8.	Mohamed Sa.	Magudi Mythen	Do	Do	Do	27						
9.	Iswal. ...	Do	Do	Do	Do	20.						
10.	Na. Abdul Kadir	Ma. Avudi Malli Taragan.	Do	Do	Do	26.						
11	M.S. Sulaiman.	Do	Do	Do	Do	19.						
12.	Na. Mohammad Mythen	Nana Mohd Kaf	Do	Do	Do	37						
13.	Na. Mira Sahib Taragan	Na Do	Do	Do	Do	35						
14	Mohd Abu Bakir	Do	Do	Do	Do	25						
15	Picha Mamia Mohd Pillai Taragan	Mythen Pichai	Do	Do	Do	37						

Calendar Case No. 1 of 1891 on the

Offence

Finding

Sentence

C. C. No. 1

Serial Number.	DESCRIPTION OF ACCUSED.				
	Name.	Father's Name.	Caste or Race.	Occupation.	Residence.
1	2				
16.	Mohd Abu Bakir	Kadir Moidin	Mohamedan	Weaving	Tenkasi
17.	Savel Hamid	Naiki Eusuf.	Do	Do	Do
18.	Kunni Mohd Abu Bakir	Shaik Abdul Kadir Taragan.	Do	Do	Do
19.	Kunni Mohd Ibrahim	Kunni Mohd Abu Bakir	Do	Do	Do
20.	Manja Mohideen Pillai	Manja Mohd. Pillai	Do	Do	Do
21.	Manja Mira Sahib.	Manja Mohd Pillai	Do	Cloth Merchant	Do
22.	Muniati Kadir Esuf Taragan	Muniati Mohd. Ismail Taragan	Do	Cultivation	Do
23.	Sulkan Mohd. Abu Bakir	Suckan Mohd Sa.	Do	Weaving	Do
24.	Suckan Abdul Kadir Taragan.	Do	Do	Do	Do
25.	Peruchali Syed Ibrahim Taragan	Peruchali Mira Saheb.	Do	Cultivation	Do
26.	Pakeer Shaick ~~[illegible]~~ Forthu Lebbai.	Pakeer Mohd Saheb Taragan	Do	Weaving	Do
27.	Kunni Mira Saheb.	Kunni Mohd Abu Bakir	Do	Do	Do

to Treasury Dy. Magte.

1 91

Judgment.

Age.	Date of					Explanation of delay.
	Occurrence.	Complaint.	Apprehension.	Commencement of trial.	Close of trial.	
	3					
	2. 3. 90	30. 3. 90	21.1.91, 3.2.91, and 5.2.91.	3.2.91	25.3.91.	As the defence witnesses were not present and as the accused represented that they required the witnesses to be examined the case was adjourned to the 17th March 1891 issuing fresh summonses to the absent witnesses on the 17th March 11 to 16 defence witnesses were examined. The 2d accused stated that he would produce his witnesses on the 19th but did not produce him. Adjourned for the perusal of the records and the hearing of the vakils to the 25th on which date the case was disposed of. (Signed) C. Murugesam Deputy Magistrate

/True Copy/

For District Magistrate

201

Print in full

Judgment.

This is a case of riot. A case brought counter to this has been disposed of in Calendar Case No 2 on the file of this court wherein the accused have been discharged as it was found that the whole case was concocted with a view of ~~threat~~ thwarting the aggrieved parties in this case from getting justice. The aforesaid two cases were originally tried by the Head Assistant Magistrate and the accused in both acquitted. Mr. Tremenheere, the then District Magistrate, called for the records of the two cases, and having come to the conclusion that there had been a miscarriage of justice moved the Government to direct an appeal to be preferred against the order of acquittal. The High Court have accordingly ordered the retrial of the cases by a competent Magistrate and they have been transferred to my file for disposal by the present District Magistrate, Mr. Nicholson.

2. This riot is the outcome of a dispute connected with a building going by the name

of "Ahamad Sha" in the town of Tenkasi. One section of the Mahomedan community of that place contend that it is a (Thaikah) burial ground and that it is the property of the heir of a priest originally belonging to the village of Gundu Katu; and another section claim it as the common property of all Mahomedans and state it is not a Thaikah but a place of worship (Pallivasal). This latter section consists mainly of the followers of a priest belonging to Kayalpatnam and they filed a suit in the sub Court in the year 1872 and obtained a decree in their favor, but the exact nature of the suit and decree is not apparent as no documents connected therewith have been filed. From that time till the end of 1889 there was no other civil suit about the building. About the end of 1889 the supporters of the Gundukatu priest raised subscriptions among themselves, made a contract with some mason and commenced to make repairs to the building at their own cost. Thereon the party that claim the

4th sheet

2d sheet

the building as common property filed a suit in the sub Court and succeeded in obtaining an injunction prohibiting the works from being proceeded with. It was some time after this that the alleged offence took place. The prosecution witnesses are the supporters of the Kayalpatnam section while the accused belong to the Gundukatu section.

3. The 1st prosecution witness Mahamed Kasim Mirah Pillai states that a riot took place 10 months ago on a Friday 5 or 6 Naligais after sunset; hearing the noise he went to the spot and saw the houses of Alam Shah and Sheik Fakir Mahomed Labbai (7th prosecution witness) were damaged by about 50 persons belonging to the section of the Mahomedan community of Tenkasi that support the Gundukatu priest's contention; 4th accused Adam had a knife (sword) and with it he cut the pillow and the mat of 7th prosecution witness; and some one in the crowd pelted a stone and it hit the 2d finger of the 7th prosecution witness

right hand. The crowd then went to the house of the 6th prosecution witness, who after an altercation with the rioters went into his house and bolted the door. The 2d. 3d, 4th and 5th prosecution witnesses who were then in the pial of the house prevented the crowd from entering the house. The 4th accused stabbed the 3d witness with his sword on the left arm and gave a cut to the 4th witness on the head and another on the right eye. He (4th accused) also cut the 2d prosecution witness with the sword on his leg. The 23d and 24th accused beat the 3d prosecution witness with hands and sticks, 1st accused beat 3d witness with a stick; 2d accused also beat the same witness, but whether with hands or sticks this witness cannot say. The 22d accused took hold of the 2d prosecution witness and others beat him. 10th and 11th accused beat 5th prosecution witness with a stick. The 15th 18th and 26th accused encouraged the rioters. The 27th accused also set them up and at the

same

3d sheet

same time beat some one with a stick; both the 26th and 27th accused had sticks; 10 or 20 of the rioters had sticks. 1st 2d" 5" 6" 7" 8" 10" 12" 19" 23" 24" and 26th accused beat the houses standing on the street; 3d. 15th and 16th accused beat them standing on the roof whereon they got up by means of a union ladder that laid close by. This witness swears that he saw every one of the 27 accused before the Court and several others in the crowd of men that committed riot that night. It was a moonlight night and this witness went then and there and gave information ~~and~~ to the Station House officer and the Village Munsif about the offence specifying the names of the aforesaid 27 men and others as the principal offenders. That he gave the information without delay and mentioned the names of the accused at that time is borne out by the Police and Village Munsifs' reports to the Taluq Magistrate that very night.

4. The 2d prosecution witness Syad Ahamed Kotel corroborates the 1st witness

story and adds that he went to the spot when the 7th prosecution witness' house was damaged. There was a crowd of 50 men; some had sticks and some stones; the 4th accused had a knife. He heard 1st and 18th accused and two others saying that they must go and loot Isual Lalbai's (6th prosecution witness') house; he thereon ran in advance and told the 6th prosecution witness what he heard. The rioters rushed in immediately afterwards and the 6th prosecution witness went inside his house and bolted the door; the 3d prosecution witness tried to prevent the crowd but the 1st, 2d, 22d and 24th accused beat him with sticks and the 4th accused stabbed him with his sword; at that time the 22d accused took hold of this witness and beat him with his hand on his chest and back; while two others not present beat him with sticks on the back, neck &c. The 4th accused gave a cut on his right leg and he fell down senseless. This witness avers that he recognized

all

all the accused and some others in the crowd that committed the riot that night. It was a moonlight night and this witness noticed 1st, 2d, 8th, 10", 12", 15", 19", 23d, 24", 26" and 27" accused and two others not present breaking the houses by beating them with sticks. This was the person that vomitted blood.

5. The 3d prosecution witness Ibrama Mahomed saib is the brother of the 6th prosecution witness. He corroborates the statement of the other witnesses. He asserts that when he prevented the crowd from entering his house; the 1st accused beat him with a stick on his left arm, the 2d accused below his right eye, 23d accused on the 2d finger of his right hand and 24th accused on his right arm. The 4th accused stabbed him with the sword on his left arm near the elbow; he also gave a cut to the 2d prosecution witness. This witness said in a general way in the examination-in-chief that he saw all the accused in the crowd that night

but on cross-examination he has stated that he recognized them only 15 of the accused now present viz, 1st. 2d, 3d, 4th, 5". 10", 12", 15", 18", 19", 22d. 23d, 24", 25", and 26th. Before the Head Assistant Magistrate also this witness appears to have said that he saw all the accused in the crowd but they were not identified by names.

6. The 4th prosecution witness Hekim Mahomed Isuf swears that he went on the night of offence to the 6th prosecution witness' house for selling certain cloths, when a crowd of people as described by the other witnesses rushed in and the 6th prosecution witness went inside the house and bolted the door. The 3d witness prevented the crowd from entering the house when the 1st and 2d accused beat him with sticks and the 4th accused stabbed him with a sword. The 4th accused also gave two cuts to this witness, one on the hand and the other on the right eye brow. 18", 19", 26" and 27" accused beat him (witness)

5th sheet

(witness) with sticks and the 15" and 25" accused trampled him under their feet.

7. The 5th prosecution witness Mahamed Meerasa states that he heard the noise and went to the spot and saw a crowd of nearly 50 men in front of the 6th prosecution witness' house and 2d, 3d, and 4th prosecution witnesses lying on the ground wounded. He cried out when the 1st accused told others to beat him (this witness). Thereon the 10th accused beat him with a stick and another person (not present) with his hands. He saw all the accused persons in the crowd that committed the riot. This witness appears to have deposed before the Head Assistant Magistrate as if he saw everything that took place before the 6th prosecution witness house but before me he has stated that he came later on, on the stage; this is not a circumstance that could be considered sufficient to impugn the statement given before me as untruthful.

8. The 6th prosecution witness Sheik

Mirah Ismal Labbai appears to be the principal man belonging to the party that claim Ahmed shah building as a common property; Although he does not admit that he is the leader still he admits, that he pays money in advance for meeting the expenses of the suit pending before the Sub Court. This witness asserts that he saw a crowd of 40 men coming to his house and he at once went into it and bolted the door. Before going in he recognized 6 or 7 men of whom he now remembers only 1st, 2d and 3d accused as also two others not present. After the crowd dispersed he came out and saw 2d, 3d, 4th, 5th prosecution witnesses lying wounded. Alim Shah whose house was damaged is this man's priest.

9. The 7th prosecution witness Sheik Isahin Mahamed Lebbai states that the rioters broke the tiles &c of Alim Shah's house and then came to his house and caused a good deal of damage to it. The 4th accused who had a sword in his hand took his mat and cut it

6th sheet

it to peices and threw away his pillow in the street. He himself hid behind a tree. He swears that he has seen all the accused in the crowd of men that committed the riot. He specifies 1. 2. 3. 4. 5. 6. 7. 10. 11. 13. 14. 15. 17. 18. 19. 21. 22. 25 and 26 accused as the persons that caused damage to his house.

10. The 8th prosecution witness is one of the persons that went to the spot on hearing noise. He says that he saw the rioters nearly 50 in number causing damage to two houses. They then went to the 6th prosecution witness' house. He saw the 4th accused stabbed the 3d prosecution witness with a sword and gave some cuts to the 2d and 4th prosecution witnesses. He also saw the 10th accused beating 5th prosecution witness. He saw all the accused in the crowd that night. He remembers the 1st 2d, 3d, 5th, 6th, 8th, 10th, 12th, 15th, 19th and 27th accused had sticks in their hands and beat the houses with them.

11. The 9th prosecution witness Sheik Abdul

Kadir gives a similar story. He also recognized all the accused in the crowd. He evidently stood at some distance for he says that he saw the rioters causing damage to the houses and then going to the 6th prosecution witness' house. In front of the last mentioned house he saw a large crowd and heard a good deal of noise; afterwards he found 2d to 5th witnesses lying on the ground wounded. He does not know the details of the fight that took place at the time.

12. The 10th witness R. John Pillai is the Medical officer under whose treatment 2d, 3d, 4th and 5th prosecution witnesses were placed. He states that the 2d witness was under his treatment from 29th March 1890 to 20th April, the 3d witness from 29th March 1890 to 20th April, the 4th witness from 29th March 1890 to 9th April and the 5th witness from 29th March 1890 to 4th April and that the 2d prosecution witness vomitted blood for 4 or 5 days in consequence of rupture of the pulmanary arteries and inflammation of the lungs,

7th sheet

lungs, result of ~~the~~ blows given to the chest.

13. The 11th prosecution witness Sankara-narayana Aiyar is the person that was acting as Village Munsif of Tenkasi during the permanent incumbent's absence on leave. He says that the 1st prosecution witness came and informed him at 1 in the night of 28th March 1890 that the supporters of the Gundukatu priest came in a crowd – caused damage to houses and beat, cut and wounded four men belonging to the opposite faction. He accordingly went and saw bricks and stones scattered in the street and the houses alluded to by the 1st witness damaged. He understood that the wounded men had been sent to the Hospital where he went and saw them. He found the 2d prosecution witness vomitted blood and all the four severely wounded. He sent a report that very night to the Taluq Magistrate. He did not send any report to the Station House Officer as he understood that information had

been given to that officer before 1st prosecution witness came to him. On the following morning he recorded the statement of the 2d, 3d, 4th and 5th prosecution witnesses as he was afraid that some of them at least may die. He also sent for the men implicated by the above witnesses and asked what they had to say. 5 of them appeared and asserted that it was the witnesses and persons belonging to their section that beat them (accused) and caused damage to their houses and that they (accused) did not beat any one or cause any disturbance. This was the first time that the supporters of the Gundukatu priest appeared before him after the alleged hour of offence. He examined the houses alluded to by them and saw no damages were done to them.

14. The accused deny the charge; all of them except the 23d formally charged under section 148 I.P.C. The 1st, 2d, 3d, 4th, 6th, 7th, 8th, 9th, 11th, 13th, 14th, 16th, 17th, 20th, 21st, 22d, 23d, 24th, 26th and 27th accused plead alibi. The 5th accused says that he was in Tenkasi on the night in question but he did not know anything about the riot. The 10th, 18th, and 19th accused state that they were beaten by the opposite party and that this complaint was brought as counter to theirs. 12th and 15th accused assert that they knew the circumstances of the riot committed by the prosecution witnesses' party and they were included as defendants in this case under the impression that they might be cited as witnesses by the other party. The 25th accused states that his name was included at the instigation of the 6th prosecution witness and he was discharged as his name does not appear in the first complaint made to the police.

15. The 1st accused has examined two witnesses on his behalf, viz, the 11th and 12th defence witnesses. They say that he was in his fields at Shanankulam 5 miles from Tenkasi at the time of the alleged offence, viz, 16th Panguni night.

night. The 2d accused has examined 1 witness (1st defence witness) who states that he came to Kalladakurichi on the 15th Panguni and returned to Tenkasi on the morning of the 17th Panguni. The 3d accused stated that he was at Shencottah on the night in question but dispensed with the witnesses cited by him. The 4th accused examined 1 witness (2d defence witness) who says that the accused worked in his loom at Melapoliam from 2d Panguni for more than a month. The 6th accused examined the 3d and 13th witnesses who say that they and the accused went to the Travancore territory for selling cloths on the 12th Panguni and returned to Tenkasi on the 22d or 23d Panguni. The 8th and 9th accused examined the 6th and 7th defence witnesses. They say that they were at Pappankulam on the date of offence, viz, 16th Panguni and returned to Tenkasi some days after. The 14th accused examined one witness (14th defence witness) who states that he and the accused went to Sundarapandiapuram for selling

Cloths

9th sheet

Cloths on the 16th Panguni and returned to Tenkas on the 17th Panguni. The 16th accused examined the 15th defence witness who says that he saw the accused at Karunagapali on the 16th Panguni, 3 days journey from Tenkasi. The 20th accused examined 10th and 16th defence witnesses who state that they saw the accused at Tinnevelly on the Evening of the 16th Panguni and returned with him to Tenkasi on the morning of the 17th Panguni. The 21st and 22d accused examined 4th and 5th defence witnesses who state that the 22d accused came to Tinnevelly on the 15th Panguni to demand certain money due to his brother from 4th defence witness and the 21st accused accompanied him; the 4th defence witness paid the money on the 16th Panguni; the 5th witness wrote the Endorsement of payment on the bottom of the Promissary note on which the money was paid. It must be remarked that in the trial before this Court an application was put in to summon the 4th defence witness to appear with the Promissory night

note and endorsement evidently to show how they remembered the date, but in the list of witnesses given to the Head Assistant Magistrate in the former trial, no allusion was made to any such document. The 23rd and 24th accused examined 9th defence witness who says that he saw them at Muttamalai in the Travancore territory on the 16th Panguni having brought cloths for sale. The 26th accused, examined 8th defence witness who states that he saw the accused at Tinnevelly on the 16th Panguni, took meals with him in a club house and got into a transit that night and went to Ambasamudram. The 5", 7", 10", 11", 12", 13", 15", 17", 18", 19" and 27" accused have examined no witnesses on their behalf.

16. It is admitted on all sides that there was a serious riot on the night in question. I have shown in detail in Calendar No 2 of this Court's file that no riot was committed by the section which claim the building as common property of the Mahomedans.

From

11th sheet

17. It is unnecessary to state that

10th sheet

From the evidence in this case, it is clear that the riot was committed by the supporters of the Gundukatu priest, the motive being to annoy the principal man in the opposite section as also his priest, they having succeeded in getting an injunction from the Sub Court prohibiting the further progress of the repair work to the building in question. The prosecution witnesses of this case may have been a little excited in the first trial, it having taken place immediately after the commission of the offence, but in the trial before me, they have been very sober and their demeanour on the whole has been satisfactory. They are said to be interested witnesses. I have no reason to endorse this allegation. Many of the witnesses have stated that they belong to neither section and it has not been satisfactorily shown that their statement on this point is false. None but Mahomedans can be had as witnesses as the offence took place in the night.

dead of night in a street exclusively inhabited by that class of people. It is urged that the identification cannot be depended upon and that a few families have been selected and all the important members of them charged in consequence of personal enmity. It is only a few families of one section that are likely to take deep interest in the dispute and it is they that are likely to feel strongly when they are disconcerted. It is they that could have thought of taking the law in their hands in their angry moments and when one member goes with an intention of causing disturbance, others are likely to follow in his support. Identification is also easier in such cases, for if every one of the rioters were unconnected, it would be difficult to recognize and remember them all, but if it be Mr A and his two brothers and a son, Mr B and his three uncles and a brother &c, there will be no difficulty in identifying them.

17. It is unnecessary to state that the evidence of the defence witnesses is worthless; every one of them seems to remember the date, "16th Panguni" while they cannot give the date of any other important occurrence. The evidence of the 4th and 5th defence witnesses cannot be believed as the story of the promissory note is now for the first time brought forward.

18. From the summary of the evidence it may be seen that the 4th accused was armed with a sword, and all the accused except the 25th have therefore been convicted under section 148 I. P. C. as the weapon was used in furtherance of the common object of the unlawful assembly. The 4th accused is therefore sentenced to 3 months rigorous imprisonment. There is satisfactory evidence of more than one witness to show that actual force was used to the witnesses with sticks and hands by the 1st, 2d, 10th, 22d, 23d, 24th, 26th and 27th accused. Each of them is therefore sentenced to 1½

~~to~~
night

months rigorous imprisonment. All the other accused who were seen in the crowd of rioters and against whom charge was framed, viz, 3d, 5", 6", 7", 8", 9", 11", 12", 13", 14", 15", 16", 17", 18", 19", 20" and 21st are each sentenced to pay a fine of Rs 10, in default, each to undergo one months rigorous imprisonment.

(Signed) C. Murugesam Pillai
Deputy Magte

(True Copy)

V. [illegible]
for Dist Magte

to II

Enclosure in a letter from the Dist. Magte. Tinnevelly, d/ 25-4-91 No 450

2
[illegible] No 20 9/91

Calendar Case No. 2 of 1891 … e Treasury Deputy Magistrate of Tinnevelly.

Offence Rioting under Section 14… 7 I.P.C.

Finding Not proved.

~~Sentence~~ order. Discharged under Section … 253 C.P.C.

Judgment.

C. C. No 2.

Serial Number.	Name.	Father's Name.	Caste or Race.	Occupation.	Residence.	Age.	Occurrence.	Complaint.	Apprehension.	Commencement of trial.	Close of trial.	Explanation of delay.
1	2						3					
1	Mohd Ismail Lebbai	Shaik Mira Taragan	Mohamedan	Mk. Merchant	Tenkasi		28. 3. 90	29. 3. 90	21. 1. 91 and 3. 2. 91	6. 2. 91	19. 3. 91	This case was posted with the Counter Case No 1 to the 21st January 1891. As some of the accused and witnesses did not appear on the said date, the Case was adjourned to the 3rd Feb. The prosecution witnesses 1 + 2 were examined on 6th February, 3 to 8 on the 7th Feb. — then adjourned to the 19th Feb. on which date 9th + 10th P.W. were examined as also all the accused. adjourned to 4th March 1 to 4 P.Ws cross examined on that date and the other witnesses on the 5th March. adjourned to the 13th March for the examination of the Station house officer who was examined on the said date. The records were perused and the Vakils heard on the 19th March.
2	Maina Mohamed Saheb.	Do	Do	Broker.	Do							
3	Abdul Kadir.	Kadir Moidin ~~Rowther~~ Lebbai	Do	Weaving	Do							
4	Moidin Pillai - - -	Risaka	Do	Do	Do							
5	Makappa Mohamed Ali	Makappa Shiek Yakin Mohamed Lebbai Taragan	Do	Do	Do							
6	Mohamed Asan.	Do	Do	Do	Do							
7	Mohamed Ibrahim	Asan Mythin	Do	Do	Do							
8	Meah Pillai Lebbai -	Abbas Ali Magadu Muthin Taragan	Do	Cultivation	Do							
9	Packir Mohamed Saheb.	Ismail Lebbai Kadir	Do	Do	Do							
10	Mohamed Hisan Meah Pillai Lebbai	Abbas Asan Mythin Lebbai	Do	Do	Do							
11	Shaik Abdul Kadir	Magadu Abdul Rahiman Saheb	Do	Do	Do							
12	Sahib	Uthuman Lebbai Taragan	Do	Weaving	Do							
13	Magadu Ibrahim Moidin Pillai Taragan.	Meastan Taragan	Do	Do	Do							
14	Mohamed Ibrahim	Magadu Ibrahim Moidin Pillai	Do	Do	Do							

(Signed) [illegible]
Deputy Magistrate

True Copy
District Magistrate

Judgment.

Date of					Explanation of delay.
currence.	Complaint.	Apprehension.	Commencement of trial.	Close of trial.	
3					
28.3.90	29.3.90	21.1.91 + 3.2.91	6.2.91	19.3.91	and the case was disposed of on that date.

(Signed) C. Murugesen
Deputy Magistrate

True Copy
for District Magistrate.

Judgment.

Before entering into the details of this case, it must be remarked that in the town of Tenkasi, there are several streets inhabited almost exclusively by Mahomedans and that a section of the community contend that a building going by the name of Ahmed shah is a (Taihaw) burial ground and that it is the property of the heir of a priest who originally belonged to the village of Genduhatti; while another section state that it is a (pallivasal) Mosque and is the common property of all Mahomedans; the latter section consists mainly of the followers of a priest originally belonging to Kayalpatnam. Hence the alleged offence goes by the name of a riot between the Genduhatti and Kayalpatnam factions. An attempt was made in the trial before this court to make out that there are really no factions in Tenkasi in the sense of parties in continual feud but that there are two parties otherwise in good ams setting up opposite claims to the building in dispute. Whatever be the real state of circumstances it is an admitted fact that in the year of 1872 the claimants of the building as a common property filed a suit in the Sub Court and got a decree in their favour, but the nature of the suit and of the decree is not clear as no documents connected therewith have been filed. From that time till the end of 1889 however there was no other civil suit about the building. About the end of 1889 the supporters of the Gundukatti priest raised subscriptions among themselves, made a contract with some mason and commenced to make some repairs to the building at their private cost. Thereon the party that claim the building as common property filed a suit in the Sub court and succeeded in obtaining an injunction prohibiting the works from being proceeded with. It was sometime after this that the alleged offence is said to have taken place.

This

2d sheet

This case of riot as well as another counte-case were once tried by the Head Assistant Magistrate and the accused in both the cases acquitted. Both the cases were ordered to be retried by the High Court, vide, Proceedings dated 10th December 1890 and transferred to my file by the District Magistrate, vide, Proceedings dated 29th December 1890 No 2393. The accused belong to the Kayalpatnam section and the prosecution witnesses to the Gundukatti section.

2. The 1st prosecution witness Kani Mahomed Abu Bakir deposes that on the 16th Panguni at about 7 naligais after sunset he was sitting with the 2d and 3d prosecution witnesses and one Nachi Shaikappa not present on the pial of his house when the 1st to 3d accused and two others not present came to his house and the 1st accused asked him whether he had not put in a statement before the Sub court opposing the suit then pending before that Court, and

on his replying in the affirmative, beat him on his left cheek when his son, the 2d prosecution witness, interfered and he was beaten by Alim shah Shaik (not present) with a stick and all the five jointly beat the 3d prosecution witness and the absent Shaikappa. Then a crowd of 40 or 50 persons came and damaged the houses of 1st 3d and 4th prosecution witnesses and of the absent Shaikappa. This witness states that he saw all the accused now before the court and several others in the crowd that night and that he & 2d, 3d and 4th prosecution witnesses and the absent Shaikappa gave a written complaint to the Station House officer on the following day at 11 a.m. on being ordered to do so in the morning of that day when they complained to him orally and that he reported the occurrence on the same night to the constables that were guarding the Taluq Treasury. In the cross examination he says that on that very night he reported

to

3d Sheet

to the Station House officer and Village Mun at 10 or 11 naligais after sunset. He further states that the Station House officer refused to receive the written complaint preferred on ess. the following day unless the date was altered from 29 to 30 which was accordingly done and yet the Station House officer's conduct was not brought to the notice of any authorities.

3. The 2d witness Káni Mahomed Ibrahim, son of the 1st prosecution witness, gives a similar story and adds that while 1st accused beat his father, 1st prosecution witness, the 2d accused and Alim shah both jointly attacked him with sticks. The 1st accused did not beat him but set up others. After this came 40 or 45 men with sticks and stones and caused damage to the houses of 1st, 3d, and 4th prosecution witnesses. He further states that 3d prosecution witness and the absent Shaikappa were also beaten but he cannot say whether it was by the first 5 men that came to the spot or by the 40 or 45 men that came

afterwards. He swears that the Station House officer compelled the complainants to alter the date of the written complaint put in by him and 4 others from 29th to 30th, but neither this witness nor the 1st prosecution witness has said anything about the alteration of date in their examination before the Head Assistant Magistrate.

4. The 3d witness Kana Abdul Kadir Taragan swears that while the 1st accused beat the 1st prosecution witness, the 2d and 3d accused and 2 others not present beat the 2d prosecution witness. Afterwards a large crowd of people came to the spot and then the 4th, 5th, 6th, 8th, 10th, 12th and 13th accused beat the 1st and 2d prosecution witnesses; the 15th, 16th, 17th, 18th, 20th, 21st, 22d, 23d, and 26th accused beat him (3d witness) and the 25th, 30th, 31st, 32d, 33d, and 34th accused beat Naki Sheikappa.

5. The 4th witness Manja Inythen Pillai does not know anything about the riot. He was at Tinnevelly on the alleged night

4th sheet

night and came to Tenkasi on the following day, and seeing his house was damaged, joined others in preferring complaints to the Station House officer. This is a remarkable witness. He told the Head Assistant Magistrate that the Station House officer said "If you change yesterday's date and put this day's dates, I will take complaint" which clearly shows that the complaint was preferred on the day following the date which was entered in it, while the contention of others is that it was presented on the date entered in it, viz. 29th and it was altered into 30th through compulsion. To avoid such contradiction he has now stated that he knows nothing about the alteration of date.

6. The 5th witness Pichai Munna Mahomed Pillai describes the deeds of the accused in much stronger terms than those in which the parties said to have been aggrieved has described. He says that he saw what was going on from his sister's house situated opposite to that

of the 1st witness. He saw a group of 5 men beating the 1st witness and his 3 companions in turns, the former going round and round the latter group; he cannot say how many blows each received but he can say that the blows were so severe that he apprehended the assaulted men might vomit blood. He saw the 2d prosecution witness covered with blood, a circumstance which is not deposed to by any other witness.

7. The 6th witness Mydeen Pichai went to the 5th prosecution witness to receive some money due to him. He also saw what took place from the 5th prosecution witness' sisters' house. His description of the assault is much the same as that of the 5th prosecution witness, but he evidently does not agree with the latter in the severity of the attack.

8. The 7th witness Perunchali Syed Ibrahim, 8th witness Jamal Sahib and 10th witness Mahomed Mytheen are persons said to have gone to the spot on hearing noise and

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and witnessed what took place from the stre

The 7th witness swears that 2d prosecution witness fell down on receiving the blows a circum-stance which is not deposed to by others and the 10th witness has now identified all the accus before the court while he had deposed before the Head Assistant Magistrate that he saw in the crowd "all the defendants except 9th, 10th, 11th, 13th 16th, 18th 21st, 26th, 28th, 33d, 34th, 36th, 39th, 41st and 42d defendants" then present.

9. The 9th witness John Pillai, Apothecary swears that the 2d prosecution witness was admitted into his hospital only on the morning of the 29th and that he was discharged after 4 days' treatment. He had mere contusions and the skin was not severed nor was there bleeding.

10. The 11th witness Chinnasami Naidoo was the Station House officer of Tenkasi at the time the riot is alleged to have taken place. He clearly states that it was the 16th accused (1st prosecution witness in the counter case) that first gave him information about the riot.

the same night at 12 and that he immediately went to the street and saw 4 persons wounded, viz. 2d, 15th, and 22d accused and another (the same as 3d, 2d, and 5th prosecution witness and another in the counter case) that he sent them to the Hospital then and there and that none of the prosecution witnesses in the case gave any information that night but that on the following morning the 2d prosecution witness came and informed him that the 3d and 4th accused and another absent, in all 10 (the names of others not given) beat and wounded him and damaged his house. On inspecting he found no damage was caused to the house. This witness adds that on the 30th March the 3d prosecution witness and another man presented to him a petition signed by 8 persons and stating that 43 persons (specifying names) came and caused damage to their houses and committed a riot. The petition having been dated 29th the witness asked the 3d prosecution witness to enter the date on which it was presented which he

entered

probably after knowing that the wounded
persons

6th sheet.

entered below the date of the complaint and signed it but as the hour was not given he again asked the 3d prosecution witness to enter the hour which was also separately entered and signed by the 3d prosecution witness. It was mentioned in the petition that information was given on the night the crime was committed; the witness therefore questioned the 3d prosecution witness as to whom the information was given and on being informed that it was given to one Sivan Pillai, Treasury Guard Constable, he recorded the statement below the petition and got the signature of the 3d prosecution witness. On this witness questioning Sivan Pillai, the latter told that no such information was given him. In the course of the trial before me, the prosecution tried to make out that the information was given to two other constables and asked me to send for them and take their statement which I declined to do.

11. Great pains were taken to make out

that the petition was presented on the 29th itself, that the date 30th was entered because the Station House officer threatened to reject the petition if the latter date was not entered; in fact some of the witnesses tried to make out that the Station House officer took hold of the 3rd prosecution witness' hand and pen and used physical force and got the date entered evidently in the manner pial schoolmasters teach the beginners to write the alphabet on sand. Nothing can be more improbable than this part of the story. The 3rd prosecution witness is not a child and the Station House officer has given his deposition in a most straight-forward manner and I fully believe every word of his statement. It is clear the prosecution witness and other men belonging to their party committed a riot and severely wounded four men of the opposite section and being afraid of the consequence went and concealed themselves and did not come out till the next morning probably after knowing that the wounde persons were faring well in the hospit

It was after that, they thought of giv information to the Police as if they had bee attached by the other section. It was after that, they sent one of their men to the hosp

In the first information which was given without sufficient deliberation, the number of the rioters was mentioned only as 10 but on further consideration with a view of making the complaint as serious if not more serious than that of the opposite section, they gave the number as 43. The complaint was given on the 30th and antidated as the 29th under the ~~information~~ impression that the Station House officer may not take notice of the date but pass it over carelessly. If he had done so it would subsequently appear as if the complaint was given on the 29th itself. The Station House officers precaution has caused disappointment.

Dist Magte

E.

The injury on the body of the 2nd secution witness was a very slight one. might have been self-inflicted, might been caused by a fall or a hit against wall or tree or might have been the result of a blow given by one of the opposite section in self-defence.

13. Then again what is the motive for the riot. The witnesses gave statements in the Sub-Court opposing the plaint brought by the section to which the accused belong and therefore it is stated that this riot was committed. When they filed a suit they must naturally have expected that a number of people will put in such statements. Where is there anything then to provoke a riot. On the other hand the accused filed a suit and succeeded in getting an injunction prohibiting the further progress of the repair work to the Ahmed Sha building. It is this success which led the witnesses and their party to take the law into their own hands. If the accused

accused had thought of following that co they should have done so when the repair was put in hand. Their refraining from ta forcible means and going to court shows they had made up their mind to settle the di pute in a legal manner.

14. All the accused deny the charge and state that this case was brought as a counte-case to the one brought by persons belonging to their section.

15. Judging from the circumstances of the case and the nature of the evidence adduced I am of opinion that the charge is altogether a concocted one and that it was concocted with a view of thwarting the opposite section from getting justice.

16. I therefore discharge the accused under section 253 C. C. P.

(Signed) C Murugesam Pillai.
Deputy Magistrate.

(True copy)

For Dist Magte

No III

Enclosure in a letter
from the Dist. Magte.
Tinnevelly D/ 25-4-91
No 450

3
Jud. Cur. No 2029/91

No 450

Tinnevelly District Magistrate
Dated 25th April 1891
Current No. 2029

From
F. A. Nicholson Esquire
District Magistrate of
Tinnevelly

To
The Chief Secretary to Government,
Judicial Department,
Fort St George.

Sir

With reference to Government Reference or No. 1621 of 1891 dated the 11th Instant, I have the honour to forward herewith a Copy of the Head Asst. Magistrate's Judgment in Cases Nos 20 and 21 of 1890, and to state that the retrial ordered by the High Court has ended in the Conviction and Sentence of one of the factionists and in the Discharge of the other. The Treasury Deputy Magistrate tried the Cases and Copies of

judgements in Cases Nos 1 and 2 of 1891
lso enclosed.

defendants in Case No 1 of 1891 have appealed
e Sessions Court and the Public Prosecutor
as been instructed to appear and support
te Conviction. Copy of the Judgment in appeal
ill be forwarded when issued.

I have the honor to be
Sir
Your most obdt Servant
For District Magistrate.

I think it would be premature to deal with Varada Row till the appeal is disposed of. So far as one can learn so far, he has acted most improperly more than once as a magistrate - and if the appeal is dismissed, we shall have very good grounds for degrading him - a few days will settle it. W 12/5/91

C. Nos 1621 & 2029.

Submitted with reference to Honorable Members' remarks on C. No. 308/1891

CS 30.4

30 Ap.

12 May.

Varada Row's explanation appears to me anything but satisfactory. If he acted to the best of his judgment, as stated by Mr. Nicholson, all that is to be said is that his judgment was very bad. There was evidently a serious riot in which two persons received grievous hurt & two others at least injuries which required treatment in hospital for some days. Varada Row made no attempt to get at the truth of the case from the evidence as was his duty as a Magte. but acting on notions of general expediency & what he calls his local knowledge got rid of the business by acquitting all those charged in both cases. His procedure in lumping the cases together was extraordinary. The strictures passed by the High Court on his action & judgment appear to be not at all too strong.

I think that Varada Row should be transferred as an Assistant to another district & that his powers should be reduced to 2nd class, the restoration of 1st cl. powers and his promotion being made dependent on the report of his Collector upon him at the end of six months.

H.C.

2 May.

I quite concur with my Hon: colleague in his strictures on Varada Row's disposal of this case - & in his proposal that he should be transferred as an Asst. with only 2nd class powers to another Dist. but do not give him back 1st class powers for a year & then

& only if [illegible] 8/5/91

Judicial Department.

C. No 2029

Ref on C No 1621/91

1891

TINNEVELLY Dt. Magte's OFFICE

From

The Distt. Magte.

Tinnevelly

To

The Chief Secretary to Government Fort St. George.

CHIEF SECRETARY GOVERNMENT 28 APL 91

Dated 25 } April 1891
Received }

No. 450

ENCLOSURES 3

Subject

Forwarding Copies of Judgments in certain Cases.

R13/V.

C. No 2029

Judicial Dept

Reference out

With reference to para 2 of his letter No 450 of 26 April '91 the District Magistrate, Tinnevelly, is requested to ~~report~~ state whether the appeal referred to therein is posted for hearing during the present month and if so to report the result of the hearing as soon as known without waiting for a copy of the judgment

(From Orders of C.s)

The Dist. Tinnevelly.

19 May

CS 19/5

19 May Copied

22/5

Sent 6/6

E

Refuse? Tinnevelly

S

JUDGMENT in Criminal Appeal No. 47 of 1891
on the file of the Sessions Court of Tinnevelly.

From what Court the appeal is preferred.	No. of the Case in that Court.	No. of the Appeal.	Name and Description of the Appellant.	Sentence & Law under which it is imposed in the Lower Court.	Whether Confirmed Modified or Reversed.	If Modified the Modification.
Treasury Depty Magistrate of Tinnevelly.	~~II~~ No. 1 of 1891	No. 47 of 1891	(1) Sikander aged 40 and (2) Mythin Pillai aged 30, sons of Kadir Taragan (3) Adam aged 20 son of Peli Chinna Mithin Mythin Pillai (4) Abdul Kader Taragan aged 26 son of Nana Avudai Malli Taragan (5) Minoti Kadir Esuf aged 38 son of Minoti Mahommed Ismael (6) Sukan Mahomed Abubeker aged 25 and (7) Sukan Abdul Kadir aged 33 sons of Sukan Mahomed Sa (8) Sheik Farith Lebbai aged 40 son of Paliam Mahommed Sahib Taragan (9) Kuni Mira Saheb aged 30 son of Kuni Mahomed Abubeker all residing at Tenkasi, 1st, 2d, 4th 10th, 22d, 23d, 24th, 26th and 27th accused respectively	Third Appellant Adam sentenced to rigorous imprisonment for three months, the other Appellants to rigorous imprisonment for one month and a half each Under Section 148 of the Indian Penal Code.	Confirmed	

This Appeal coming on for hearing: upon perusing the petition of appeal and the record of evidence and proceedings in the case, and upon hearing the arguments of Mr. Babu Shreenivassa, Couns ~~Pleader~~ for the Appellants and of the Public Prosecutor in support of the conviction, the Court deliverd the following

JUDGMENT:—

Date of					
Presentation.	Filing.	Notice issued by Court to appear.	On which appellant ordered to appear.	Hearing.	Order.
14.4.91	14.4.91	15.4.91	22.4.91	4.6.91	4.6.91

Judgment:- Mr Balu Shrinivassa for the Appellants; the public prosecutor in support of the conviction.

2 The Appellants are nine out of twenty six men who were convicted of rioting armed with a dangerous weapon. The third Appellant was sentenced to be rigorously imprisoned for three months and the others to be rigorously imprisoned each for one and a half months.

3. This is one of two counter cases brought against each other by two factions of Mussulmans. The other case, brought by the Gundakatti faction, to which the appellants belong, was dismissed. In this case brought by the Kayalpatam faction, of which the sixth prosecution witness is a prominent member, the accused were convicted.

4. I have read the Judgments in both cases and have gone through the voluminous evidence recorded, 56 pages of foolscap closely written. I am satisfied from the evidence that the Gundakatti faction to which Appellants belong were the aggressors and that

Various

various members of that faction beat and wounded members of the Kayalpatam faction. The third Appellant was armed with a sword or scymitar which he used freely and with which he wounded more than one of his adversaries.

5. The defence and the main argument in appeal was the setting up of the counter case and the argument that it is strange that the witnesses should have been able to recognise the features of the rioters. It was also pointed out that there are discrepancies in the evidence and that it is remarkable how the evidence given by different witnesses agreed! The chief discrepancy pointed out was one as to where a certain cry was raised. I attach no importance to it since it is a matter which might very readily be forgotten in the excitement of what must have been a very considerable row. The witnesses gave very clear evidence. It was argued that they must have studied the evidence given by them when the cases were first tried. That may be true, but I am bound to go by the impression

impression which the evidence has made on me. The two cases were originally acquitted by the Head Assistant Magistrate. An appeal against the acquittal was made by Government. The High Court set aside the order of acquittal and ordered the retrial of the two [illegible]ses. This case has ended in a conviction and the other in a second acquittal. The defence evidence in the present case is that of men who remember just the date on which the riot took place and no other date. It is impossible to believe alibis which rest only upon such evidence.

6. It is clear that there was a very serious riot; and it is fortunate for the Gunda-Katti faction that so little damage was done to persons of the opposite faction. I consider that the sentences are remarkably light, and that Appellants have got off very easily.

7. The conviction and sentence of the lower Court are affirmed and this appeal is dismissed.

4th June 1891

(signed) W. J. Grahame
Sessions Judg

(True copy)

W J Grahame
Sessions Judg

To The District Magistrate
of Tinnevelly

Note

This file for Press

Tinnevelly Dist. Magistrate's office

No. 607

Dated 6th June 1891

From

G. S. Forbes Esquire

Ag. Dist. Magistrate

Tinnevelly

To

The Chief Secretary to Government,

Judicial Department,

Fort Saint George.

Sir

In reply to Reference No. 2049 dated the 22nd May 1891, regarding the Case of the Mussulman riot at Tenkasi, I have the honor to report that 9 out of the 26 persons Convicted in Case No. 1 of 1891 on the file of the Tuy. Deputy Magistrate Tinnevelly appealed to the Sessions Court and their appeal was dismissed on the 4th Instant. A Copy of the appeal Judgment which was received to-day is herewith sent.

I have the honor to b

Sir

Your most obdt Serv

P. Subramaniam

For Ag. Dt. Magist

CURRENT No. 2638

1891

Judicial Deptt

Refce. on 2029/91 of 22.5.91

H. SECRETARY
10 JUN 91
PUBLIC ETC. DEPTS.

From
The Distr. Magte.
Tinnevelly
To
The Chief Secretary
to Government
Fort St. George

Dated 6th }
Recd. 9th } June 1891

No. 607
Enclosures

Reporting the result
of the appeal in
the Mussalman riot
at Tenkasi

Note. This file
not to go to Press

(6)

Circulate

To revert to [illegible] & powers
to be reduced to 2nd class
& transferred to [illegible]

The reference was put up with the
D.M. Tinnevelly with the
H.E. the Governor's remarks
No. 2029.

The District Magistrate's report upon him
& the reference to [illegible]
order [illegible]

C.S.
10. VI.

[illegible]
10 June

[illegible]
10 June.

19 June

The conviction by the Dt. Magte. having been confirmed in appeal orders may now issue in regard to Varada Row. I think six months on second class powers will be enough.

[illegible]
11 June

I doubt - This is not the first time Varada Row has proved himself a most incompetent Magte. In G.O. of 31st Octr/90 No. 728 he incurred the grave displeasure of Govt. for exhibiting lamentable want of judgment in the disposal of an important case. Now he has exhibited conduct which is only explicable on the ground of his being unfit to do his duty. Such officer shd. not in my opinion be permitted to exercise 1st class powers again for at least 2 years. and then unless he shows in the meanwhile that he has learnt to appreciate the responsibilities of his position.

12/6/91. [illegible]

I wd. agree with this - but as I understand it will create difficulties for Govt. I wish it to come up in Council
W
14 June

12/6

Jud. DEPARTMENT.

74 P

[5]

Papers to be read in Proceedings:—

✓ Again G.O. dated 11 Aug. 1890 ✓ No. 1388 Judl.
23 Oct. 1890 ✓ No. 1101 A Judl.
31 Oct 1890 ✓ No. 728 Publ.
✓ Again G.O., dated 12 Dec. ✓ 1890, No. 1998 Judl.
✓ Again G.O. dated 19 Dec. ✓ 1890, No. 2059 Jud.
of 1891, dated 20 Jan. from Govt. Pleader, Madras.
Reference on D.O. of 13. 2. 91
31 March — D.M. Tinnevelly.
Reference on D.O. of 14. 4. 91
25 Ap. — D.M. Tinnevelly.
Reference on D.O. of 22. 5. 91
D.M. Tinnevelly.
Current No. 2638 of 1891, dated 6 June from

Print

Order of 30. 6. 91. No. 1286

The currents read above relate to the conduct of Mr. T. Varada Rao Acting Head Asst. Magt. of Tinnevelly in Calendar cases Nos. 20 & 21 of 1890 on the file of his Court. These two cases represented ~~[illegible]~~ charges brought by the Police against two parties of Labbais who on the 28th of March, 1890, committed a seri[illegible] riot in the town of Tenkasi. In calendar C. No. 20 the Police put in a charge sheet against ~~charged~~ 32 persons & in C.C. 21 ~~against~~ 3 only but in this case ~~[illegible]~~ the Magistrate [illegible] the number of the defts. to 45 he then proceeded to dispose [illegible] both cases at one trial [illegible] the result that ~~all~~ the def[illegible] were acquitted ~~[illegible]~~ on the ground that the [illegible] for identification was insuf[illegible] Against this acquittal [illegible] on the recommen[illegible] Dt. Magt.

Adv. Judgment.

LMS
27 June

[illegible]
27/6/91

[illegible]
make the following remarks:—

"In our opinion there has been a grave miscarriage of justice in these cases. … The number of the persons charged & tried in each case made it practically impossible for any Magistrate to deal satisfactorily with the evidence… … In the judgment the Magistrate has made no attempt to deal with the evidence as against the several prisoners but has, in a most perfunctory judgment, observed that the evidence of identification is worthless. The judgment is most unsatisfactory & we are compelled to express our grave disapprobation of it. We must set aside the acquittal … & direct all the accused to be tried by a competent Magistrate."

The result of the re-trial has been that in one case twenty-six of the accused were convicted & their conviction upheld on appeal by Sessions Court while in the other case the defendants were discharged.

After full consideration of all the circumstances of the case & Varada Rao's explanation the G. in C. ~~regrets~~ that he must [illegible] ~~[illegible]~~ express his serious ~~[illegible]~~ disapprobation of the ~~[illegible]~~ in which that Officer disposed of the charges brought before ~~[illegible]~~ him. On more than one occasion previously the Govt. has had cause to regard with grave displeasure the conduct of Mr. Varada Rao & in the present instance the course taken by ~~the~~ him ~~[illegible]~~ evinces a want of … at … in the performance … is.

tion of Assistant ~~Magistrate~~ with the powers of a Magistrate of the Second Class & will be transferred to Malabar the ~~Collector~~ Dist. Mag. of which district will be directed to report ~~upon~~ ~~him~~ at the end of a year upon the manner in which he performs his duties

3. The ~~following~~ necessary notifications will be published in the Fort St. George Gazette:—

~~Under~~ Sec. 41 of the C.C.P. the Govt. in Council withdraws ~~the~~ all magisterial powers ~~of a Magistrate of the First Class~~ hitherto conferred on Mr. T. Varada Rao ~~as notified~~
~~at . . . published in the~~
~~Ft. St. George Gazette of the . . .~~
~~. . 18 . . page . . .~~
(From [illegible])

En 24 June.

A 25 June

G.O. desptd. 25/7.

To the Dt. Mag. of Tinnevelly
to Mr. T. Varada Rao
" " D.M. of Malabar 2
" Rev: Dept: 3
" Pub: Dept: 1
} signed on 23/7 shown on 25

Copies [illegible] 2/7

This won't do as it will not give him the second class powers. The notifications & minute of appt. had better be submitted separately.

J.C.

Despd. to G. India. — 18/7/91.
— to Secy of State — 29/7/91.