

12/11/87

பொ. ப. புது எண். 24

புது.

குறிப்பிட்டவர் பொறுப்பிலிருக்கும் பதிலுக்கு கட்டினதும் எடுக்கப்பட்ட தள்ளுபடி.

அக்க

பரிசுரை

வாலாயம்

எண்

, தேதி

198

எதன் பொருட்டு:

எடுத்த
தேதி.

குறை.

நடப்பு எண்

ஆண்டு.

தள்ள எடுக்கும்
எழுத்தர் அல்லது
சிறைமுத்தர்
சுருக்கொப்பம்.திருப்பிக்
கொடுத்த
தேதி.சிறைமுத்தரின
சுருக்கொப்பம்.

Judicial. (1895) Department.

ORDINARY *Mis*

G.O., No. 2441

Confidential No 176

DATED 26-11-95

[Despatch Abstract.]

Appeal against acquittal

Com 7 to the Dist. Mag., S. Canara, judgement
of the High Court in the — in Sessions Case
No. 33 of 1894, and requesting the Hon'ble the
Judges to call upon Mr. W. C. Holmes to
account for the irregularity noticed therein.

அச்சு
பல்கலை
வாஸ்தவம்

எடுத்த
தேதி.

One thousand eight hundred and ninety five.

President: —

The Honorable Sir Arthur J. W. Collins ^{Att. Genl.} Chief Justice
and
The Honorable Mr. Justice Parker.

Criminal Appeal No. 149 of 1895

The Public Prosecutor _____ o. Appellant

1 Lapi Beary, 2 Ali Beary, 3 Thodi Beary
4 Haka Beary, 5 Loku Beary, 6 Hammed
Beary, 7 Badova Beary, 8 Domet Beary,
9 Abdulla Beary, 10 Fudakamara
Bhatta, 11 Sanna Ali Beary 12 Serry
and 13. Sanna Serry.

Politicus Prudens
(*Prudens* 254 in S.C.
33 of 1894 in the file of
the *Prudens* Court of
South-Carolina)

Appeal under Section 417 of the Cr. P. Code of Criminal Procedure against the judgment of acquittal passed on the accused in Sakandar Case No. 23 of 1894 by the Sessions Court of South Canara.

This Appeal coming on for hearing on Monday the 2nd September 1895 and Counsel not appearing on behalf of the 7th & 8th Prisoners; Upon perusing the Petition of Appeal and the record of the evidence and proceedings before

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1st page 269

stoppage

Consequence

the Court of Session; and upon hearing the
appellant and upon hearing the arguments of
Mr. D. Haffarum Aiyer Bahadur for
Gangamma (widow of the deceased Hari
Kumbhe Narasappa Narasappa and
of Mr. H. Narana Das Bahadur for Prisoners
186 and 9 to 13th and the case being
stood over for consideration till this day
the Court delivered the following
judgment:—

This is an appeal by Good
against the acquittal of Prisoners 254 and
16 to 14 by the Sessions Court of South
Canara on charges falling under Sections
302, 326, 148 and 143 I.P.C. It is explained
by the Public Prosecutor that through a
misappropriation misapprehension no
appeal has been presented against the
acquittal of the 1st Prisoner, and the
appeal as regards him is now barred.

The evidence for the prosecution went
to show that one Hari Kumbha Narasappa
now deceased, had acquired lands
at Nandavur. Some of these lands had
been

2nd page old been

been bought at Court auction in execution
of decrees against the Prisoner who is
an influential Jain of that place, but who
had got into pecuniary difficulties.
The consequence was that matters were
made as unpleasant as possible for the
auction purchaser, and his issue, Thera-
maga, the prosecution witness, has
only been able to cultivate by obtain-
ing labour from a distant village
and has been continually obstructed,
so much so that he has been in
constant need of police assistance. The
case for the prosecution is that Prisoners
254, Moplahs employed by 1st Prisoner
to wreak vengeance on the auction purchaser
went to Danc Mangalore on the morning
of September 3rd to give Narasappa a
beating and that when the latter saw
them coming he took refuge
in the shop of one Ananta Bai into which
the Moplahs followed him and gave
him such a beating that he died in
consequence

vide Good
pleading letter
infra

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3rd page

consequence on September 16th.

The witnesses called for the prosecution consisted of Anantha Bai and his son and a number of neighbouring shopkeepers and persons who happened to be in the street at the time. It does not seem to have been suggested that any of them were connected with the factions at Panduram in consequence of the sales of the 1st Prisoners lands. The 1st witness was a Head Constable, Mr. Dennis, who arrived on the spot shortly after the beating and took a complaint by Grom Narasappa before sending him off to the Hospital for treatment.

The Sessions judge did not doubt that Narasappa had been severely beaten, - but he was of opinion that the story that he was beaten in Anantha Bai's shop was altogether false. He was expressed himself in the very strongest terms against the credibility of the prosecution witnesses, but he has made

it clear that the bias of his mind was affected by one fact only and that one fact is in our opinion wholly inconclusive.

It appears from the prosecution evidence that while the beating was going on in Anantha Bai's shop the Local Guard Engineer (Mr. Macfarlane) happened to come down the street at Pandamangalore. This gentleman was walking and was followed by his carriage. He was accompanied by the overseer and was engaged in check measuring and in verifying the overseer's book. The prosecution evidence is to the effect that when some one gave the alarm that the "Dikarai" was coming the Moplahs slipped away out of the shop and made off. It was a feast day and there were a good many people about in the street. Mr. Macfarlane deposed that he passed the shop engaged in his own business

with his own eyes, that his attention was
not drawn to any disturbance and that
he did not notice anything in particular.
It is on this one fact that the Sessions Judge
has discredited the whole prosecution
testimony.

Mr. Macfarlane was called after
the 3rd prosecution witness has been
examined as a Court witness as he
was going out into the District. From
that point in the trial the judgment makes
it clear that the judge's mind was
strongly biased against the prosecution.
From the 4th witness onwards every person

called has been denounced as "false"
witness, his demeanour denounced and
his evidence characterised as a tissue
of falsehoods. With regard to the 15th
witness the judge has recorded in
his notes (before a word of the evidence)
the remark "lying written in his face".
If this remark was recorded before
1/39
6 page

the witness gave his evidence we can-
not but characterise it as most improper
but the whole tenor of the remarks made
by the judge in the case shows strong bias
and that the case was not approached
in a judicial frame of mind nor can
we endorse the remarks made by the
judge upon the conduct of Head Constable
Pereira. The offence may not have been
alleged to have taken place within the
limits of his own station, but he had
been sent specially to inquire into the
disturbance at Khandavale and he was
certainly justified as a police officer in
taking notice of the complaint of Karsashtayya
whom he found suffering from severe
injuries.

There may be a question as to how far
death was the result of the injuries received,
but the medical evidence was not considered
by the judge nor was the defence gone
into. The trial was prolonged for
153
7th page three

the week, - principally in consequence
of the Cross Examination (Morally irrelevant)
of the Reader who appeared for the Prisoner
(Mr. Thomas Dow) and the trial at last
came to an end. Since the Public Prosec-
utor declined to call any further evidence
in consequence of the attitude taken by the
Judge.

It appears to us that the case for
the prosecution is not in the least affected
by Mr. Macfarlane's evidence which may
be accepted in its entirety. But it
seems to us most improbable that a
European gentleman walking through
the bazaar street of a native town
would specially notice what was going
on in any of the shops he passed unless
his attention were specially called to
it. In this case the evidence is that the
Muslins dispersed when the carriage was
seen approaching and that Mr. Macfarlane's
attention was engaged with the overseer.
146
8th page why

why the judge would not permit the
overseer to be called we are quite unable
to understand. Had he given evidence
which could fairly be said to take the
defence by surprise it was open to the judge
to allow them to call further evidence to
meet it.

Since the case has not been tried
out, we have no option but to direct
a retrial. The acquittal of prisoners
2 of 7 and 10 of 14 is set aside and
we direct that they be tried by the
Sessions Court of Kottai Malabar.

Ordered accordingly.

(s) C. G. Goodhumber
Deputy Registrar,
Appellate Side

(True Copy)

S. Rajagopalakrishnan

Superintendent

ga flast page

Copied by Dy

CURRENT No. 4986

Government Pleader's Office,

HIGH COURT,

Madras, 21st October 1895.

No. 1083

From

E. B. POWELL, Esq.,

GOVERNMENT PLEADER,

Madras,

To

THE Chief Secretary to Govt.,
Fort St. George.



Judgment
Crit. Appeal 149

HIGH COURT, APPELLATE SIDE.
C. D. No. 2378/95

Application made..... 10-9-1895
Stamp papers called for..... 189
Do. deposited..... 189
Copy ready..... 14-10-1895
Do. delivered..... 15-10-1895

SUPERINTENDENT.

* Inqo 1973 J. Sir,
20/9/95

In continuation of this Office letter No. A of the 10th September 1895, I have the honor to forward herewith a copy of the Judgment in Criminal Appeal No. 149 of 1895 on the file of the High Court.

2. With reference to the remark of the High Court in the first para: of the judgment that no appeal was presented against the acquittal of the Prisoner owing to a misapprehension, I have the honor to submit the following remarks to explain how the misapprehension arose.

3. When the papers in Sessions Case No. 33 were sent to me for my opinion the only copy of the evidence annexed was a manuscript copy of the Judge's notes. For some unknown reason the Judge altogether omitted in taking down the evidence of 16th witness to record anything referring to

S.O. 11-2-95, No. 291

189

4986

To the 1st Prisoner's connection with the others. Accordingly
finding no reliable evidence on record against the 1st Prisoner I thought there was no use in appealing against the acquittal

of the 1st accused, and Government agreed with me and
directed an appeal against the others.

From the evidence recorded by the Judge's Clerk, ^{it appears}
there was a considerable body of evidence to incriminate
the 1st accused.

I have the honor to be,

Sir,

Yours most Obedt Servt,

E. W. W.

Government Pleader.

x 90

565

143

CURRENT No. 4986

1873 20. 9. 1951
4 papers.

Read again 5. Oct. 9. 95.
2 C 20 4586. - 1

[G.
25]
1,000-6-11-95

Ind. DEPARTMENT
C. No. 4986.

From
THE GOVERNMENT PLEADER,
Madras.

CHIEF SECRETARY
22 OCT. 1895
GOVERNMENT OF MADRAS

Dated 27.10.95

Recd. 23/10/95

No. 1883

ENCLOSURE.

Towards a copy of the
Judt in s. appeal
no 149 of 1895 on the file
of the High Court with
his remarks.

Note
The papers are circulated
accordance with H. P. S.
in 5. Oct. 16. March 95.
568. A copy of Mr Holmes
ment in S. Cavan is in
no 33 of 1894 will be
under cover of 5. Oct. 20. Sept. 95
no 1973.

HT.

13/11/95.

To the S. P. Magistrate, S. Cavan.

FOR ORDERS.

This is Judicial - a th. go on to
the hon Mr. P. P. P. Perhaps he
will understand it. I don't. We
saw all these papers before - & after
reading them - together with the
H. C. to letter - Mr. Holmes was
called upon for an explanation.
I have however initialled the
order.

W.
18 Nov

The proposal in the letter in f. 2231
Public was that this of 4.11.95
judgment should be re-
mitted separately with a note regarding
the omission to appeal against the acquittal
of the 1st Prisoner. It has been re-
submitted, but without the note. No
wonder H. S. did not understand.
The copy of judgment should of course
go on to the S. C. without further
delay so that he may know what
is going on. Mr. Holmes should also
be called on for any remarks he
may wish to offer, as this judgment
was included in the report already

Please see the draft order &
note on the back of the current
Please see also the passage
marked in page 4. of the note
for order in go. 2231
which states that this
case is quite distinct from
those on which Mr. Holmes has
already been called upon to
explain should
this judgment also be
sent to him for explanation
in continuation of the Public go.
quoted? It appears to have
been W. M. V. 95

16/11/95.

Submitted to Mr. P. P. P. reference
papers in conf. box
13/11/95

ade in the f.o. above mentioned
though it was evidently H.L.'s
intention that it should be and
is his impression that it ~~should~~
has been.

The note as to the mission to
appeal in the case of the
1st P. may follow.

No time should be lost about
this as Mr. Holmes will have
left. He may have done so already
I shall know.

JH

19/11/95

JG

19/11/95

Appeal against

by Mr. Holmes. Les.

FOR ORDERS.

SH. E. THE GOVERNOR.

THE HON'BLE MR. H. W. BLISS,

THE HON'BLE MR. J. GROSE.

[G.]
25
1,000-5-11-95

I don't understand why the
appellate judgment of the
H.C. on the appeal by Sub. 33
the acquittal in Les. Case No.
33 has not been sent on to the
D.M. - as stated on 19/11
that it should go on without
further delay, so that the D.M.
might know what was going
on. This was 4 days ago.

As to sending this judgment
to Mr. Holmes, that is not
necessary, because he must
have rec'd. a copy from the H.C.
direct. What he has want
from him is an explanation of
the facts stated by the Sub. Pleader
in his para 3, which led to
the omission of a appeal agt
the acquittal of the 1st accused

JH
23/11/95

JH

Please put up the copy papers
re: to the 2nd accused
in S.O. 11-2-95, d. 29/11/95
p. 6 & 5

19/11
R2911

13/11/95 put up

Judicial DEPARTMENT
C. No. 4986.

FOR ORDERS.

Resubmitted

It ~~is~~ ^{was} thought that the facts
of the case ~~are~~ ^{were} well-known to the Hon.
Members, so no summary of them ~~is~~ ^{was} put up.
What occurred was this. In his letter
in G.O. No. 291, d. / 11th Feb. 1895, the
Dt. Magte. of S. Canara asked Govt. to
move the High Court to set aside the
order of acquittal in the Session Cases
Nos. 33 & 34. The papers were by ~~H.M.~~ ^{H.M.} re-
ferred to the Govt. pleader for opinion
on the probability of an appeal being
successful. In his letters in G.O. No.
568, d. / 14th March 1895, the Govt. plead-
er recommended the filing of an appeal
against the acquittals in both cases (Nos.
33 & 34) except in so far as related
to the acquittal of the first accused
in Session Case No. 33 against whom there
was apparently no evidence on the re-
cord. Orders were issued accordingly.
In his letter in G.O. No. 672, d. / 1st
April 1895, the Govt. pleader reported
that the High Court had admitted the
appeal in Session Case No. 33 but had re-
fused to admit that in Session Case No.

1. The result of the appeal was communicated to Govt. by the Govt. pleader in his letter in G.O. No. 1973, d./ 20th Sept. 1895 and in the present current he forwards a copy of the High Court's judgment. In his orders in G.O. No. 568, d./ 14th March 1895, H.M. ordered that when the High Court had decided the appeals, the papers should be circulated so that the Hon'ble Member might see them. The present current was accordingly circulated. Before the receipt of this, however, the High Court's letter in G.O. No. 2231, d./ 4th Nov. 1895, Pub. sends up for orders proceedings dealing with the judgments in the Session Cases Nos. 33 & 38. Page 4 of the note for orders in that G.O. speaks as if these two cases were distinct from those dealt with in G.O.s No. 291 d./ 11-2-95, and No. 568, d./ 14-3-95, whereas in fact one of them (S.C. No. 33) is the same. The note goes on to say that the judgment of the High Court in S.C. No. 33 (the present current) will be resubmitted with a note regarding the omission to appeal against the acquittal of the first accused. The present current was accordingly sent up separately, but there appears to be nothing in the omission to appeal against the acquittal of the first prisoner ^{upon} for which a note could be written. (I consulted Mr. Davidson upon the point of their submitting the papers). The question now for orders is whether the present judgment of the High Court in

FOR ORDERS.

H. E. THE GOVERNOR.

THE HON'BLE MR. H. W. BLISS, C.M.

THE HON'BLE MR. J. GROSE.

This could not be ascertained from the previous note on the current was written, as the H.C. Progs. had gone to Mr. Holmes in original, & no copy had been kept. They have now been received back from Mr. H. It was thought before that the note was accurate & the cases distinct.

The evidence against him was not properly recorded by Mr. Holmes, & so no appeal was filed. This appears from the current. The Mr. Holmes omitted to record it is not known. The appeal will be barred now.

the appeal in S.C. No. 33 (which is distinct from the proceedings of the High Court, which has already been sent to Mr. Holmes for explanation) should also be sent to Mr. Holmes for explanation together with the Govt. pleader's letter referring to the omission to record the evidence of the 16th witness against the first prisoner. It was ^{before} thought that this was ^{absolutely} necessary and therefore the draft order put up on the current by the office. ~~Mr. Holmes'~~ Mr. Holmes' explanation with regard to the Govt. Order No. 2231, d./ 4th November 1895, has ^{meanwhile} arrived (the day before yesterday) and is in the linked file. ^{It now appears that this explanation already refers to the High Court's remarks on S.C. 33.} Orders are requested as to whether the judgment in the present current should still be sent to Mr. Holmes.

The paper was sent to H.E. the Govt. before the Hon. Mr. Bliss by a mistake in circulation.

W. 20. 195
2/11/95

APPEALS against ACQUITTALS

by Mr. W.C. Holmes i.e.s.

(FOR ORDERS)

Hon. Mr. Bliss C.J.

* Letter from the Registrar
of the High Court to the Chief
Secretary to Govt. No. 2873
W.C. 1895

* Copy enclosed

in addition to other
facts in his management of
the case

2. In his proceedings
W.C. 1760 Judicial
Hon. the Judges of the High C.
have already commented adversely
upon the Sessions Judge's conduct
of this case, & have expressed their
opinion that this & other in-
stances of his inefficiency demonstrate
that Mr. Holmes is not suited to
judicial work & should be employed
in some other dept. on his return
from furlough. (3) It appears from
the Govt. Pleader's letter, forwarding
the High Court's judgment in the case,
that the Sessions Judge altogether
omitted in taking down the evidence
of the 16th witness to record anything
referring to the 1st Prisoner's
connection with the others, whereas
from the evidence recorded by his
clerk it appears ^{seems to have been} that there was
considerable body of evidence to
incriminate this 1st accused.

~~4. The proceedings of the
Hon. the Judges above referred to
has been referred to Mr. Holmes
for explanation & it~~

4. Mr. Holmes conduct of the
case appears to Govt. to require to
thorough scrutiny. The bags of

Order: 26 Nov 1895, No 2441

The judgment of the High
Court in the appeal against
the acquittal in sessions
case No. 32 of 1894 will be
Comm'd. to the Dist. Magistrate of
S. Canara.

2. The Govt. Pleader's letter
of the 21st Oct. No. 1083 will
be comm'd. to Mr. W.C.
Holmes i.e.s. who will be
requested to submit to Govt.
his explanation of the circum-
stances referred to in para 3.
above which has led to the
omission to appeal against the
acquittal of the 1st accused in
the case.

W.C. 1895 (from order)
To Dist. S. Canara.
W.C. Holmes i.e.s.

To R
Hindi
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Holm
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to

The Court above referred to
was referred to him for ex-
amination, & that the Judges
of the Court ~~with the request~~
call upon him to ~~consider~~
the desirability of calling
upon Mr. Holmes to account for
this (apparently) additional
irregularity and to communicate
to Govt. ^{with any remarks which they may see fit to offer} the upl that he may
make upon the matter, with his
opinion thereon.

to Mr. Kings 22 (from orders)
25/11/85
casto
Com Dnye S Canara. A. Act + Encl.
S. Ca Hon the Judges. H. Ct. with C. S.
A. Act

M. W. C. Holmes. is
CS.
(from orders)

80 2441
26/11/85

First copy sent to Press.
Returned for Signature.
Despatched.

READ AGAIN G.O., No.
139

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ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO

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IN ORIGINAL.

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