

Judicial (1895) Department.

ORDINARY MIS

G.O., No. 64

Confidential No. 5

DATED 12-1-95

[Despatch Abstract.]

Mr J. Varada Rao

Considering that — is not at present fit for promotion and directing the Collector of Malabar to submit a further report on his work after six months.

BACK PAPERS.

No.	Department.	Date.	G.O.	No.	Department.	Date.
06		1891	58		Con	1894
17	Con	1892	77			
85	—	—				
11	—	1893				
32	—	—				
146	—	—				
164	—	—				
176	—	—				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

my dear Molerly,

I write to remind you that on the 13th Decr. next a report on Mr. Varada Rao's work is due from you — vide G.O. 213 June 1894, No. 1439 Indl.

25/11/94

Molerly 29/11

CHIEF SECRETARY
GOVERNMENT OF MADRAS
14 DEC. 1894

My dear Sir,
As soon as I received your
letter of 26th ult. reminding
me that my report on Mr
Varad Rao's work was due
on 13th, I wrote to Mr
Srinivasulu & asked him
to let me have the
necessary papers. This day
I have received some
papers, but not those
I particularly wanted

I am sorry
with the circumstances
excuse me for not sending
the report in time. I return
to Calicut on 15th & will
send off the report early
next week.

I am afraid I cannot
report favourably. The man
is sadly wanting in energy
& too unwieldy to be
used as a Divisional Officer.

Yours sincerely
G. S. S. S.

Just DEPARTMENT.

From

H. Inokely Esq JCS

No.

Dated 11 }
Received 14 } over 94

Received 14

Enclosures

SUBJECT.

Re. report on Lwt. Varada Rao's

work

W

To await the report

$\frac{2}{17.12}$

In the Court of the District Magistrate of Malabar.

PRESENT :—

Henry Moberly Esquire

JUDGMENT.

IN CRIMINAL APPEAL NO. 15 OF 1894.

DATE OF					Order.
Presentation.	Filing.	Notice issued by Court to appear.	On which appellant ordered to appear.	Hearing.	
2.8.94	3.8.94				30.8.94
Court of the District 22 nd Class Magistrate of Malakal.					
P.C. no 34 of 1894					
P.A. no 16 of 1894					
1. Payil at H.H.					
2. Edathil Maland in					
The accused are sentenced to six months rigorous imprisonment each for house-breaking by night with intent to commit theft in a building. Sections 459 and 380 B.P.C.					
Reverse d					
Sentence and Law under which it was imposed in the Lower Court.					
Whether confirmed, modified or reversed					
If modified the modification					

The appellants, who are in jail, have not instructed any writil to appear on their behalf. The appellants say that the 1st Prosecution witness had threatened to get them into trouble and that he concocted the case against them.

2. The appellants are said to have committed housebreaking by night, and theft on the 4th Decr 1894. The theft is said to have been discovered

a maid - servant of the 1st Pros. witness, but was neither cited nor examined as a witness. The 1st Pros. witness simply spoke to the loss of certain articles.

3. The 2^d Pros. witness said that 1st appellant had pledged a Ketelasa (identified by the 1st Pros. witness as his) with him.

From 4. The 3^d Pros. witness said that he had seen 1st appellant twice on the 4th May, and that after dark, two moplaks came to his house and asked for Alikutle and that he told them to go to Muttath Mammad's house. Before the Police, however, this witness said that he saw 2 moplaks taking 1st appellant from Mammad's house. This witness was not asked by the Assistant Magistrate to explain these discrepancies.

5. Muttath Mammad who had been cited by the Police as a witness was not examined and no reason for his non-examination was assigned.

6. The evidence of the 4th and 5th Prosecution witnesses is really of little or no importance.

7. The 6th Prosecution witness is the Station House officer of Karaparamba. He deposed to the finding of 2 boxes near 1st Pros. witness's house in consequence of 1st appellant's confession, to the confession of 2^d appellant and to the production by 2^d appellant of 2 gold sequins, 2 rupees and a ear ornament. A search list was prepared stating to the production of the above articles by 2^d appellant.

8. The 1st Court witness is the Adhikari of Pannikot. He says that 2^d appellant's house was searched. There is no evidence whatever that the search was properly conducted and the Assistant Magistrate failed to question the Adhikari or the Station House officer on this point.

9. Confessions made by persons after their arrest by the Police are always open to suspicion, and it is to be noted that in this case the 2^d appellant told the Magistrate that he had been tortured by the Police.

10. The 7th Prosecution witness said that 1st appellant had pledged with her 18 gold beads, 3 gold clasps, 2 gold tubes and 8 silver rings; and that he redeemed the gold ornaments 3 days later. According to the Charge sheet, this witness told the Police that 1st appellant asked her to redeem a ring from the place where it had been pledged. Her statement to the Police was utterly inconsistent with her statement before the Assistant Magistrate, yet the latter did not call on her for an explanation.

11. The whole case has been conducted in a very slipshod manner and the Assistant Magistrate has not attempted to test the veracity of the witnesses. As the appellants have not had a fair trial, I reverse

the

2. The Procreation story is that during the night of Thursdays

12
Thursday 14th June, which 1st Prosecution witness who
sleep in his shop, Appellant opened the door by putting
is hand over the wall & drawing the bolt, that Appellant
accidentally kicked over a kerosene oil tin and woke
1st Prosecution witness, who chased him out of the house
and caught hold of him, but was thrown off. 1st Pro-
secution witness cried out, and 2nd and 3rd Prosecution
witnesses then chased the thief and recognized him to
be Appellant.

3. Now 1st Prosecution witness is a lame man, & his
story that he was able to catch hold of the thief
near the channel in front of his house is not credible.
1st Prosecution witness says the offence was committed
on 2nd Mithunam, but the 2nd Mithunam corresponds
to 15th June. Neither the 2nd nor 3rd Prosecution witnesses
know the date of the offence. In his Judgment the
Assistant Magistrate remarked: "Some of the witnesses
blunder regarding the dates". I cannot find ^{any} blunder
in any of the recorded depositions, except in that of
1st Prosecution witness; but in the statement of Complaint
taken from 1st Prosecution witness by the Kasba Station
House Officer the date is given as 14th June. The Station
House Officer whom I have examined says that he
took the statement on 15th June and this agrees with
the date given in the occurrence report. Admit-
ting that Complaint was made on 15th June, it
is not clear why 1st Prosecution witness should
say that the offence was committed on 2nd
Mithunam.

4. The Appellant was not arrested till 18th June.

The

13
The Police went to the scene of offence on 16th June, but
did not attempt to search Appellant's house on 16th
or 17th as Appellant is a N. D. - Strange to say, as soon
as Appellant was arrested he confessed to the crime
took the Police to his house, and from the roof of a
cattle pen produced a box. He then took them to a
Cocoanut tree, dug up the ground and produced
some Coins tied up in a cloth. This evidence may
in my opinion be rejected as utterly untrustworthy.
The omission to search the house on 16th or 17th is
suspicious; the Confession by a N. D. after arrest is
suspicious & it is to be remarked that in the lower
court the Appellant said that the Police had
tortured him for 2 days.

5. Rejecting the Evidence as to the finding of the
property alleged to have been stolen, the whole
Case rests on the Evidence of the 1st three Prosecution
witnesses, who say they recognized the Appellant
in the moonlight. I have already shown that 1st
Prosecution witness cannot be believed. It is very
difficult to recognize a man who is some distance
ahead of you, in bright moonlight; much more
so when the man is running through a paramba.
6. I am unable therefore to believe the Prosecution
story. I reverse the conviction and quash the sentence.

Signed - H. M. M. S.
Ag District Magistrate.

True copy

H. M. M. S.
Ag. D. Magistrate.

(Encls n^o. III. to letter dated 18-11-94 n^o. 17)
15 Confol.

Magtl.—No. 41.

IN THE COURT OF THE Assistant 2nd MAGISTRATE OF Malabar

PRESENT.— J. Varada Rao Esquire

CALENDAR No. 38

of 1894

Assistant Magistrate

COMPLAINANT

DEFENDANTS.

The Queen Empress.

Erankihunnummal Krishnan
Nair

Offence and Law

House breaking by night with intent to commit theft
And theft in a building Section 457 and 380 I.P.C

Finding of the Magistrate

Guilty

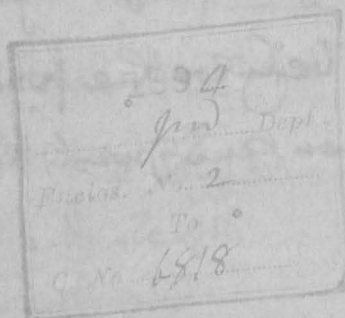
Sentence and Order.

The accused is sentenced to (6) six months rigorous
imprisonment of which period 30 days shall be passed in
solitary confinement.

Serial Number.	DESCRIPTION OF ACCUSED.					DATE OF					Explanation of delay.
	Name.	Father's Name.	Caste or Race.	Occupation.	Residence.	Age.	Occurrence.	Complaint.	Apprehension.	Commencement of trial.	
1	2	3	4	5	6	7	8	9	10	11	12
	Erankihunnummal Krishnan Nair	Thunlunni Nair	Nair	Cultivation	Matam Anson in Calicut	24 years	14 th June 1886	15 th June 1886	18 June 1886	27 th June 1886	16 th July 1886.

Judgment.

The prisoner before the Court Krishnan Nair
is charged under Section 457 and 380 I.P.C., with
the offences of house breaking and theft and
theft in a building. The offence is said to have



16
have occurred on the night of ^{The} 16th June 1894, at
Madam in Calicut Taluk. The Complainant was
his preferred the next day to the Police Station Officer.
Some of the witnesses blunder regarding the date,
but the above may be accepted as correct.

2. Prosecution 1st witness Kunyotti Oono, a small
shop in Madam and was sleeping therein on
the night of the offence. There was an empty
terracotta oil tin in the shop, and as some body
kicked against it, the witness woke and got up.
The man inside ran out, and witness, who is
lame, chase and caught hold of the man
in front of a channel. The latter however
shook his pursuer off and showed him down
and escaped into the adjoining hills. Witness
was able to make out by ^{the} moonlight that it
was Krishnan Nair the accused, and that he
carried a box in one of his hands. Witness
explained that entrance was effected into
his shop by withdrawing the bolt which
slides vertically from the door frame into
the door itself, by inserting a hand between
the mud wall and the roof. In Exhibit A,
the Complainant presented the next day, witness
names the accused, as having broken into
his shop, and gives particulars of the
property

17
property lost. On Monday 18th June 1894, the
accused was arrested and brought before
the witness. The accused was taken to his house
and he took from under the roof of a cattle
pen in his house a box (produced before the court)

2 whole rupees	The marginally noted properties
2 gold bannons	which were tied up in a cloth
a gold quarter sequin	pocket, and buried under a
a small porcelain bottle	Cocoanut tree in the paramba
3 copper pieces	of the house of the accused,
one gold ring	were also discovered to the Police
one copper tube	by the accused himself. All these articles
a palm leaf containing names	are named in Exhibit A, as those lost by the
of partners in a firm, and a packet	Complainant from his shop on the night
of 18 palm leaf tickets.	of the 14 th June. They were all secured in a box

which the accused was seen carrying off and
which was taken out by the accused himself
from the cattle pen.

3. Prosecution 2nd witness, Abduraman, and
Prosecution 3rd witness, Subichitili, say that
hearing Prosecution 1st witness cry out, they
ran out, and saw the accused running
and Prosecution 1st witness following him.
Prosecution 1st witness was pushed down and
Prosecution 2nd and 3rd witnesses continued
the chase but without avail. The witnesses
that they were able to make

by the moonlight. On returning to the shop they found Prosecution 1st witness complaining of the loss of his box, and the property recovered herein.

4. Prosecution 4th witness, N. Govindan Nair, the ashigari, swears to his having been present at the search, and attested the search list B, and C. The gist of his evidence is that both the box and the packet in which the articles recovered were found were pointed out by the accused himself.

Prosecution 5th witness, Ghem Kunjan says, he pledged with the ^{Prosecution} 1st witness a gold quarter sequin, a gold ring and two gold fanoms for Rs 1-12-0, of which 12-0 were paid off. These articles are among those recovered from the accused and were identified by the witness. Prosecution 1st witness also admits the pledge.

5. The accused pleads not guilty. His defence is that Prosecution 1st witness and he are not on good terms in consequence of a dispute regarding the division of profits on sale of gums raised by both these individuals. Prosecution 1st witness once threatened to beat the accused, and said he would

see him sent out of the country. Accused denies that the Police found anything in his house. Accused complains that the property ^{found} was foisted on him by the Police, that he was in Police custody for two days, and that he was tortured by Constable N^o 9292.

6. Not one of these allegations is the accused able to substantiate. He cites three witnesses. None of them professes to have any knowledge of the matter.

I am therefore constrained to convict the accused Krishnan Nair of the offences he is charged with. I sentence him to be rigorously imprisoned for 6 months - of this period 30 days shall be passed in solitary confinement.

(Signed) J. Varadachari

Assistant Magistrate

16th July 1896

(True copy)

Obtained by

by J^r Magistrate.

Confidential 21

MALABAR District Magistrate's Office
Calicut, 18th December 1894No. 17
Cont.

From

CURRENT NO. 6818

H. Mooley Esq.

To
Ag District Magistrate MALABAR

Calicut

To
The Chief Secretary
to Government
Judicial Department
Madras

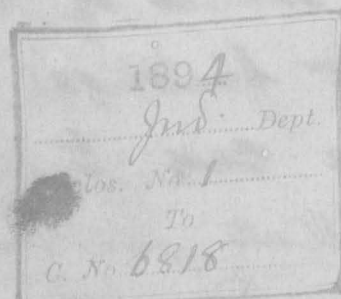
I have the honor to submit the report called for in G.O. dated 13th June 1894 N^o 1439, Judicial

2 I have been in charge of this District since 15th August. Mr. Bradley has left no remarks about Mr. Varada Rao's work from 26th May to 15th August; my report is therefore confined to the work from 16th August to the present date.

3 I regret that I cannot report favorably on Mr. Varada Rao's work as a Magistrate. I have heard 4 appeals against decisions of his.

In Criminal Appeal N^o 15 of 1894 I had to set aside the findings and sentences and send the case to the Deputy 1st Class Magistrate in charge

of



Calicut Division, as Mr. Varada Rao had tried the case in a most unsatisfactory manner. Copy of my judgment is enclosed.

In Criminal Appeal No. 16 of 1894 I also had to reverse Mr. Varada Rao's finding in Calandar Case 38 of 1894. Copies of Mr. Varada Rao's judgment and of my appeal judgment are enclosed. The offence is said to have been committed on 14th June 1894, yet the first prosecution witness said it was committed on 15th June. Mr. Varada Rao seemed over this important discrepancy and my chief complaint against him is that he is too fond of presuming that the accused is guilty and that the prosecution witnesses are telling the truth.

In Criminal Appeal 17 of 1894 I confirmed his judgment, but only after additional evidence had been taken.

In Criminal Appeal 19 of 1894 I was compelled to reverse his finding. He believed the prosecution witnesses and refused to believe the defence witnesses, whereas I saw no reason why the

the defence witnesses should not be believed.

4 Calendars in nine other cases tried by him have been received by me and I have had no reason to find fault with his decisions in those cases. He has been more careful over his Magisterial work during the last 3 months.

5 As Chairman of the Calicut Municipal Council, he has taken considerable interest in municipal affairs; but I am afraid that his inability to ride and his corpulency stand in the way of his exercising proper supervision over municipal affairs.

I have the honor to be

Sir

Your most obedient Servant

Disobly

Ag District Magistrate

CURRENT NO. 6818

Judicial Department

Confidential No. 487



FROM
THE COLLECTOR
DISTRICT MAGISTRATE OF MALABAR.

To
THE Chief Secretary
to Government
Judl. Dep^t

Dated 18 }
Despatched 19 } December 1894
Received 21 }

No.

Enclosure. 3

Subject.

Reporting on the magisterial
work of Mr. Varada Rao

20

Order
misc

A further report on Mr.
Varada Rao's work must
be submitted after the expiration
of six months. At present
he does not appear to be
fit for promotion.

(Promoted)

Letter to Malabar 24/12/94

Submitted for perusal

21/12/94

I fear this man will never be
fit for the work of a District Officer.
The best thing to do with him
would be to remove him from
the service, I think.

22/12/94

He is not yet fit for
promotion, and I don't see how
he can be promoted for the
service. He is not doing any work
under the Commission for
the service. We might get another
Commissioner to look into
the matter.

I do believe he is an indifferent
officer - but I hardly think there
is enough here to throw him out on
let us hear again 6 months hence.

W

4 Jan

21/12/94
RTD R12/1

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ENCLOSURES TO Q. No.

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LETTER OF GOVERNMENT.

STATEMENT WITH DITTO

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