

Judicial (1895) Department.

ORDINARY *Mis*

G.O., No. 889

Confidential No 60

DATED 30-4-95

[Despatch Abstract.]

Mr. H. R. Farmer, J. C. S.

Recording letter from the High Court re. the
judicial work of —.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	27	Cou	1895				
	1799		—				
	448		—				
	338.		—				
	83						

FURTHER PAPERS.

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

Confidential.

High Court of Judicature,
Madras, 5th March 1895.
CURRENT NO 1095

No 609.

From

D. W. G. Cowie, Esquire

Sq. Registrar of the High Court
of Judicature, Appellate Side.

To

Madras

The Honorable J. F. Price, C. S. J.
Chief Secretary to Government,
Fort St. George.

Honorable Sir,

In reply to the Proceedings of
Government, No. 339, dated the 15th
ultimo, Judicial, I am directed
to say that the experience the
Honorable the Judges have gained
of Mr. Farmer's judicial work
during the several years that
he has held judicial office
does not justify the opinion
that he is not qualified to con-
-tinue in the exercise of the
powers of a Sessions Judge.

2. In the two cases observed upon by the Government, there was no doubt a want of thoroughness in conducting the trials. For this the Public Prosecutor must primarily be held responsible, but the Sessions Judge also is to blame for not insisting upon a fuller investigation into the case and a more exhaustive examination of the witnesses. These faults were remarked upon by the High Court in the judgments under reference and were besides pointed out in a Proceedings directed to Mr. Farmer. Of these two cases had been regarded as typical examples of Mr. Farmer's method of dealing with his judicial work, the High Court might have had to consider whether some further action ought not to be taken and would have called on Mr. Farmer for explanations and would have addressed the Government on the subject, had there appeared sufficient

sufficient ground for such steps. But this is not the case and the Judges consider that the notice they have taken of the matter is all that is required.

3. Two isolated instances of such faults (which may be due solely to errors of judgment) form no adequate reason for questioning the fitness of the Judge for Judicial office, and so far from such faults being usual on the part of Mr. Farmer, I am to say that his tendency is rather to err in the opposite direction and to protract cases by an unnecessary degree of minuteness of investigation.

I have the honor to be,
Honorable Sir,
Your most obedient servant,

D. Lowie
Ag. Registrar.

Every letter, whether printed or in manuscript, should be docketed and abstracted on the back ;
and the abstract should state clearly the purport of the letter and not merely its title subject.

Enclosures and statements also, whether sent with letters, or merely under cover, should be numbered, docketed and abstracted. The headings of statements should be written in full to prevent mistakes, (G. O., 8th April 1883, No. 239, Public.)

Confidential
CURRENT NO. 1095

Judicial {1895.} Department.

Confidential No. 66

FROM

CHIEF SECRETARY
No.
-6 MAR. 1895
GOVERNMENT OF MADRAS

The Registrar of the High Court
of Judicature, Appellate Side,
Madras.

in view

For orders
submitted that this may be

Recorded

Yes
20
4/4/95

Dated 5 March

Received

1895.

No. 609.
Enc . u

Stating that the experience
gained of Mr. Farmer's judicial
work does not justify the opinion
that he is not qualified to
continue in the exercise of the
powers of a Sessions Judge.

60

157. 322. 1.95
339 3 15.2.95
1680 3 7.7.94
1799 3 24.7.94
339 3 15.2.95

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the *thirty-first* day of October,
One thousand eight hundred and ninety-four.

PRESENT:—

The Honourable *Sir Arthur J. H. Collins*, *Mr. Chief Justice*,
and

The Honourable Mr. Justice *Parker*.

Criminal Appeal No. 289 of 1894.

THE PUBLIC PROSECUTOR.....Appellant.

Gurugu Varahulu ——— Prisoner. accused.

Appeal under Section 417 of the Code of Criminal Procedure against the
Judgment of acquittal passed on the accused *at Session of the Vizagapatam D.*
by the Court No. of 189
by the _____ of in Calendar case No 11 of 1894.

This Appeal coming on for hearing, and ~~Counsel not appearing on behalf of the~~
~~Prisoner~~; Upon perusing the Petition of Appeal and the record of the evidence and
proceedings before the Court of Session; and upon hearing the Appellant, *and upon*

hearing the arguments of Mr. J. C.
Smith, Counsel for the accused,
the Court delivered the following
Judgment:— The Sessions Judge
has acquitted the accused on the
ground that the confessions
were retracted and he was

500-4-2-95,

not

not satisfied that they were voluntarily made or were true. He observed that the corroboration was but slight and the motive insufficient. The Government appeals against the acquittal.

We observe that the evidence shows that accused was arrested on the night of January 28th and that the first confession before the Magistrate was made on February 10th. The prisoner was then no longer in the custody of the police, but in the custody of the Magistrate, and no evidence seems to have been offered as to the alleged ill-treatment

by

by the Constables or when and how it occurred. We note moreover that there was an interval of 16 days before prisoner made his second confession to the Magistrate on February 26th.

As to the slightness of the corroboration we cannot but notice that this was in a great measure owing to the perfunctory manner in which the prosecution was conducted in the Sessions Court. No less than 20 witnesses were examined before the Committing Magistrate, and though some of the Panchayat-dars were not bound over to appear at the Sessions, the Public Prosecutor did not even call all the witnesses who were sent up. There appears

to have been evidence that the accused confessed before the arrival of the police and that a report to that effect was despatched by the Village Munsif at 4 P. M. on the 28th. There was also further evidence as to the delivery of the jewels by the prisoner.

As regards the alleged insufficiency of the motive the value of the property was no doubt small, but the Judge might have considered by the light of his experience whether the wearing by young children of jewels of even less value did not often offer temptation for

for such crimes.

As regards the evidence of the two boys (witnesses 2 and 3), we doubt whether their inability to tell what would happen if they did not speak the truth was a sufficient reason for doubting their testimony. It is not certain that even grown up people could give a definite or categorical answer to such a question. We think the appeal should be allowed and the case re-tried, and that all the evidence available should be laid before the Court.

We therefore set aside the acquittal and direct that the case be tried by the Sessions

Court

Court of Ganjam.

ordered accordingly

/Signed/ A. J. Forbes

By: Registrar,
Appellate Side,

/True copy/

D. Lowie

By: Registrar,
Appellate Side.

14/3.
10/6
1880

Court of Ganjam.

ordered accordingly

/Signed/ A. J. Forbes

By: Registrar,
Appellate Side,

/True copy/

By: Registrar,
Appellate Side.

14/3.
10/6
1880

Enclosure I to the High
Court's letter dated 14th
March/95 No. 594,
Judicial.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Thurs day, the first ——— day of November,
One thousand eight hundred and ninety-four.

PRESENT:—

The Honourable Sir Arthur J. H. Collins, Knight, Chief Justice,
and
The Honourable Mr. Justice Parker.

Criminal Appeal No. 293 of 1894.

THE PUBLIC PROSECUTOR.....Appellant.

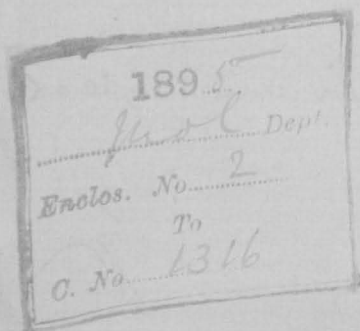
Chembolu Somanadham ——— Accused.
Prisoner.

Appeal under Section 417 of the Code of Criminal Procedure against the
Judgment of acquittal passed on the accused in Session Case No. 6 of 1894
by the Sessions Judge of Vizagapatam.

on Wednesday, the 31st October 1894,

This Appeal coming on for hearing, and Counsel not appearing on behalf of the
Prisoner; Upon perusing the Petition of Appeal and the record of the evidence and
the order of this Court dated 16th July 1894, and upon hearing the Appellant in person,
proceedings before the Court of Session, and upon hearing the Appellant in person,

and the arguments of Mr J. V. Seshagiri
Aiyar, Bahil for the Prisoner, and the
case having stood over for consideration
till this day; the Court delivered the
following
judgment: — This is an appeal



2
by Government against the acquittal
of prisoner on a charge of murder
by the Sessions Court of Vizagapatam.

The facts are that a little girl
of 5 (five) years of age, daughter
of 1st Prosecution witness, disappeared
on the morning of January 27th.
Search was made for her, but she
was not found. On the evening of
January 29th parts of her body
were found which were identified.
She had worn jewels when she
disappeared and her silver anklets
were found on the legs. The other
jewels had disappeared.

Suspicion seems to have
fallen upon the prisoner who was
a relation and lived in the neighbour-
ing house. He was questioned
by

3
by the Police Inspector on the 30th and from
a place where they had been buried
near the wall of 1st witness' house
he produced the missing jewels. On
the same day he made a confession
before the Magistrate (Exhibit B)
in which he said his destiny had
compelled him to kill the child. He
produced the knife with which he said
he had cut off the jewel. He said
the girl had been eating sugar cane
when he killed her and he had made
her throw it away. The piece of sugar
cane was found. The girl's father
had that morning given her a quarter
anna to buy sugar cane; she had spent
two pice and received one pice change.
There is corroborative evidence of
all this, and one pice was delivered
up by the prisoner with the jewels.
On

by On two occasions afterwards - on
 of February 6th and 7th after the prisoner's
 by evidence had been taken - this con-
 -fession was repeated to the Magistrate,
 the prisoner repudiating any enmity
 and saying he had killed the girl
 by destiny. He declared that he had
 spoken voluntarily and that he knew
 he would be sentenced either to death
 or transportation.

Another witness - the second - a
 boy of 14 - gave evidence that he had
 actually seen the prisoner killing a
 girl by pressing his foot on the
 child's stomach and twisting her
 neck, and that he had gone and
 told this to his father but his father
 could not believe he could really
 have seen it. His father (3rd witness)
 corroborates this. The Sessions -
 judge

judge apparently disbelieved this evidence,
 and remarks that it did not come
 out till 8 days after the event. In
 this he was mistaken as the evidence
 was produced on February 3rd.

The case against prisoner was
 dismissed on the ground (1) that the
 evidence is weak, - (2) the facts impro-
 -bable and (3) the motive insufficient.
 As regards the first point, we can
 not but observe that the evidence
 if it be believed is conclusive, and its
 scantiness appears to be owing to the
 manner in which the case was
 conducted in the Sessions Court
 for which both the judge and the
 Public Prosecutor must be held
 responsible. Fourteen witnesses
 were examined before the Magistrate
 of whom only six were called
 before

before the Sessions Court. With inexcusable negligence the Public Prosecutor did not even call the boy Nookiah (7th witness) before the Magistrate) who first found the remains of her corpse.

The delivery of the lost jewels by the prisoner was spoken to before the Magistrate by two village men - Siff and the Kurnam (prosecution witnesses .8, 9 and 10 before the Magistrate). This was most important evidence yet only one of them was called and his examination in chief is contained in about ten lines of print, though he had been fully examined before the committing Magistrate. This witness was not even cross-examined.

The

The question of the reliability of prosecution witnesses 2 and 3 was no doubt most material, - but the judge has not really discussed their testimony and we observe that the 3rd witness was not cross-examined at all - while the two or three questions which were addressed to the boy (2nd witness) did not test his credit in any way.

We set aside the acquittal and direct that the case be retried by the Sessions judge of Ganjam.

Ordered accordingly.

(Signed) A. J. Forbes.
Dy. Registrar,
Appellate Side.

(A true copy)

D. Lowil
Dy. Registrar,
Appellate Side.

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594 **CURRENT NO.** 316

High Court of Judicature,
Madras, 14th March 1895.

From

D. W. G. Bowie Esquire,
ag: Registrar, High Court,
Appellate side, Madras.

To

The Honourable Mr. J. F. Price C.S.,
Chief Secretary to
Government,
Fort St. George.

Honourable Sir,

With reference to the Memo-
randum of the Government dated
the 11th instant, No. 535, I have the
honor to forward copies of the High
Court judgments in Criminal
Appeals Nos. 289 and 293 of 1894.

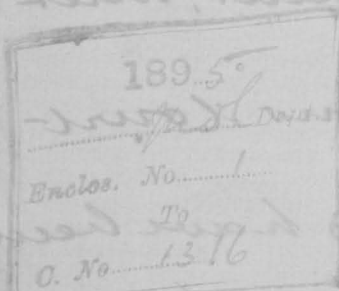
2. I may state for the infor-
-mation of the Government, that
on retrial by the Sessions Court
of Goujam, the accused have been
found

Enclosure II to the High

Court's letter dated 14th

March/95 No. 594.

Judicial.



found guilty of Murder, and
sentenced to death by the Sessions
Judge and that the matter is now
pending before the High Court.

I have the honour to be,
Honourable Sir,

Your most obedient servant,

D. Lowie

ag. Registrar,
Appellate Side.

15/3.

10/3.

CURRENT NO 1316

Judicial { 189 } Department.

No.

FROM

THE AG. REGISTRAR OF THE HIGH COURT
OF JUDICATURE AT MADRAS,
APPELLATE SIDE.

Dated 14th March 1895.

Received

No. 596
Enc. 2
16 MAR 95
PUBLICITY DEPT.

Forwarding copies of judgments
in Criminal appeal Nos 289 +
293 of 1894 and informing
that on retrial the accused
have been found guilty of
murder by the Sessions Court
Ganjam & the matter is now
pending before the High Court.

500-20-6-91.

Cs.

Order of 30th April 1895, No. 889

Recorded

(From order)

8-4-95

The Hon. the C.J. with the C.J. 25/4/95
copy to Public (p. 10)
Office order dated 2-12-16 order to
Public for deposit.

This is the worst of the H.C. - Every
judge meets complaints of
the terrible inefficiency of the H.C. 2.
Class. Judges & then when a case
against one turns up, they won't
move. They say "Oh! he is not the
worst", but then they never report
the worst. They may be excellent
Judges, but can't be said to be
successful administrators of a very
large & extremely important dept.
What to do to improve the Judiciary
any when the H.C. won't move, I
don't know.

BA

4/4/95

Having asked the opinion of the
H.C. we must accept it. Their
list may be recorded

29/3/95

I do not suppose there is any thing
else for us to do.

I notice that the H.C. insinuate that
it is for them to make the first move
in the event of any J. Judge not
being up to the mark - but it is
strange that they sh^d. be so apathetic.
But unless they do move, I do not see
how we can do any thing.

W
7 Apr

DEPARTMENT.

No. 1095-
1316

Dated { 5 } - 3 - 1895,

FOR ORDERS.

This is the reply of the High Court
to P.O. of 15.2.95 No. 339 J. 2. Attention is invited to para. 3
of P.O. No. 83. of 15.1.95 which
accuses an advocate or Mr. Farmer's
delay in disposing of civil work.
3. The original judgments in Criminal
appeals 289 & 293 of 1894 were
being forwarded in the usual course
to the Dist. Magistrate of Vizagapatnam
but copies have since been obtained
from the High Court (C. 1316) in case
Mr. Farmer's should wish to
refer to them. The retrial in each
case has resulted in a conviction.
4. In the linked P.O. Mr. Wolfe Murray
writes that Mr. Farmer is behaving
in a most eccentric manner, & speaks
of him as suffering from over work.

29.3.95

Eccentricity appears to be uncommon in the
Magistrate Mr. J. H. W. Murray himself has been behaving in
a very eccentric way of late and a telegram
has just been received from a member
of the Dist. Bd. accusing Mr. H. W.
of conduct which would make one
almost think that he was in a
little upset.

20
8/4/95

W. Farmer's fitness
to hold the post of Sessions
Judge

H.H.
Fair.

(For order)

First copy sent to Press.

Returned for Signature.

Despatched.

READ AGAIN G.O., No.
189

DATED

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Order complete with Letter

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LETTER OF GOVERNMENT.

MENT WITH DITTO

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—

A = Print in full.
B = Not to be printed.
P = Print abstract only.
Q = Print heading only.