Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1010

Dated 14th May 1895

INDEXED.

[Despatch Abstract.]

PETITION FOR MERCY.

Declining to interfere with the sentence of death passed on convict Voona Pandayya in Ganjam Sessions Case No. 28 of 1894, and directing that the law shall take its course.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	2618		95				

DISTRICT JAIL OFFICE
No.
8 - MAR. 95
B

GANJAM SESSIONS COURT.

C. C. 28 of 1894.

Committed by M. R. Ry. N. Ramamurti Naidu Garu, Ag. 3rd Class Magistrate
of Ichapur (R. C. 7/94), and remanded by the High Court for retrial as per their
order dated 12-12-94 in Cr. A. 593/94.

PRESENT.

J. P. Fiddian Esquire, Sessions Judge.
Regina Indiæ Imperatrix. Versus. Voona Pandayya.
Offence:— 1. Murder, Sec. 302 I. P. C.
2. Theft, Sec. 379 I. P. C. (withdrawn by the Public
Prosecutor with the consent of the Court)
Opinion of Assessors:— Guilty.
Finding of Judge:— Do.
Sentence:— Death, subject to the confirmation of the High Court.

JUDGMENT.

This is a case in which defendant was convicted by this Court of theft &
murder but the conviction was set aside by the High Court and the case sent for
retrial, with a direction that the charge of murder should be tried first.

2. Their Lordships remark that the course adopted, viz. the hearing of the
two charges together, was very inconvenient; the inconvenience presumably arises in
the High Court as it is obviously more convenient for this Court to try the charges
together and so avoid the necessity of recording the whole evidence twice *i. e.* once
under each charge.

3. It is also remarked that the charge to the jury is not distinguished from
the judgment but although the printed paper does not contain the heading "heads of
charge to the Jury" the charge to the Jury is clearly distinguishable from the judg-
ment for the printed matter consists of two main parts separated by the record of the
verdict of the Jury on the first charge and the opinion of the Assessors on the second
charge.

4. The former of the two main parts is clearly in the form of a charge to the
Jury and after recapitulating the evidence deals exclusively with the charge of theft;
the printed paper after stating the verdict of the Jury on the first charge and the
opinion of the Assessors on the second charge proceeds (after recording the Court's
finding on the 1st charge) to discuss the evidence adduced to support the charge of
murder and ends with the finding of the court on the charge of murder and the
sentence &c.

5. Their Lordships' observations on the manner in which the three confes-
sional statements were dealt with, will be referred to later on.

6. The story for the prosecution is that about 7 A. M. on the morning of
Monday the 22nd October defendant induced the deceased, a boy of 5 or so, to ac-
company him from the village by telling him that his father who had been away from
the village for some time, was coming; that he (the boy) then wore two gold ear-rings
and two silver anklets like those now before the Court (P. W. 3); that the two
went eastwards out of the village by the New tank (70 or 80 yards from the boy's
house) the boy walking 5 or 6 feet behind defendant (P. W. 4); they then went to
Bhagavaddoss tank (P. W. 5); they were then seen standing on the bank of Kalindi
tank by P. W. 6 who was cutting grass in the bed of the tank 60 or 80 yards off; and
the latter then heard a cry in a boy's voice of Father I am killed; although this was
repeated three times, the witness did not look to see what was the matter but 20
minutes later or so, he noticed while moving to a different place that defendant was
standing up to his waist in the water picking moss (or water weed) and saw him then

go to another tank (described by him as Gongatank and probably the same as Gongadhara Subudhi's tank (i. e. the New tank spoken of by P. W. 8); defendant was also seen, by P. W. 10 who was grazing cattle under the new tank, coming from Kalindi tank to New tank, in a hurry and with his cloths all wet; the witness asked why he was wet and defendant explained that he had fallen down as he was coming from Chikati fort; defendant went to bathe in the new tank and the witness went home.

7. The boy was not seen alive again and his people after searching for him in the village and failing to find him then, informed the village munsiff that he was missing; and at about 3 P. M. that officer (P. W. 15) and others including P. Ws. 8 and 9 went out by the tanks above said to look for the body, several people having stated in the village that the boy had been seen in the morning going in that direction with this defendant.

8. Those who went to Kalindi tank found the boy's footprints on the bank and saw those of the boy with foot prints made by defendant who is lame, near the water ;the body was then found in the water and taken out by the village dandasi; and was then seen to have no jewels on it.

9. Defendant having been the last person seen in the deceased's company was suspected and was taken to a temple where he was questioned by the Karji in the presence of the Curnam (P. W. 16 who had been sent for by the Karji) and P. Ws. 8 and 11 and defendant then after at first denying his guilt admitted the murder & agreed to give up the jewels; he then took the village officers &c. to his backyard & dug up the silver anklets from a place near a guava tree and the gold earrings from a place between two buildings of the house and they were identified as the deceased boy's.

10. Defendant was then taken back to the place where the body lay and asked to write an account of what he had done and wrote Exh A and this was sent that evening with the village officers' report Exh B to the Station 4 miles away; it reached the Station (according to the writer, P. W. 13) at 10-30 P. M. and the writer & a constable reached the village about mid-night; the Station House officer heard of the death at Ichapur, 10 miles from the village at 10 P. M. or so and arrived at the village at 3 or 4 A. M. next morning.

11. The inquest was held next morning at 7 or 8 A. M. by P. Ws. 11 & 17 & 3 others in the presence of the village officers, and the Station House Officer (P. W. 14) and acting Head Constable (P. W. 13) and the finding was that defendant had drowned the boy and taken his ornaments; the inquest report embodies the whole account as now given for the prosecution viz that defendant was seen at 8 A. M. or so with the deceased; that the body was found in the Kalindi tank, to which defendant's foot prints were traced; that defendant confessed before the Karji and dug up in his own compound the silver anklets and gold earrings and the finding is that defendant murdered the boy for his ornaments

12. Two days after the inquest i. e. on 25th October defendant was brought up before the Committing Magistrate and gave a verylong statement setting out the details of the manner in which the crime was committed and the jewels given up &c. and 5 days later, after the prosecution witnesses had been examined he again made a statement admitting the truth of the previous one and repeating in brief his former account of what had occurred.

13. Defendant was accordingly committed and as stated above was convicted by this court but the conviction was reversed.

14. The first question is whether the boy was murdered or whether he accidentally fell or intentionally threw himself into the tank and apart from the evidence it is incredible that a boy of 5 should commit suicide and it is most improbable that on a rainy day a boy of that age would wander three furlongs from his own house and that he would accidentally fall into the tank.

15. Further the medical evidence shews that death was caused by violence and Exh C shews that the villagers thought so from the appearance of the body.

16. I have no doubt therefore that the boy was murdered by drowning.

17. The next question is whether this defendant was the murderer and as to this we have (1) the evidence to shew that this defendant was the last person seen with the deceased and that he was observed taking the boy away from the village towards the tank where the body was afterwards found; (2) evidence to shew that this defendant within a few hours of the boy being missed, gave up certain jewels which are proved to be those worn by deceased and (3) evidence to shew that before the Police arrived, defendant confessed his guilt & (4) defendant's own statement before the Committing Magistrate on 30th October.

18. As to the first point, I see no reason whatever to doubt that defendant was seen accompanying the deceased towards the place (Kalindi tank) where the body was found, and no objection is taken to the evidence of P. Ws 3-5 who depose to that effect nor to that of P. W. 10 who saw defendant coming back alone from Kalindi tank with his cloth wet, though it seems difficult to believe that of P. W. 6 who states that he heard the boy cry out that he was murdered but never troubled to look and see what was going on; and the evidence of P. W. 7 also seems somewhat suspicious as he now gives 8 A. M. as the time at which he saw defendant and deceased together, though at his previous examination in this Court he gave it as 11 A. M.

19. Besides the evidence as to defendant's being seen leaving the village with deceased, several witnesses (P. Ws 8-9 and 15) depose to tracing defendant's foot steps with those of deceased on the bank of the Kalindi tank to the water's edge and I see no reason to doubt their evidence; as the rain which fell that day would account for foot prints being made and for other persons being kept away having? from this tank which is according to the Station House Officer 200 yards from the road and three furlongs from deceased's house.

20. The next stage in the case is defendant's conduct in the afternoon after the body was taken out of the water and as to this, the important witnesses are P. Ws 8,9 and 15 to 17.

21. Of these P. W. 8 deposes that he heard the village officers question defendant on the steps of the temple; that at first he denied his guilt but afterwards when the Karji informed him that there was evidence that he took the boy, he admitted that he had killed the boy and promissed to give up the boy's jewels; witness then went with the defendant, the Karji and Curnam to defendant's yard where defendant in the presence of his parents dug up the four jewels and at the Karji's request handed them to this witness as being a respectable man.

22. I see no reason to disbelieve this evidence though the witness puts the arrival of the police at an earlier hour (7 or 8 P. M.) than any other witness but this may be due to his ignorance.

23. P. W. 9 states that he stood on the road and watched defendant dig up the anklets and hand them to P. W. 8, and that he then saw the village officers come out of the house and was shewn the earrings by them and told that defendant had just given them up.

24. P. W. 15 the Karji deposes that after the body was found he and others went to the house of defendant whom they suspected from his having been seen with the boy in the morning; that defendant's father at first objected to his going out of the house but witness went in and brought defendant out and made him sit on the steps of the temple 15 or 16 yards away; that he told defendant he

was suspected and had better give up the property and defendant agreed to do so he then describes the giving up of the 4 jewels and proceeds to depose that defendant was then taken back to where the body was and asked to describe in writing what he had done and that he accordingly wrote (Exh A.)

25. P. W. 16 the Curnam gives much the same account of defendant's agreeing to give up and giving up the jewels and of his writing Exh A.

26. P. W. 17 also deposes that he was in the road when the Karji &c. brought out the 4 jewels from defendant's house; that P. W. 8 had them in his hand and shewed them to the bystanders; and that he then heard defendant confess that he killed the boy.

27. I see no reason to doubt this evidence and it proves that defendant when questioned by the village officers about the boy's death at first denied everything but afterwards agreed to give up the property.

28. Beside the oral evidence, Exh A itself has to be considered; defendant admits that he wrote and signed Exh A but states that he was beaten by the police and compelled to write it.

29. The oral evidence however proves to my satisfaction that Exh A was written by defendant and despatched to the Station before any Police officer appeared on the scene and further the writing of the document is quite regular and firm and has not by any means the appearance of being written by a man who had been beaten and compelled by threats to write it.

30. Further the village officers depose that it was voluntarily written by defendant and I believe them.

31. It is objected however in the High Court's Proceedings that Village Magistrates had been prohibited by Government from recording confessions but I am not aware of any principle of law or practice that would prevent such a confession if taken, from being treated as evidence and in this particular case such principle if existent would hardly apply for the statement was admittedly written out and signed by defendant himself and was not taken down by the Village Magistrate.

32. There is a slight circumstance however on the face of Exh A that might be taken to tell against it and that is that the last sentence of the body of the statement is that defendant got it written.

33. Defendant however still admits that he wrote the document himself and beneath his first signature, he has written that the statement was in his own handwriting and this also is signed by him; probably the mis statement above said was noticed by some one at the time and the addition was made to correct it.

34. The paper is attested by the Karji and signed and dated by the Curnam and forms a most important piece of evidence as in it defendant admits that he took deceased out in the morning, gave him a custard apple; and as he was eating it removed his jewels and then drowned him in the tank and that he (defendant) had just given up the four jewels (as now described by the witnesses.

35. This is all the oral evidence except that of P. W. 12 who took the body for examination and received the certificate; of P. W. 13 the writer who deposes to receiving Exh A with the report of the village officer; and of P. W. 14 the Station House Officer who proves the plan (Exh E) of the locality.

36. The next document is defendant's statement of 25th October and this document, (which is stated in the High Court's Proceedings not to have been brought on the record but which was read in evidence as is usual with prisoner's statements taken by the Comitting Magistrate, and endorsed as so read) has been excluded from the record in consequence of the objections to its reception in evidence as set out in

the High Court's Proceedings.

37. The Sub Magistrate who recorded the statement states, when examined (as P. W. 1) that he cannot remember if he ascertained before recording the statement (as required by Sec. 164 Cr. P. C.) that it was to be made voluntarily; the witness explains the number of the questions put to defendant by saying that he wished to ascertain if the confession was one put into his mouth by the police and that from his answers he thought the confession was made voluntarily but the provisions of the law were apparently not complied with and the statement is excluded.

38. The next document is the defendant's statement made in the ordinary course during the preliminary enquiry and in this again he confesses that he drowned the boy and took his jewels and afterwards gave them up and I see no reason to exclude this statement though defendant denies that he gave it.

39. Defendant pleads not guilty but cites no witnesses although two of the witnesses depose that his parents were present at the giving up of the jewels and if they were not present, their testimony would be important evidence for the defence.

40. To sum up, the evidence shews that defendant was seen leaving the village with the deceased just before the latter was missed; when questioned the same afternoon he admitted having murdered the boy and agreed to give up the jewels which he had taken from him; he did so give up the property and immediately after wrote out a brief statement of what he had done in presence of the village officers; next morning the panchayetdars found that he had drowned the boy and just a week later he deliberately informed the Sub Magistrate in open Court that he had so murdered the boy and had taken and afterwards surrendered the jewels and his confessional statements are corroborated on minor points as to his proceedings just before and after the murder and his statements as to his giving up the jewels are proved to be true by the evidence of several respectable witnesses.

41. There is not a single suggestion throughout the case to account for these witnesses or any of them, deposing falsely against this defendant and I am therefore compelled to conclude that defendant did murder the boy for the sake of his jewels.

42. Agreeing with the Assessors therefore I find defendant Voona Pandayya guilty of murder and sentence him to be hanged by the neck till he is dead.

43. He is informed that if he wishes to appeal, he must appeal to the High Court within 7 days.

The 7th day of February 1895.

Sessions Judge.

The second charge is withdrawn by the Public Prosecutor with the consent of the Court.

(Signed) J. P. Fiddian

Sessions Judge.

(True Copy) By order of the Court

Sheristadar

B

In the High Court of Judicature at Madras.
Wednesday, the third day of April one thousand eight hundred and ninety five

Present:-

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

and

The Honourable Mr Justice Best.

DISTRICT JAIL OFFICE, No. 19 APR 95 BERHAMPUR, GANJAM.

Referred Trial No. 19 of 1895.

Voona Pandayya ——— Prisoner.

Trial referred by the Court of Session of the Ganjam Division for confirmation of the sentence of death passed upon the said prisoner in case No. 28 of the Calender for 1894.

Criminal Appeal No. 135 of 1895.

Appeal by the Prisoner against the said sentence.

This caſse coming on for hearing, the court delivered the following

Judgment. - We see no reason to doubt the correctness of the conviction. In his appeal petition the prisoner admits that he was with the deceased boy at the tank in which his body was found and he also admits having taken the jewels and subsequently given them up. These facts are also amply proved by the evidence of the Karji, Karnam and other witnesses- to whom the prisoner admitted that he killed the deceased.

The evidence satisfies us that appellant has been properly convicted. We affirm the conviction and sentence and dismiss the appeal.

By the Court
(signed) D. Cowie
Aq Registrar, Appellate Side
(True Copy)

No 217

To Voona Pandayya Prisoner in C.C. 28/94 S.
through the Keeper of the District Jail,
Berhampore, as per his application
dated 11-4-95.

G.R.
H.C.

[illegible]

[illegible] 5692 [illegible]

1. [illegible] 1894 [illegible]

[illegible] 28 [illegible]

2. [illegible]

3. [illegible]

4. [illegible]

5. [illegible] ?

6. [illegible]

[illegible]

7. [illegible]

[illegible]

[illegible]
[illegible] ೨೧

Superintendent of Jail

Appeal for mercy

Memorial in Telugu presented by prisoner No 5692 Voona Pandayya under sentence of death.

1895
Jud. Dept
Enclos. No 3
To
O. No. 2130

To

His Excellency the Right Honorable the Governor in Council
Madras

The humble memorial of Voona Pandayya prisoner No 5692 of the District Jail at Berhampore Most humbly and respectfully showeth:-

1. That your petitioner was sentenced to death by the Court of Sessions Ganjam in Case No 28 of 1894 (Vide Copy of Judgment Marked A attached for perusal).

2. That the above sentence was confirmed by the High Court of Judicature, Madras, on an appeal preferred by your petitioner (Vide Copy of Judgment marked B enclosed for perusal).

3. That the High Court dismissed the petitioners appeal merely because the petitioner has admitted in his appeal petition that he was with the deceased boy near the tank wherein the corpse of the deceased was found and that he (petitioner) delivered the jewels to the Kharji and Karanam.

4. That your petitioner has given a true and detailed account of the history of the case in his appeal petition and has assigned sufficient causes for his stay wi the deceased boy; and the delivery of jewels is, it is clear accounted for, done by the petitioner in good faith.

5. That it would have been equally just on the pa of the High Court to have given the same weight

the petitioner's other allegations in his appeal petition as was given to his admissions in the same.

6. That if all the assertions of your petitioner in his appeal petition were thoroughly perused and brought into due consideration along with the fact that there is no direct evidence as to the commission of the offence of murder by the petitioner himself, the High Court would have no doubt done something to save the life of your petitioner and would have given him the benefit of doubt; but owing to the petitioner's greatest misfortune, the other facts of his appeal petition were lost sight of by the High Court and only those which will be favorable towards conviction were taken into consideration.

7. That your petitioner, therefore, most humbly and respectfully prays that your Excellency may be pleased to peruse the petitioner's appeal memorandum with a gracious view bringing all the facts mentioned therein into your Excellency's merciful consideration and to administer justice in the case of your petitioner who is at the point of death.

For this act of mercy on the part of your Excellency, your petitioner shall as in duty bound ever pray.

erhampore Jail
April 1895

Sd/ Uoona Pandarra

(True Translation)

Superintendent of Jail

Appeal for mercy

Translation of the memorial in Telugu presented by prisoner no 5692 Voona Pandazza under sentence of death.

1895
Judl. Dept.
Inclos. No. 4
To
C. No. 2130.

Appeal for Mercy

No. 364

Berhampore
22d April 1895

CURRENT No. 2130.

From
Surgeon Lt Col T. J. Hackett Wilkins
Superintendent of jail
Berhampore

To
The Chief Secretary to the Government
Fort St George

Sir,

I have the honor to forward herewith an appeal for mercy presented by convict no 5692 Voona Pandazza whose sentence of death in Sessions Case No 28 of 1894 of the Ganjam Division was confirmed by the High Court of Judicature, Madras, with copies of the two judgments attached.

2. The nominal roll of the prisoner is also enclosed.

3. The prisoner will not be executed until a definite reply is received to the enclosed memorial.

I have the honor &c
Sir
Your most obedient Servant
T. J. Hackett Wilkins
Superintendent of jail

CURRENT NO. 2130.

Appeal for mercy

Judicial Deptt

From Surgeon Lt Col F. J. Wackett Wilkins
Superintendent of Jail
Berhampore

To

The Chief Secretary to the
Government
Fort St George

Dated 22nd } April 1895-
Recd 30th }

1600

No 364

Enclosures 5-

Subject

Forwarding the appeal for mercy presented by Convict No 5692 Voona Pandara under sentence of death with the usual nominal Roll.

CHIEF SECRETARY
30 APR. 1895
GOVERNMENT OF MADRAS

The paper was detained till 11 30 [illegible] from the days to trace the 87 G.O. reqd [illegible] Confessions referred to in the Sess court's in his judgment

ds
1/5

16.30 [illegible]
30/4

G.O. 1259/94 &c
G.O. 2883/4: 17 Dec 87 &c
1600: 31 July 1888 &c.

[G/60]
1,000—18-3-95.

DEPARTMENT.

Memorandum.

(D)
Ret cong. ~~py~~ despto
1/5

Read the following

C. No 2130.

Telegram to the High Court

No 245 Please cause transmission ~~of records in~~ criminal appeal 135 of 1895 ~~including~~ of original judgment of Ganjam Sessions Court and High Court's order thereon directing retrial

D
1 5 95

FORM No. 53.

Nominal Roll of Convict No. 5692 Voona Panderra

Crime.	Sentence.	Date of Sentence.	Adjudicating Court.	Present Age.	State of Health.	Conduct in Jail.	Result of the Appeal to Appellate Court.	Number of previous convictions if any and remarks.
Murder, Section 302 I.P.C	Death Subject to the Confirmation of the High Court.	7th February 1895	Court of Sessions Ganjam	24	Good	Good	Sentence Confirmed by the High Court of Judicature Madras.	nil

District Jail Office,
Berhampore
22nd April 1895.

J. Wachm McLeay
Superintendent of District Jail.

Rules 701 and 704.

1,000—9-94.

1259 of 24-5-94
1600 of 31-7-88
2883-84 of 17-12-87

CURRENT No. 2320

Judicial {1895} Department.

No.

From

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

Dated 3rd May
Received } 1895.

CHIEF SECRETARY
8 MAY 1895
GOVERNMENT OF MADRAS

No. 1052 Jud l
Enc two

Forwarding copy of original Judgment in Ganjam Sessions case 28/94 & a copy of High Court's Order in R.T. 59/94

appeal for mercy

Nominal Roll of
prisoner No 5692
Voona Pandayya under
sentence of death.

1895.
Judl. Dept.
Enclos. No. 5
To
O. No. 2130.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Tuesday, the twelfth — day of December,
One thousand eight hundred and ninety-four.

PRESENT:—

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

Referred Trial No. 59 of 1894.

Voona Pandayya — Prisoner.

Trial referred by the Court of Session of the Ganjam — Division for confirmation of the sentence of death passed upon the said Prisoner in Case No. 28 of the Calendar for 1894.

CRIMINAL APPEAL No. 593 OF 1894.

Appeal by the Prisoner against the said Sentence.

This case coming on for hearing, the Court delivered the following

Judgment:— The accused has been tried by the Sessions Court of Ganjam for the offences of murder and theft and convicted on both charges. The

The procedure adopted was very inconvenient and the Judge should have taken the course pointed out in High Court Circular of 11th February 1889 No. 336 and tried the charges separately.

The charge to the Jury is not distinguished from the judgment, both apparently being included under the term "Judgment". Whether, however, this proceeding is to be viewed as a judgment or as a charge, it is equally open to objection.

Great weight is given in this judgment (or charge) to the different confessional

Statements

Statements made by the accused. The first of these is Exhibit A dated October 22nd which was taken by the Kharji and Karnam. The prisoner alleged that this statement had been taken from him by force, and the evidence of the Kharji and Karnam might certainly raise an inference that pressure was put upon the accused. Neither in his charge nor in his judgment has the Judge considered whether this statement was voluntary. The practice of Village Magistrates taking written confessions from accused persons was prohibited in G.O. dated 17th F[illegible] No. 2883, Judicial. [illegible] 93 [illegible]

The prison[illegible]

the 3d. class Magistrate on October 25th. and a statement taken from him under section 164, Criminal Procedure code.

The Judge has treated this statement, as also one made on October 30th. as evidence in the case (paragraphs 7 and 8 of judgment) though neither of them has been brought on the record of the sessions trial. The statement on October 25th. is open to the gravest objection.

It starts with an injunction to the accused to [illegible] what he knows of the

of the a[illegible] "Hari Krishna" and

is in reality a long cross-examination of the accused consisting of no less than 70 questions and answers. There is nothing to show that the Sub: Magistrate before recording the statement took any steps to satisfy himself by questioning the accused whether the statement was likely to be voluntary, and his own foot note shows that the accused was at the time in the custody of a police orderly.

The question with which the statement was prefaced was a very improper one and certainly was not calculated to impress on the accused that it was entirely within his own option whether he made any state[illegible] at all.

The Sess[illegible]r was pla[illegible]

have considered whether this statement was legally admissible in evidence and if he found it was not, he should have excluded it from the consideration of the jury and from his own judgment.

The statement taken by the Magistrate on October 30th is also open to objection. Under section 342, Criminal Procedure code, the only purpose for which questions can be put to the accused during the enquiry is to enable him to explain any circumstances appearing in the evidence against him. Questions put to get the accused to the a[illegible] to incriminate himself

are

are not permissible. This rule would exclude the greater part of that examination.

We are constrained to hold that the trial has been very unsatisfactorily conducted and that the accused has been seriously prejudiced. We set aside the conviction and sentence and direct that the accused be re-tried separately on the charge of murder. Should he be acquitted on that charge, it will be for the Public Prosecutor to elect whether he will proceed to trial on the charge of theft.

By the court.
(signed) A. T. Forbes
Dy: Registrar,
App: Side.

(True copy)

6.

1895
Jud.
Enclos. No. 2
to
O. No. 2320

No 1052 Jud'l.

High Court of Judicature,
Madras, 3d May 1895.

CURRENT No. 2320

From
D. W. G. Cowie Esquire,
Ag: Registrar, High Court,
Appellate Side, Madras.

To
The Honourable Mr J. F. Price C.S.I.
Chief Secretary to Government,
With the Governor,
Stone House-Hill.

Honourable Sir,

With reference to your telegram of yesterday's date, I have the honor to forward a copy of the original Judgment dated 7th November 1894 in Ganjam Sessions case No. 28 of 1894 and a copy of the High Court's order in Criminal appeal No. 593 of

(Referred Trial 59 of 1894) directing retrial.

I have the honor to be,

Honourable Sir,

Your most obedient Servant,

D. W. G. Cowie

Ag. Registrar,

Appellate Side

Sd/ 3/5.

[G./25.]

520—8-3-95.

Jud. DEPARTMENT.

C. No. 2130 & 2320

FOR ORDERS.

I cannot see that there can be any doubt of the Petr's guilt — I would dismiss his petition.

It seems to me that para 4 of G.O. 2883/17.12.87 was a mistake — It purports to prevent V. Magtes from taking action which ~~it~~ all private persons are legally competent to take & is therefore, in my opinion, illegal — I think it should be cancelled. I have not the strong opinion as to the valuation of confessions which is held by the H.C. — My belief is that in this country the village influence in favour of speaking the truth is so strong that the great majority of the confessions recorded in the village ~~[illegible]~~ are true & that the arrival of the police makes no difference in this respect. It is almost a commonplace that, if you can get at the villagers assembled, you can almost always find out the truth. This may be noticed every day [illegible]

Appeal for mercy from Convict No 5692 Voona Pandayya under sentence of death in Ganjam Sessions case No 28 of 1894, which sentence has been confirmed by the High Court.

The Supt. of Berhampore D. Jail states that the sentence will not be carried out until a definite reply from Govt. is received.

A reference had to be made to the High Court for copies of the original judgment of the Ganjam Sessions Court & the High Court's order thereon directing retrial; hence the delay in submitting the convict's petition for orders.

at in presence of the assembled villagers should be upheld. But the Judges of the H.C. are naturally ignorant in such a case as this –

GH
10/5/95

The case seems to me to be clear & I think the Law must take its course.

As regards para 4 of G.O. 2882/17.12.89 I would let matters stand as they are. Certainly in the majority of cases as to village matters the truth can best be ascertained in an assembly of villagers, but there are exceptions to this rule – when a person is believed to be a murderer, for instance, there is what Col Parsons calls a natural tendency on the part of Natives to get a confession from him, which may lead to injustice. The High Court made out a strong case, & the safeguards against the practice of relying on confessions seem to me to be founded on good policy. I see no illegality in the order. V. munsiffs are prohibited from doing many things wh. are not contrary to any law.

JG
10/5

FOR ORDERS.

I would dismiss the petition.

As regards the para 4 under discussion, I am inclined to agree with the hon. Mr. Grose. It was passed on a very strong representation by the High Court, and was intended to check what was apparently a growing evil. Besides supposing it were cancelled & V. Magistrates permitted to take down confessions, I do not believe that the superior courts would attach any value to such confessions. Even as it is, the confessions wh. are now recorded are looked upon with a certain amount of suspicion, and considering the degree of corroboration wh. is also expected, might almost as well never come on the record at all. They are in almost every case withdrawn before the Sessions Court – but this is clearly accounted for [illegible]

[J. / 16.]
1,000—5-2-94.

Judicial Department.

CHIEF SECRETARIAT
MADRAS

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following letter, dated 22 April 95. No 364, from the Superintendent of the D. Jail at Berhampore, forwarding petition from Convict No 5692 Voona Pandayya under sentence of death in Ganjam Session Case No. 28 of 1894 ~~of 180~~, confirmed by the High Court of Judicature.

Read also letter, dated 3 May 95. No 1052 [illegible], from the Registrar of the High Court, Appellate Side, forwarding the record of the case.

ORDER THEREON, 14 May 1895, No. 1010.

Having considered the circumstances of the case as set forth in the foregoing papers, the Right Hon'ble the Governor in Council sees no reason to interfere with the sentence of death passed on Convict No 5692 Voona Pandayya.

2. The law will take its course.

(From orders
~~(True Extract.)~~
D
13.5.95

13/5/95
Chief Secretary.

Note for H.C.
After issue please have the papers circulated to H. M. [illegible] the annexed note.
13/5/95

To the Superintendent of the D. Jail, Berhampore
for communication to the Prisoner.
" Inspector-General of Prisons ~~with~~ C.R.
" Hon'ble the Judges of the High Court ~~with papers returned~~.

Despatched
14/5

Copied
13/5

Recirculated to H. M. with reference to the remarks of the Hon. Mr Grose & H. E. the Govr.

D
13.5.95

Seen
WD
17/5/95

Recorded
20.5.95

C 16/95
T 118/5

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N.B.—

A = Copy in full.
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