Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1051

Dated 18 May 1895

INDEXED.

[Despatch Abstract.]

FEES TO PUBLIC PROSECUTOR, TRICHINOPOLY.

Accepting the District Magistrate's recommendation and sanctioning payment to M.R.RY. K.S.Ganapathi Iyer, Public Prosecutor, Trichinopoly, of a fee of Rs. 1,000 for having successfully prosecuted the Tiruvanaikaval temple theft case, Trichinopoly district.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	543		11-3-95				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	3118		95				

J.G. d/ 29-6-94 No. 1629

CURRENT NO. 2214

Judicial 1895 Deptt.

From

E. A. Elwin Esq
Ag. District Magistrate
Trichinopoly

To

The Chief Secretary to Government
Judicial Department
Madras.

CHIEF SECRETARY -3 MAY. 1895 GOVERNMENT OF MADRAS

Dated 29th }
Despd 30th } April 1895
Recd 3rd May
Regd. 4th do

Ref on Cir No. 427/mag of 95

Enclosures 4

Submitting for orders the question as to ~~what~~ [regarding] fee is to be paid to the Public Prosecutor, Trichinopoly, for having successfully prosecuted the Tiruvanakaval temple theft Case.
which was one of great importance, jewels valued at Rs 4000 having been stolen & which occupied him 43 days
Ref [illegible] the Lower [illegible]

Please [illegible] there are any papers regd Jumbukeswaram Temple Case
[illegible]
8/5/95

For orders

The Public Prosecutor was engaged for 22 days in the Sub Magistrate's Court and for 20 days (& not 21 days as stated in the D. M's letter) in the Sessions Court.

No 38

Trichinopoly
7th April 1895

From

The Public Prosecutor
Trichinopoly

To

The District magistrate,
Trichinopoly.

Sir,

I have the honor to submit for favour of your Sanction my bills of fees for the month of February and March 95. I have charged Rs 1240 for the Jambukesvaram temple Case. According to the instructions Conveyed in your letter No 764/M of 94, I Conducted the prosecution in the Town Submagistrate's Court. In the Sessions Court, the case was split into two, C.C. 7/95 against the trustee Kunju Pillai and C.C. 8/95 against the trustee Kunju Pillai and 5 others. In the Submagistrate's Court I attended on the 22d & 23d December 1894, 18th, 19th 21st, 22d, 23d, 24th, 25th, 26th, 28th, 29th, 30th & 31st of January 1895, and 1st, 2d, 4th, 5th, 6th, 7th, 8th & 9th of February 1895. I Submit a Sum of Rs 20 per day is a reasonable amount to award for my attendance in the Submagistrate's Court. In the Sessions Court, the Case was tried on the 8th, 9th, 11th, 12th, 13th, 14th, 15th, 16th, 18th, 19th, 20th, 21st, 22d, 23d, 25th, 26th, 27th, 28th, 29th & 30th of March 1895. I Submit a Sum of Rs 40 a day is a reasonable amount to award for my attendance at the Sessions Court. The Case was one of very great importance. It was made very intricate

by the line of defence adopted. It has Cost me a good deal of labour. I Conducted the Case Singlehanded. I have therefore the honor to request that you will be pleased to recommend to Government that the Sum of Rs 440 for my attendance for 22 days at the Submagistrate's Court and the Sum of Rs 800 for my attendance for 20 days at the Sessions Court, i.e, in all Rs 1240 be sanctioned to be paid to me for Conducting the Prosecution in the Case.

I have etc

Signed / K. S. Ganapathi Iyer

Public Prosecutor

(True Copy)

A. Krishnaswamy Iyer
for Asst. Dist. magistrate.
DH.

1895
Jud.
Enclos. No. 1
To
C. No. 2214.

COLLECTOR AND MAGISTRATE
20 APR. 95
TRICHINOPOLY.

IN THE COURT OF SESSIONS OF

Trichinopoly Division.

The 2nd day of April 1895.

Present:—R. D. Broadfoot Esq., Barrister-at-law.

AG. SESSIONS JUDGE.

C. C. No. 9 of 1895.

Committed by 2nd class Magistrate, Trichinopoly Town.

QUEEN EMPRESS.	VERSUS:	Names of accused
		1. Visweswara Sastri.
		2. Someswara Sastri.
		3. Lakshmana Pillai.
		4. Thiruvengada Mudali.
Offence.		Section 411.
Verdict of Jury		Not guilty.
Sentence.		Acquitted.

The prisoners are charged with dishonestly receiving or retaining stolen property knowing it to be stolen, Section 411 I. P. C. They all plead not guilty.

2. The material objects before the Court were not found in the house or in possession of the 1st and 2nd Prisoners. As far as I can see on the evidence there is nothing to connect the 1st and 2nd Prisoners with the case, I therefore direct you to acquit these two prisoners.

3. As to the others, providing you are satisfied that the material object produced are property stolen from the Jambukeswaram temple, there is some evidence though not much.

4. Of the three Jambukeswaram temple servants called, two (2nd and 3rd Prosecution witnesses) say that the jewels, material objects Nos. 1—3, in their mutilated condition, cannot be identified by them to be temple property.

5. The other man (8th Prosecution witness) says that by reason of his having constantly handled the pearl strings (material objects 2 & 3) he is able to identify them, but he admits that they have no distinguishing marks and that similar pearl strings might be found in the house of any wealthy person.

6. He says, as to material object 1, that the bilva leaf pattern is peculiar to temple jewels and would not be found in ornaments which are private property; but he admits that similar jewels of bilva pattern may be found in other wealthy Siva temples.

C 461 / Mag of 95

7. If you are satisfied upon the identification of the material objects by the 8th Pro. witness that these material objects are really Jambukesvaran temple property, then the case may proceed. But if you are not so satisfied, there is no use in proceeding with the case any further as the charge will fail on the first requisite, namely, that the property in question is stolen property.

The Jury are unanimously of opinion that the evidence to prove that the items charged belong to the Jambukeswaram temple is not sufficient, and they unanimously find the 3rd and 4th prisoners not guilty.

I concur with the verdict of the Jury and order all the prisoners to be set at liberty.

TRICHINOPOLY,
SESSIONS COURT,
2nd April, 1895.

(Signed) R. D. BROADFOOT

Ag. Sessions Judge.

(True copy)

(By order)

[illegible]

Sheristadar

~~*Ag. Sessions Judge.*~~

To

The District Magistrate

of Trichinopoly

Dis 375 of 95 / Mag Despd 26/4

Copy forwarded to the Town 2d Magistrate Trichy & the Dy Magte Trichy [illegible]

O/c [illegible]

Ag. D. Magte

[illegible] / 24.4

Back paper No. 189

Further paper No. 189

TRICHINOPOLY DISTRICT.

Magistrate Series.

DATED 25 4 1895

Despd 26-4-95

ENCLOSURE

Dis No. 375/Mag of 95

[illegible]

To whom sent Town Sub Magt of Trichinopoly

[Disposal Abstract.]

Covering copy of sessions judgment in C C No. 9 of 1895

1895 Jud. Bndls. No. 2 To C. No. 2214.

Item No.

COLLECTOR AND MAGISTRATE 20 APR. 95 TRICHINOPOLY.

IN THE COURT OF SESSIONS OF Trichinopoly Division.

The 30th day of March, 1895.

Present:—R. D. Broadfoot Esq., Barrister-at-law.

AG. SESSIONS JUDGE.

C. C. NO. 8 OF 1895.

Committed by the 2nd Class Magistrate of Trichinopoly Town (P. R. No.1 of 1895)

QUEEN EMPRESS. VERSUS: **Names of accused.**

(1) Muthusawmy Pillai alias Kunju Pillai
(2) Vaithi Iyer
(3) Laksmana Padayachi
(4) Ramachandra Naidu
(5) Muniyan
(6) Sangili

Offence: 1st Prisoner, sections 457, 380 and 381. I. P. C.

The other Prisoners. 2-6, sections 457&380. I. P. C.

2nd Prisoner and 3rd Prisoner were convicted on their plea of guilty.

Verdict of Jury: Majority—3 against 2-1, 4 and 6 Prisoners guilty. Unanimous as to 5th Prisoner, not guilty.

Sentence 1st Prisoner to (3) three years' rigorous imprisonment and a fine of (1000) one thousand rupees, in default six months additional rigorous imprisonment; 4th and 6th Prisoners each to (1) one year and (8) eight months' rigorous imprisonment; 2nd Prisoner to (8) eight months' rigorous imprisonment, 3rd Prisoner to (4) four months' rigorous imprisonment; and 5th Prisoner acquitted and set at liberty.

N. B. [(1) The 2nd and 3rd Prisoners are also 2nd and 3rd Prosecution witnesses.

(2) The four men, 18—21 defence witnesses, are throughout referred to as the 'Madras Prisoners'. They are in custody, but are not charged in the present case]

Heads of charge to the Jury.

GENTLEMEN:

The Prisoners are charged with (1) House-breaking by night, section 457 I. P. C. (2) Theft in a building, section 380, I.P.C; and 1st Prisoner alone is further charged with Theft

as a servant, section 381, I. P. C. 2nd Prisoner and 3rd Prisoner pleaded guilty and were convicted on their plea. The rest plead not guilty to all charges.

2. House-breaking is an aggravated form of Criminal trespass. A man is said to commit Criminal trespass when he enters on property, in the possession of another, with intent to commit an offence. If such trespass is committed in any building used for the custody of property, it is then called house-trespass. If it is committed between sun-set and sun-rise, it is called house-trespass by night. If, in committing such house trespass, a person enters or quits the house by any passage which he knows to be fastened against him, then such an entrance, or house trespass, amounts to house-breaking.

3. I now come to the question 'who is in possession of the temple'? It appears from the prosecution evidence that the committee are in possession of it.It was put to you, by the learned counsel for the defence, that it is not illegal for a man to break the door of his own house, if it pleases him to do so, and that 1st Prisoner, being the trustee,had every right to get into the temple in his charge, at any time at his pleasure. Of course it is true that a man may, as a rule, deal with his own property in any way he likes, and may even destroy it if he chooses. But are you prepared to hold that 1st Prisoner has a right to destroy the temple?

4. If you are satisfied that the temple is in the possession of the committee, you mus then consider the relative position of the 1st Prisoner and the committee. 1st Prisoner, although he is referred to very often as "Trustee," is not a hereditary Trustee. In fact he is not a Trustee at all, according to the English use of the word. He is a manager. He was appointed by the committee. He was dismissed by the committee. Therefore I should think there will be very little difficulty in your finding whether, or not, he was the servant of the committee.

5. From the evidence of Kasi Visvanatha Aiyar, (7th Prosecution witness), agent of Mirasi Aiyakalaier, you will see that, in the Lower Court as well as here, he has said that it was his duty always to seal the Karukoolam room, and that without his presence no person has a right to go into it. Therefore if you find that 1st Prisoner entered by a door which had been fastened and sealed to prevent such an entrance, and took property in the possession of the committee, by night, with intent to commit theft; then the requirements of the section are complied with. I have now explained to you the essentials of the charge under section 457, and it is for you to find if the facts proved constitute the offencc.

6. If you are satisfied that 1st Prisoner was a servant of the committee, and was in possession of the jewels, as such servant, and that he committed theft with regard to those jewels, then the transaction falls under section 381. If theft is committed in a building then section 380 applies.

7. Then we go to 'what is theft'? Definition read.

You are said to take a thing dishonestly, if you do so with intent to cause, wrongful gain to yourself, or wrongful loss to any other person. Wrongful gain is gain by unlawful means of property to which you are not entitled.

Wrongful loss is loss by unlawful means of property to which the person losing it is legally entitled.

8. Now about Munian, 5th Prisoner, there is one point to which I wish to draw your attention. He was absent at the time of the actual breaking and theft. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act, in the same manner as if the act were done by him alone. Of course you can only deduce a man's intention from the evidence before you as to his acts. The law presumes that a man always intends the natural and probable consequences of his acts. If you find on the facts that Munian knew of the intended theft and did certain acts in furtherance of such theft, then you are entitled to convict him, otherwise you should acquit him. It is for you to find from the facts what intention Muniyan had.

9. An accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, (section 133 Indian Evidence Act.) But it is proper for the judge to warn the jury that they should scrutinize the evidence of an accomplice very carefully and that they should hesitate to act upon it, unless it is corroborated in material points both as to the offence, and as to the persons concerned. As to the question whether the evidence of one accomplice can be accepted as corroboration of the evidence of another, the better opinion appears to be that the evidence of one accomplice cannot be held to be sufficient corroboration of that of another. The Public Prosecutor pointed out to you that the position of a man who has been convicted and sentenced, and has therefore nothing further to hope or fear, differs from that of the ordinary accomplice, who is an approver in expectation of pardon. There is no doubt that the distinction has been recognized to some extent—vide Judgment in Criminal Appeal No. 36 of 92 High Court against C.C. No. 42 of 91 on the file of this court. Muthusamiaiyar and Best JJ.—That question does not matter very much in the present case, because there is an ample quantity of corroborative evidence, if, as to quality, you believe it. There is both direct corroboration by witnesses and circumstantial corroboration by material objects. Of course it is solely for you to say, whether you believe the evidence of 2nd and 3rd Prosecution witnesses or not; whether you believe the corroboration or not; and whether you accept the latter as a sufficient strengthening of the former.

10. From the frame of the defence, it is apparently not denied that a house-breaking and theft did occur, but the defence allege that it was committed by those defence witnesses, 18—21, who for convenience' sake may be described as the 'Madras Prisoners.'

11. The 1st Prisoner is the manager of the temple under the committee. The date of the offence is 31st October 1894. 1st Prisoner was arrested on 6—11—94. 2nd Prisoner holds the office of Gollanaik, for many years, in the temple. 3rd Prisoner is a door-keeper who works under 2nd Prisoner, apparently as a private servant; not as a regular temple servant. These two (2nd Prisoner and 3rd Prisoner) were arrested on the evening of 1st November. 4th Prisoner is employed in a chattram, the lands of which were granted by a member of the 1st Prisoner's family. He was arrested on the 4th of November. The 5th Prisoner is the temple lamp-lighter. He was arrested on the 6th November. The 6th Prisoner was formerly in the service of 1st Prisoner, and is now in the service of a minor, who is a relative of the 1st Prisoner, and who is under the Court of Wards. He was arrested on the 7th November.

12. Gentlemen, you have inspected the temple and you will remember that it is built in five concentric squares round the Mulasthanam or the Holy of Holies.

The first wall has four gates. Of these gates all are locked up during nights except one, the west gate. Irulan, 6th Prosecution witness, is responsible for the keys of those gates. People live inside the enclosure between the first and second wall. Here the 2nd Prisoner also lives. The next two walls have each two gates, one east and one west. These gates are not kept locked. Then we come to the wall which is known as the Arivittan. That has but one gate, which is to the west. The next is the Maikaval. It also has but one gate. These last two gates are carefully shut and locked up every night. These last two walls are very high say about 30 feet. You saw that it is practically impossible for anybody to climb them without assistance. The Kothanarai room is inside the Arivittan enclosure. It is kept locked, and in it are stored temple properties,ropes, crow-bars etc. Also inside that enclosure, is the Vada Thiruvanakaval Mantapam, and close to that Mantapam is the kitchen. The kitchen has chimneys. In front of the Maikaval gate inside the Arivittan enclosure, there is the Pudu Mantapam. Then on entering the Maikaval gate, on your right is the room called Maikaval room, and on your left is the Karukoolam. The Karukoolam has one outside door locked by four locks. Having passed that door, you get to the inner door. That was kept locked by three locks. Then having pased the inner door, you go into a chamber having no door. When you examined carefully, you found that there is an opening in the wall. That opening is filled up with two very large stones, one pretty large stone, and one small stone. In order to get into the strong room you must pull the small stone out with your hand, then you can move the medium stone. Then you can take the big stones out with a crow-bar. In the

north-eastern corner of the Arivittan there is the small room called Chandanavadi Kattalai. An active man on the terrace could descend by means of the projections close to that room. You remember that there was a gap between the Puthu Mantapam and the Maikaval Gopuram and there is also a gap between the Vada Thiruvanakaval Mantapam and the kitchen roof.

13. As to the things found next morning :—There was a rope tied to a projecting stone near the terrace of the Maikaval, which rope hung over the front or western wall of the Maikaval enclosure. Another rope was tied to the kitchen chimney, and hung over the eastern wall of the Arivittan enclosure. That rope had a good many knots in it. These knots, when first seen, were so loose that one or two fingers could pass through them. At the foot of this rope there were fowl's excreta, blood and feathers. At the threshold of the Maikaval and at the threshold of the Karukoolam there was candle grease. At the threshold of the Karukoolam there were also two small crow-bars, a bundle of keys and some locks. Inside the Karukoolam were a big crow-bar and two broken boxes, and in the second room there were one or two locks. Then between the roofs of the kitchen and the Vada Thiruvanakaval Mantapam there was a ladder. Of these things, that ladder, the two ropes, and the big crow bar, are well identified as temple property, which had been stored in the Kothanarai room, which was kept locked. One small crow-bar was spoken to by the deceased Karuppanna Asari, as having been prepared by him, for the 1st Prisoner. The other the Prosecution did not trace. But the defence called a witness Potti Naidu alias Rajamannar (14th Defence witness) who said that the small crow-bars came from Madras. On this point and indeed on all matters which involve a conflict of evidence, it is entirely for you to say which version you believe.

14. Next as to the motive attributed to the 1st Prisoner. Though he is a man of considerable property, he has a good deal of debt. Vaithi Aiyan (2nd Prosecution witness and 2nd Prisoner) says 1st Prisoner not only pledged some temple jewels, but also melted some and misappropriated the resulting gold. As to the pledge, Vaithi Aiyan is contradicted by the two Chetties, 3rd and 4th Defence witnesses. The point as to the pledge is not very material. Except Vaithi Aiyan, there is no other evidence with regard to the melting and misappropriation. But the accountant named Sami Iyengar, (11th Prosecution witness), who has examined the temple accounts, says that he finds a deficiency of Rs. 4500 worth of jewels. Now 1st Prisoner would be, at all events civilly, liable for the deficit. The next step in the 'motive' argument is, that comparatively recently some committee members were newly appointed. They were apparently younger, more active and zealous men than their predecessors, and they began instituting a general checking of all properties of all the temples under their jurisdiction, not alone those of this temple.

In the usual course, the affairs of this temple came under scrutiny, and the members sent the 1st Prisoner a yadast, "we will come and inspect either this day or the day after." It is dated 24th September (Exhibit H.). On the same day the accused replied (Exhibit J.) that he was not well, and that the inspection should be put off. On the 7th October, a similar yadast was sent from the committee, proposing inspection on the 15th (Exihibit K.) On the 12th the accused replied stating that he had urgent private affairs, that the Peishkar, if necessary, would attend for the purpose, but it would be more satisfactory if the inspection went on in his (1st Prisoner's) presence. 1st Prisoner has actually sent an order (Exhibit XIV) to the Peishkar telling him to attend on the commitee, but the Peishkar says 1st Prisoner did not send him the keys of the Karukoolam where the jewels were kept. The members again deferred their inspection but on 30—10—94 the committee sent a, not very civil and rather stringent, yadast (Exhibit M.) saying that they would accept no excuse and that they would certainly inspect on the 1st of November. On 31st October the alleged house-breaking happened.

15. The 1st witness is the Srirangam Police Inspector. He describes what he found when he inspected, on the morning of 1—11—94. He says that when he saw the knots, on the rope hanging over the Arivittan wall, they were loose, but when the ropes were produced before the lower court the knots were tight. This is accounted for by the fact that the Deputy Magistrate made an inspection, and ordered Head Constable Balaguru Naidu (33rd Defence witness) to climb up the rope, and thus by his weight the knots were tightened. The Inspector also says the amount of property stolen was about Rs. 40,000 in value.

16. Now you come to the most important witness—the 2nd prosecution witness—the 2nd Prisoner who pleaded guilty and was sentenced before being examined as a witness. He says that on the early morning of 31—10—94 he went to ask for leave from 1st Prisoner, and at that time the temple blacksmith, Karuppanna Asari, was with 1st Prisoner; 1st Prisoner ordered him to make some keys and also to sharpen an iron bar before evening. Next he gives you a full description of what took place that evening. It is still fresh in your minds, so I need not go into it in detail. Briefly it is this: 1st Prisoner sent Lakshmanan, (3rd Prosecution witness) to call him (2nd Prosecution witness). He (2nd Prosecution witness) came with the keys, and under 1st Prisoner's directions, he opened the Arivittan and Maikaval gates, and gave the key of the Kothanarai room to 3rd Prisoner; he (2nd Prosecution witness) opened the Karukoolam; he failed to open the jewel box (Material Object No. 10) and the 6th Prisoner broke it with a crow-bar. 3rd Prisoner says he went to the Kothanarai room, and took out the ropes and the crow-bar; he (3rd Prisoner), Munian (5th Prisoner), and 2nd Prisoner went up and tied the Maikaval rope. He and Munian tied the Arivittan rope and in getting to the chimney he pulled the ladder up on to the Vada Tiruvanakaval Mantapam roof and left it there, as he found another way, by the Chandanavadi Kattalai room, more convenient for him to get down by. Both 2nd and 3rd Prosecution witnesses agree that before the Karukoolam was opened the 1st Prisoner told the 5th Prisoner to take the fowl and kill it and make blood stains at the Arivittan rope. The 5th Prisoner then went off and never turned up again. 4th Prisoner was present throughout carrying keys &c. Then 1, 2, 4 and 6 Prisoners took out the jewels from the box and bundled them up in a cloth; some of them were scattered on the ground. 1st Prisoner ordered some of the locks to be broken: 6th Prisoner thereupon broke some. Then they left the Karukoolam. 4th Prisoner carried the bundle of jewels for some distance, and then gave it up to the 2nd Prisoner Vaithi Aiyar. Then they all went out of the temple. They went to 1st Prisoner's house where he ordered the property to be thrown down the well, with the exception of the plate about which you have heard a great deal. That plate the 1st Prisoner ordered the 2nd Prisoner to take back and place in the temple. We leave 1st Prisoner, 4th Prisoner, and 6th Prisoner, at 1st Prisoner's house. The 2nd Prisoner goes to his house with the plate, and 3rd Prisoner was left at the Arivittan gate.

17. You have heard the details as to how the Prisoners got into the temple, how they went up and tied the rope &c. The details given by 2nd and 3rd Prosecution witnesses correspond with the facts, deposed to have been, observed on inspection of the temple on 1—11—94. If you believe the Inspector and Sub-Magistrate, this correspondence is corroboration to some extent (circumstantial corroboration) of the depositions of 2nd and 3rd Prosecution witnesses.

18. We now come to the direct corroboration by witnesses. First is Amirtham (4th Prosecution witness). His father is a temple servant. He at times does the duty of his father. On the night in question he was sleeping at the office pial, which is close to the Arivittan gate. There was a light burning there. He was awaked by the rattling of the door chain, and he either got up, or looked up, from his bed. He swears positively that he then saw, all six Prisoners entering the Arivittan gate, by the light of the lamp that was burning there. Then he says he went either quite asleep or half asleep, and that after a time he saw them all come out. Here of course there is a discrepancy. He ought to have seen only five Prisoners returning, as Muniyan 5th Prisoner had gone before the rest came out. After 1, 2, 4 and 6 Prisoners went away, Lakshmanan (3rd Prisoner) lay down on the office pial. To discredit 4th Prosecution witness the defence showed that, by order of 1st Prisoner, Rs. 11—4—0 was recovered from the pay of his father, saying that 4th Prosecution witness had stolen temple oil (Exhibit XII). Next witness is the bearer Kottapali (5th Prosecution witness). He says that after taking his part in bearing the idol in procession he went to sleep in the thousand-pillared mantapam, it being convenient for him to do so, that there were two lights there, near the path or aisle. He got up in the middle of the night at about 2 A. M. Then he happened to see the 1st, 2nd, 4th and 6th Prisoners coming along the aisle, he saluted 1st Prisoner, and then 2nd Prisoner told him to go and lie down. For the defence it is argued that the lights probably would not continue burning until that late hour.

19. The next witness of this batch is Irulan, (6th Prosecution witness) the outside

gate-keeper. He deposes that at half past 10 or 11 P. M. 1st, 4th and 6th Prisoners came in through the western outer gate, that the 1st Prisoner took away the key with him, that Irulan lay dozing, and at about 2 or 3 in the morning 1st, 2nd, 4th and 6th Prisoners went out. There is a discrepancy as to whether they went out through the small door or the big door. To discredit this witness the defence show that he was ordered to be dismissed, by the 1st Prisoner(Exhibit XIII). But as a matter of fact he was not dismissed, but continued to do duty. Another point they put forward is, that he lives in a house-site belonging to the new manager, Subramania Sastri, and they argue that if he does not give evidence for the Prosecution, the new manager would eject him. But there is no evidence, in connection with this, of any threat by the new manager. It is further remarked that the evidence of the 5th and 6th Prosecution witnesses turned up rather late. It is for you to say whether you believe the evidence of these witnesses or not. If you believe them, of course it is good corroboration of the depositions of 2nd and 3rd Prosecution witnesses.

20. The next witness is Kasi Visvanatha Iyer, 7th Prosecution witness. He holds the seal of Aiyakalaier. And this seal is to be affixed every night on the Maikaval and Arivittan doors, and always upon the Karukoolam outer-door. He deposes that on the night in question he, 2nd, and 3rd Prisoners, as usual, searched the two inner enclosures before locking the gates. In the lower court he only mentioned that he sealed the Karukoolam. Here he says that he sealed the Maikaval, Arivittan and Karukoolam. When he was asked why he did not speak in the lower court of the outside gates, he said nobody questioned him on the matter. If you believe his evidence, it is tolerably clear that no strangers could have been left inside the Arivattan or Maikaval enclosures of the temple. But of course, it is possible that some strangers may have been concealed there and escaped his observation. The only thing that is urged by the defence against this man is that he is a relative of Kamatchi Aiyan who petitioned to the committee against the 1st Prisoner.

21. Next witness is the Peishkar (9th Prosecution witness). He identifies the ropes (Material Object Nos. 1 and 2), and the big crow-bar (Material Object No. 19) as temple property. He proves the orders passed by the 1st Prisoner against Irulan and Amirtham (Exhibits XIII and XII respectively). He also proves that he took a statement immediately after the theft was discovered, from 2nd Prisoner and that the 2nd Prisoner then denied all knowledge of the matter (Exhibit II). Similarly the Tahsildar said that 2nd Prisoner denied all knowledge of the theft on the next morning. It is for you to consider whether these denials weigh much against the 2nd Prosecution witness' evidence or not.

22. Next witness is the Sub-Magistrate (10th Prosecution witness) who confirms the finding of the ropes, knots, ladders &c. He confirms the statement of the Inspector, (1st Prosecution witness) that 2nd and 3rd Prisoners made partial confession, on the evening of 1st November. He proves the deposition of Karuppanna Asari (Exhibit N) taken by him, and he speaks to the method in which he took the detailed confessions from the 2nd and 3rd Prisoners; they were kept in the Sub-Jail for more than twenty four hours, to be out of the immediate custody of the Police; he cautioned them, he held out no inducement to them and he believes they made voluntary confessions.

23. The next evidence is the result of the scrutiny of the temple accounts by Sami Iyengar, who discovered that jewels worth Rs. 4500 were missing. This practically closes the case for the prosecution with the exception of the deposition of Karuppanna Asari who is dead. He confirms 2nd Prosecution witness as to the making by him of keys, by order of 1st Prisoner on 31—10—94.

24. Upon the evidence for the prosecution you must decide if any, and if so what, offence has been made out. If you do not believe that any offence has been committed, then you must acquit all the Prisoners. If you consider that some offence has been made out, you must consider the case of each Prisoner separately, and say what offence is made out against him, if any.

25. All Prisoners, except 2nd and 3rd, deny all knowledge of the matter and plead *alibi*,

26. About 40 witnesses have been examined for the defence. Of these witnesses, 3rd and 4th contradict the story of the pledge. The Tahsildar (17th Defence witness) was called to negative the motive; he simply said that 1st Prisoner held a good position and had made jewels for the temple.

27. The next batch to take is, Defence witnesses 18, 19, 20, and 21 who have been styled the 'Madras Prisoners.' The defence really is that the 'Madras Prisoners' committed the offence. You heard each one of these 'Madras Prisoners' swear he knew nothing about it.

28. To contradict them the defence put in (*a*) defence witnesses 1, 2, 6, 7, and 12, who are all Police Officers; (*b*) people who are not Police; 8th defence witness Radacharen, 10th Kannia Asari, 9th Dasari Sri Raman Chetti and 23rd Sri Krishnan. All this batch speak to receiving property from the 'Madras Prisoners'; (*c*) specially against Thiruvengadam (18th Defence witness) there are the 11th Defence witness Tayammal of Conjeevaram, 22nd his sister, 24th his mother, and to some extent 14th Potti Naidu; (*d*) specially against Lakshmanan (19th defence witness) the 13th defence witness, Manicka Mudali, speaks to the search in Lakshmanan's house and Potti Naidu also speaks againt Lakshmanan. Finally we have, for each Prisoner, witnesses as to an *alibi*. The above is an attempt at grouping the defence witnesses.

29. Now to go into some detail Thiruvengadam (18th defence witness) was arrested on the 4th December. His written statement was not taken until 10th. In that statement his story is, that he hid by the side of a Gopuram, while Visweswara Sastri (20th Defence witness) went inside, that Visweswara Sastri let down a rope, to which he tied crow-bars and sent them up, then the jewels were let down by the same rope—where that rope had been used he could not show—and that the Sastri somehow came down outside the Arivittan wall. The method of the descent is not specified. You have seen the place, it is for you to say whether you are satisfied or not that this man acted as described in (Exhibit XXI) his statement before Mr. Simpson (2nd Defence witness). Then he goes on to say that Visweswara fell down in a place, which must be beyond the Arivittan enclosure, and that he got Lakshmanan to take the injured man to the hospital. Thiruvangadam went away to Madras with Somaya. Then in his statement of the 14th December he adds keys, candles, and description of jewels. He admits that he gave this statement (Exhibit XXI) before Mr. Simpson, but he says that he was tutored by Muthukrishna Naidu, the Madras Police Inspector (6th Defence witness). About the finding of jewels in Tayammal's (11th Defence witness) house, he simply says that he never went there, till the Police took him there in custody, and that he knew nothing about it. The jewels no doubt were produced from the house, but he says the Police placed them there. Tayammal (11th Defence witness) said this man never came to her house, till the day on which he is supposed to have put the jewels there. It is for you to consider whether he would have selected that house as a hiding place, and if he would know there was a hole in the wall. Among the property so found there was a string of pearls (Material Object No. 21). From his sister Ranganayaki's (22nd Defence witness) house jewels were taken. Among others some loose five Franc coins "Kasu." 25th Defence witness Arumugam Asari says that he made different links or ears (Kathus) for those loose gold coins. These loose coins and that string of pearls you must keep in mind. 26th witness is another Asari, who says he made bangles for Thiruvengadam, but these articles cannot be identified as the property of the temple. The 24th witness is Thiruvengadam's mother Valliammai who says that he is a vagabond and has no ancestral property. Then there is the story of Potti Naidu (14th Defence witness) about the two crow-bars having been brought and kept with him. It is for you to say whether you believe that story. Why should Thiruvengadam not keep the crow-bars in his own house? Again one crow-bar is not very unlike another. No doubt Potti Naidu, in the lower court picked out the right crow-bars, but there were slips of paper attached to them. It is for you to say whether you believe his evidence or not. Further there is the story, that when Thiruvengadam, Potti Naidu and Lakshmanan were gambling together Somaya comes, and produces two pieces of Kasu Malai, and says "one is for you Thiruvengadam and one for Lakshmanan". They immediately wrapped them in their waist cloths. Potti Naidu never saw the bits of jewels before or since, yet he identifies them. It is for you to say whether you can believe that.

30. We now get to the 19th witness Lakshmana Pillai (Madras 3rd Prisoner). His house was searched on 4—12—94. Property was found. The only identifiable articles among these are a bit of Kasu Malai (Material Object No. 22) and one pearl string (Material Object No. 23). He says, the bulk of the property is mine, as for the pearl strings, the Kasu Malai and rubies, the Police brought and placed them. He gave his statement to the Deputy Commissionor of Police late in the afternoon of the 7th December. There is some importance, in the fact that it was late in the evening, which will appear hereafter. He says that he went to the temple with the other three Madras Prisoners,he and Somaya stayed outside while Thiruvengadam and Visweswara Sastri went in, that Thiruvengadam brought out jewels, that Viswesswara was hurt, and that he took him to the hospital. The property was all melted in the house of Visweswara. It seems true that Visweswara is a professional gold-melter, because the Police took from his house 50 crucibles. Thus it was unnecessary for him or his brother to send for a professional Asari to melt for them. Lakshmanan goes the length of denying having given the statement before Mr. Simpson. This is not very probable. But Mr. Simpson had no knowledge of the temple. He would not be able in any way to check the details given by the 'Madras prisoners.' The fact that statments were made to Mr. Simpson is probably true, but it does not follow that the facts mentioned in these statements are true.

31. The next witness is Visweswara Sastri (20th Defence witness). His statement was taken on the 11th of December; in it he admits that he and Thiruvengadam went to the temple. He(Visweswara) slept outside in a Mantapam whileThiruvengadam went in,he may mean the Mantapam outside and west of the Arivittan wall. But you must form your own opinion on the matter. Thiruvengadam got in somehow through the Arivittan gate. How he got into the Maikaval enclosure does not appear.But he turned up in the middle of the night,woke Visweswara, and told him he had got a bundle of jewels. Visweswara says that he fell immediately on getting down from the Mantapam, because he was half asleep. Now Thiruvengadam's statement seemed to mean that the spot, where Visweswara Sastri fell and injured himself, was some hole outside, and east, of the Arivittan wall. Visweswara Sastri denies his presence in the Trichinopoly hospital. He said he was tutored by Muthukrishna Naidu, that the hurt in the leg was the effect of a fall from a cart, and the hurt to his arm was the result of Police ill-treatement . He says he never made any statement before Mr. Simpson.

32. Next witness is his brother Somaya (Defence 21st witness). He gave his statement to Mr. Simpson on the 8th and 19th December and knows nothing actually of the theft, because he stopped outside with Lakshmanan. One point in his statement is that six ingots were buried in his house. Those six ingots have never turned up. He denies the story of his having sold about Four-thousand Rs worth of gold through Radacharen. But he admits that he bought some Three-hundred Rs. worth of silver from this witness, and says he made the former statement because he was tutored by the Police. He says the family consists of three brothers (not two) all three living in the same house. If that is a fact, it is curious why the 3rd brother was not arrested, and charged also. These 'Madras Prisoners' say he was arrested, but was let off by the Police subsequently.

33. Mr. Carr's (1st Defence witness) statement does not prove very much. He says some of the 'Madras Prisoners' showed him the place where Visweswara fell down. The place shown was outside the Arivittan wall. He says also The Madras Prisoners did not "point out any thing as having been done by them, as far as I remember." But in Madras they had admitted to him generally, that they had done this house-breaking and that they had no accomplices.

34. We now come to witnesses intended to support the statements of these 'Madras Prisoners' given to Mr. Simpson(2nd Defence witness)and to contradict their evidence given in this Court. Mr. Simpson(2nd defence witness)proves that he took the statements(Exhibits XVIII XIX. XX. XXI.) and that a large amount of property was produced before him, as stated by the Madras Police, but he knows little or nothing of the case personally.

35. Muthukrishna Naidu (6th Defence witness) is an acting Inspector of the Madras City Police. He speaks to the arrest of Thiruvengadam and Lakshmanan on the 4th December and to the finding of the bit of Kasu Malai(Material Object No. 22)and one pearl string (Material Object No. 23) in Lakshmanan's house. Of course he denied that he ill-treated 'the Madras Prisoners' in any way.

36. Head constable Varadarajulu (7th Defence witness) took Thiruvengadam to Conjeevaram and there a large amount of property was produced from a hole in an inner wall of the house of Tayammal (11th Defence witness) including one string of pearls (Material Object 21). From the house of Visweswara and Somaya he produced a large amountof property, but none of it is identified as temple property.

37. Perumal Naidu(12th Defence witness) is another Head Constable. He confirms Muthukrishna's evidence about the search inLakshmanan's house. The other witness that speaks to the search is Manicka Mudali (13th Defence witness) bnt he is alleged to be at enmity with Lakshmanan.

38. You have heard the evidence and the arguments for and against the *bona fides* of the searches. It is for you to say whether you believe that the property was found as alleged by the Madras Police, or whether you believe it was foisted as alleged by the 'Madras Prisoners'. You must remember that out of property valued at ten or twelve thousand rupees only these three items (bits of Kasu Malai and two pearl strings) (Material Objects Nos. 21, 22 and 23) are alleged to be identifiable as temple property.

39. The next witness is Radacharen (8th Defence witness) who says that he bought gold from Somaya and saw the crown in the house of Visweswara. You remember what the Public Prosecutor called your attention to, Viz. that there is a contradiction between the confessional statement of the 'Madras Prisoners' before Mr. Simpson, and Radacharen's deposition before this Court. He says that he saw the crown complete, whereas in the confessional statements it is said that it was melted the night before Radacharen was sent for. If the confessional statements are true Radacharen's statement is not true. If the confessional statements are not true, Radacharen's may be correct. It is for you to say whether you believe either or neither.

40. Next we have Dasari Sriraman Chetti (9th Defence witness). He confirms Radacharen to a certain extent, by admitting that he purchased gold from him (8th Defence witness). Of course he (9th Defence witness) cannot say where this gold came from. 23rd Defence witness Sri Krishnan simply speaks to having bought a large amount of gold from Radacharen. I should here bring to your notice that Sri Raman Chetti made some confusion about the date of Deepavali. If the transaction with Radacharen was prior to Deepavali, it is prior to the theft. But he explains, that by saying ' Deepavali" he meant the Guzaratti Deepavali, which falls on a date different from that generally observed by people at Madras.

41. Kannia Asari (10th Defence witness) deposes that he melted the crown. On the other hand you know how little need there was for his assistance, as Visweswara Sastri and Somaya are professional melters.

42. As to the search at Conjeeveram, 11th witness Tayammal confirms the Police to a certain extent; but she admits that, before the visit during which Thiruvengadam is supposed to have concealed the property, in the hole on the top of a wall, to get at which you need a ladder, he never came to her house. It is for you to say if you consider the story of the concealment probable.

43. Ranganayaki (22nd Defence witness) sister of Thiruvengadam, spoke of his having given her certain jewels and says that she got them altered by Arumugam Asari (25th Defence witness) in some way. When he (25th Defence witness) was shown (Material Object No. 22, piece of Kasu Malai) he said the (Kathus) links or rings on it, were similar to those which had been on the loose ¼ sovereign pieces, before he altered them. Except that resemblance there is nothing to connect the property found with Ranganayaki, with that of the temple. 26th witness, Govindan Asari, says that he made some jewels for Thiruvengadam, but again there is nothing to connect these with the jewels of the temple.

44. 27th Defence witness simply proves the value of the property found.

45. Then two temple servants, 15th and 16th Defence witnesses, are called, and 7th Prosecution witness is again examined, for the purpose of identifying (Material Objects Nos. 21 to 23). These witnesses were shewn the three items (Kasu Malai bit and two pearl strings). It

seems that in the lower court they all said "These are temple properties." Here they said they resemble temple property; but the 16th witness finally said "Yes it is temple property." Kasi Visvanatha Aiyar(7th Prosecution witness) says that in the lower court he stated that the pearls were of "Sundaikkai" size, those produced here are not of that size. The evidence of these three men is very important, because on it you are asked to state, whether you are satisfied that these portions recovered (Material Objects Nos. 21—23) are satisfactorily identified as temple property. Of all the properties produced, only these bits are put forward as possible to be identified.

46. Then gentlemen, we come to the evidence of the Hospital Assistant (5th Defence witness). He certainly identifies Visweswara as the man that was treated on the early morning of the 1st November, under the name of Seshaya, and adds that Lakshmanan accompanied him to the Hospital. It is urged by the prosecution that he gave a doubtful description of the wounds when first asked,that a pencil entry containing the description appears in the remarks column of Exhibit I, and that his explanation regarding the pencil entry is not very clear or satisfactory. It is further put forward that he might be under the influence of the Trichinopoly Muncipal Chairman [*N. B.*—The Muncipal Chairman appeared as Vakil for the 6th Prisoner] and so was actually giving false evidence, and that he was not the medical officer that actually performed the operation. It was the Assistant Surgeon who did it, and he was not called as a witness. It is entirely for you to say whether you believe this identification or not.

47. Even if you accept it, it does not necessarily follow that all the Madras theory is true. It is entirely left for you to weigh the evidence about this theory as a whole, and to come to a conclusion about it. Of course if you come to the conclusion that the 'Madras Prisoners' committed the offence, and had no accomplices, then the Prisoners now on trial are entitled to an acquittal. You are not now trying the 'Madras Prisoners'. You have to decide the case of the Prisoners at present before the court.

48. Before leaving the Madras theory I should draw your attention to the fact that Head Constable Kuppusami arrived in Madras at 8 A. M. of 7—12—94. The earliest of the statements taken from the 'Madras Prisoners' was Exhibit XX taken from Lakshmanan on the evening of the 7th. Therefore it is possible that from Kuppusami or some one else, the Madras Police might have learned facts relating to the burglary, before Lakshmanan gave his statement. There is a dispute as to the presence in Madras of Nagarathnam Pillai (34th Defence witness). He says he never was in Madras at all about that time. The 'Madras Prisoners' say that they saw him in Madras on the 4th and 6th December. Inspector Sambasivaier (1st Prosecution witness) says that he saw him on the 7th and 8th in Madras, while the Municipal Chairman (35th Defence witness) says he saw Nagarathnam attending the horse races here (Trichinopoly) on the 4th and 8th and also met him on the 7th in Trichinopoly. A curious circumstance I may call your attention to in this connection is this :—Mr. Simpson said that he heard that Head Constable Kuppusawmi was tampering with Madras witnesses. He was then shown Nagarathnam (34th Defence witness). He said he could not be sure he had ever seen the man, but he (Nagarathnam) looks like Kuppusami. On this contradictory evidence you should decide for yourselves whether Nagarathnam was or was not in Madras from 4th to 8th December.

49. As to the *alibi* of the 1st Prisoner. The man at the toll gate on the road between Pitchandar Kovil and Tiruvanakaval saw him several times during the day of 31—10—94 but not in the night from 9 P. M. to the next morning. It does not follow that he might not have gone to the temple by some other way. Then there is the evidence of the witnesses (28 to 32 Defence witnesses) who slept in his pial, and who say that they saw him (1st Prisoner) at midnight, and also early next morning when they woke up. The Mahomedan (28th Defence witnesses) you remember, said that he is in the habit of getting up during night for prayer, and he saw 1st Prisoner sleeping on the pial about 2 A. M. Of course if the 1st Prisoner was in his house at 11 P. M. and 2 A. M. he could not be in the Thiruvanakaval temple at the same time. It is argued by the Prosecution that of these witnesses, one (33rd Defence witness) is 1st Prisoner's own steward, another (29th Defence witness) is his caste man who came to him to get money for some relative. Of the others, one (31st Defence witness) made a slight discrepancy by saying that 1st Prisoner went to bed at half past two instead of half past twelve or so. Whether you attach weight to this evidence or not, is for you to say. There is positive evidence that 1st Prisoner was in the temple, and there is positive evidence that he was in his house at Pitchandar Kovil at one and the same time. The distance between these two places is not very great—about 2 miles. But the

1st Prisoner is not a man adapted for rapid motion. [*N. B.* 1st Prisoner is elderly and very fat]. It is for you to say which set of witnesses you believe.

50. Then as to the 4th Prisoner, all the eye-witnesses for the Prosecution say that he was present with 1st Prisoner in the temple. His two witnesses (Defence witnesses 36 and 37) say that he was at Chintamani that night, in his capacity of Chattram manager, keeping order at the Bajanai. [Bajanai பஜனை is worship or service at which songs are sung in honor of some deity.] One witness saw him there till twelve in the night and the other till two hours later. The distance from the Chattram to the Jembukeswaram temple is about two miles.

51. 5th Prisoner is spoken against by the accomplices (Prosecution witnesses 2and 3) and also by Amirtham (4th Prosecution witness). but not by the 5th and 6th Prosecution witnesses. I again call your attention to the fact that before the Karukoolam was broken open, he went away. It is for you to say whether you believe that he did partake in the acts done, and if so whether it was with the intent of helping the common design of theft. If you think that he had no knowledge or intention to help in the offence, then it is your duty to acquit him. His *alibi* is good enough, if you believe it. His mother says he was attending his wife who was ill all the night in question. The Public Prosecutor commented on the fact that the wife was not called as a witness. You saw the mother in the box. It is entirely for you to say what weight you attach to her evidence.

52. 6th prisoner Sangili is the body-servant of the minor Avadia Pillai. The minor was asleep in the estate house in the east Chittarai Street of Srirangam and 6th Prisoner was in attendance on him. In the middle of the night some one knocked at the door and the 6th Prisoner opened it. This is spoken to by the 39th Defence witness, tutor of the minor, who is employed in the S. P. G. College, and seems a respectable witness. The 6th Prisoner's other witness (40th defence witness) is the Municipal Shroff, who says that he that day tapped at the door in order to get a light. He fixes the date because it was the last day of the month and it took him much time to check the counterfoils &c. The distance between Srirangam and Thiruvanakaval is not very great-only about 2 miles. These witnesses could not fix the time very accurately having no watches. It appears that 1st Prisoner is a member of the Municipal Council under which this Shroff is employed, and the minor is a relative of this 1st Prisoner. Therefore it is alleged that the two witnesses might have been influenced to favour the defence. It is for you to say whether you believe their evidence or not.

53. I am not going to trouble you about the plate of which you have heard so much. Even if you accept the story of its finding it really is evidence against 2nd Prisoner only, and as he has confessed, the plate becomes of little importance.

54. The counsel for the defence put forward (*a*) that as 1st Prisoner was a wealthy man it was unlikely that he would have done this offence. Of course the reply to that is, that he is alleged to have committed the offence, to avoid the impending detection of the deficit, during the proposed inspection by the committee. (*b*) that there was no evidence of any previous conspiracy, and little of any preparation. This is true. The only witnesses who speak of any previous preparation are Karuppanna Asari [This Asari died after giving evidence in the lower court and his deposition was exhibited, N, in this Court] and 2nd Prosecution witness : (*c*) that the Havildar (pensioned sepoy), who used to sleep in the temple, was not produced as a witness. You need not trouble about what an absent person might have said had he come. You have to decide on the evidence given before you, and on that only, (*d*) inasmuch as the inner locks were broken, and the majority of the outer ones opened with keys, the probability was that some stranger had committed the theft. This argument is met by the prosecution thus :— from the examination of the locks you will find they were broken, after they were opened. Of course it is for you to make up your mind as to the inference to be drawn from the appearance of the broken locks:— (*e*) the Police probably foisted the silver plate ; (*f*) that Ex. XIV negatives the statement that 1st Prisoner evaded inspection ; (*g*) that the Chubbs locks which were on the jewel box are not produced before the court ; (*h*) that the evidence as to the *alibi* of 1st Prisoner is credible and

convincing. Counsel specially asked to you to state whether or not you are satisfied that Material Objects Nos. 21—23 are temple property.

It is for you to consider whether the House-breaking was, as is alleged by the Prosecution a device to evade the inspection, or whether as alleged by the defence there was a mere coincidence between the date fixed in the stringent yadast (Exhibit. M,) and that of a House-breaking committed by strangers from Madras.

54. Mr. T. V. Sanjeeva Row pleader for the 4th Prisoner to some extent reiterated the arguments of counsel saying that Prosecution witnesses 2–6 were not trustworthy, the 2nd and 3rd witnesses, being the people whose duty it was to watch the temple, would be called on by 1st Prisoner to account for the theft, and for this reason they implicate 1st Prisoner. He refers to the three statements given at different times by these two men, and points out that the story improved as time advanced. From this he wishes you to infer that the men were tutored by the Police or the Committee. He then pointed out a great many discrepancies which is not necessary for me to recapitulate. He says that the *alibi* of 1st prisoner is credible, and that of the 4th Prisoner that he was conducting the Bajanai ceremony is likewise credible.

55. For the 5th and 6th prisoners. Mr. T. R. Kuppusawmi Aiyengar pointed out that the evidence against the 5th Prisoner is much weaker than that against the others; that the 6th Prisoner was probably implicated because it was necessary, for the prosecution theory, that some menial should assist the 1st Prisoner, and that the evidence of *alibi* of each prisoner is trustworthy.

56. The Public Prosecutor points out that considering the nature of the strong room, no stranger could have committed the theft, that the theory that the 'Madras Prisoners' committed the offence is not proved, that there is no reason to disbelieve the evidence for the prosecution, and he specially urges that if professional thieves had committed the offence for gain, they would not have been satisfied with taking the jewels alone, but would have also taken all the gold and silver vessels, which were in the other boxes in the strong room. His theory is that the 1st Prisoner promoted the offence, not so much to obtain gain, as to avoid the detection of the fact that many jewels were missing. Hence the jewels alone were interfered with.

57. Most of these points are matters of argument or inference and it is for you to draw your own conclusions from the evidence.

As to the discrepancies:—It is for you to say whether they are only such as may reasonably be expected considering, the *status* of the witnesses, the number of times their evidence has been recorded, and the length of time (five months) which has elapsed since the matters of which they speak took place, or whether they are such as to make you distrust the whole story of the Prosecution.

In fact the point is whether the discrepancies are trivial or vital. If you consider the latter to be the case you should acquit every body. If on the other hand you believe that there is some truth in the prosecution story, you must try and pick the truth out and find what offence has been committed, and by which accused.

58. You must pay attention only to the evidence given before you, and not to any outside rumours. You must avoid all prejudices and give your verdict without any fear or any favour.

59. Supposing you feel some doubt, you must remember that in almost no case is it possible to get evidence proving it beyond any possible doubt. The real test for the amount of doubt to the benefit of which the prisoners are entitled, is this:—If you as prudent men consider the guilt of any prisoner so probable that you would not hesitate to act on a similar amount of proof with regard to a grave matter of your private concern, then you are entitled to convict such prisoner. A mere shadow of doubt is not sufficient to justify an acquittal. But if, on the other hand, you feel a substantial, or reasonable, doubt then the accused are entitled to the benefit of such doubt and you should acquit them.

60. There is one other thing I have to say. It does not follow because you think one prisoner is guilty, all are guilty, or because one man is acquitted, all should be acquitted. You must consider the case of each prisoner separately.

61. The questions I wish you to answer are:—

(1) Was there an offence under section 457 I. P. C. House-breaking by night?

(2) Do you find that there was theft in a building, section 380 I. P. C.

(3) Do you find that there was theft by a servant under section 381 I. P. C.

(4) As to each prisoner:—Do you find him guilty, or not guilty, of any of the offences charged?

It will also be convenient if you answer the question put by counsel.

(5). Are Material Objects 21—23 Jembukeswaram Temple property?

Consider your Verdict.

Note:— (After an absence of fifteen minutes the jury returned saying that they were divided 3 to 2. I sent them back to reconsider. Again they returned and said there was no prospect of further agreement.)

The Jury found, by a Majority of 3 to 2, that there was House-breaking by night, there was theft in a building, and there was theft by a servant.

That, 1st Prisoner is guilty of all three offences.

4th Prisoner is guilty under sections 457 and 380 I. P. C.

6th Prisoner is guilty under Sections 457 and 380 I. P. C.

That 5th Prisoner is not guilty [unanimous]

The jury further found that the pearl strings Material Objects Nos. 21 and 23 have not been satisfactorily identified as temple property, and that the bit of Kasu Malai (Material Object No. 22) is temple property.

As to the 5th Prisoner, I concur with the Jury. He is acquitted and set free.

As to 1st, 4th and 6th Prisoners, I concur with the majority.

I sentence 1st Prisoner to three years' rigorous imprisonment and a fine of Rs. One thousand in default to six months' additional rigorous imprisonment.

I sentence the 4th and the 6th Prisoner each to one year and eight months' rigorous imprisonment.

I have already (15—3—95) convicted on their plea the 2nd and the 3rd Prisoner of the offences charged, and sentenced—the 2nd Prisoner to rigorous imprisonment for eight months, and the 3rd Prisoner to rigorous imprisonment for four months.

[*N. B.*—Each of the prisoners has already been in Jail for about four months.]

In sentencing 1st Prisoner I have taken into consideration the sentence about to be awarded in C. C. 7/95.

TRICHINOPOLY,
SESSIONS COURT,
30th March, 1895.

(Signed) R. D. Broadfoot
Ag. Sessions Judge.

Examined by S. Rama Row,
Translator.

(True Copy)
(By order)
Superintendent
To the District Magistrate
Trichinopoly

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E.A.L.
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[Disposal Abstract.]

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Disposal No. 389/9n of 1895 ~~In~~ or ~~not In~~

COLLECTOR AND MAGISTRATE
20 APR 95
TRICHINOPOLY.

IN THE COURT OF SESSIONS OF

Trichinopoly Division.

The 30th day of March, 1895.

Present:—R. D. Broadfoot Esq., Barrister-at-law.

AG. SESSIONS JUDGE.

C. C. No. 7 of 1895.

Committed by the Second class Magistrate, Trichinopoly (P. R. No. 1 of 1895).

QUEEN EMPRESS. VERSUS: Names of accused

Muthusami Pillai alias Kunju Pillai

Defended by

Mr. G. P. Johnstone (Counsel).

„ T. V. Sanjivi Row.

„ T. R. Kuppusami Aiyengar.

& „ S. T. Rengasami Aiyer.

Offence: Section 408 I. P. C.

Opinion of Assessors:

1st Assessor Nayudu. } Guilty.
2nd do. Brahmin. }

Finding of Judge: Do.

Sentence: (2) Two years' rigorous imprisonment and a fine of Rs. 1000 (one thousand) in default to suffer (6) six months' further rigorous imprisonment.

JUDGMENT:—

1. The Prisoner is charged with Criminal Breach of Trust-Section 408 I. P. C, and pleads not guilty.

2. Prisoner is the sole trustee or manager of the Jambukeswaram temple and as such is responsible for all jewels belonging to the deity. Jewels which are worn by the God only on festival occasions are kept separately in a box in the room called Karukulam. Prisoner keeps the only key for this room. From this box jewels have vanished. The total amount that is not accounted for in any way is about Rs. 4500. The item with respect to which Prisoner is now charged is No. 86 in the List (Ex. C) of temple jewels. It is a gold waist string valued at Rs. 54½.

3. From the evidence for the Prosecution it appears that this jewel was in existence in 1886, when it was seen by 2nd Prosecution witness Nataraja Aiyar, a member of the Devasthanam Committee, during his inspection of temple jewels. Its last appearance in any temple account is in Ex. H⁴ dated 13—1—91.

4. On 11—7—89 a circular (Ex. Y) was issued by the Committee to all Managers forbidding them to melt any temple jewel without the express permission ofthe Committee. But this order seems to have been universally disregarded.

5. There is an account called "Kuripu" (Series MM) showing receipts and expenditure of all temple property other than money. There is no entry in this account to explain the disappearance of item 86, the waiststring.

6. There is also an account called "Rokka Chitta" (Series NN). If any jewel were sold for cash the amount received should appear in this Chitta. This account contains no entry to explain the disappearance of item86.

7. 4th prosecution witness, the temple Golla, states that by order of Prisoner the missing jewel (item 86) was melted into an ingot with some other jewels and placed in a box styled the "Work box."

8. 5th prosecution witness, an accountant of the temple, states that about October 1894 i. e. just after he first heard that inspection by the Committee was imminent, Prisener caused him to make several entries in the temple jewel accounts, but it is not clear that any of the entries so made were false. Some are shown to be true. No remark, however, was made even then against item 86. From this omission the Prosecution wish to deduce that Prisoner had no legitimate way of accounting for the disappearance of item 86.

9. Prosecution witnesses 9 to 12 are called to rebut the argument that because Prisoner is a large landholder it is absurd to accuse him of embezzlement. They prove that Prisoner is heavily indebted to them (Rs. 19000 Ex. QQ 1-4, RR & SS 1-3).

10. On 24—9—94 (Ex. Z) Prisoner was told that the Committee were about to inspect the jewels of this temple. He replied on the same date asking the inspection to be put off on the ground that he was sick.

On 7—10—94 (Ex. DD) a similar letter was sent to Prisoner. He replied 12—10—94 (Ex. EE) saying he had urgent private affairs, that he had ordered the temple Peshkar to meet the Committee, but that it would be much better if they would wait till he (Prisoner) could attend in person. On 30—10—94 Ex. FF was sent to Prisoner telling him that the inspection would be held on 1—11—94 and no excuse for delay would be accepted. Prisoner did not reply, but on the night of 31—10—94 the temple was broken into and many jewels vanished. This the Prisoner reported to the Police and Committee next day,

11. As after some enquiry the Inspector suspected Prisoner, he arrested him on 6th, and charged him with both Criminal Breach of Trust and Housebreaking and Theft. For convenience the charges were split in this Court.

12. The Prisoner admits having had possession of item 86 as trustee and that it was a temple jewel. He says it was melted under his orders about three years ago and the gold used for the manufacture of portions of three new pendants. These three pendants are among the items lost in the alleged burglary. He called 5 witnesses.

13. The evidence of the 1st Defence witness is not much in point, as he merely states that some 7 or 8 years ago Prisoner made a number of jewels, partly from old jewels and partly from materials newly purchased.

14. 2nd Defence witness is the goldsmith that melted item 86. He says he worked for about 1½ years, setting stones in three pendants (ஒத்தம்). The plate at the back of the jewel, into which the stones are set, he styles the 'Socket'. This he did not make. He purified the ingot, which resulted from the melting, and used it for the 'setting' work, i-e for the ribs of gold which keep the stones in place. He says that, allowing for wastage, the ingot was just enough to complete the three pendants: He finished the pendants a year and a half ago, and says his account for making them is not yet settled, i-e he has not been paid his wages in full, but has only receivd some sums on account. This evidence, if believed, is sufficient to clear Prisoner.

15. On being asked to give details of the jewels melted by him he mentioned the waiststring, a crown, a leg ornament, a gothumani and a Munkei Tagadu, and stated that the result of the melting was an ingot of 80 pagodas weight.

16. 3rd Defence witness is the man who kept the Karukulam accounts. He speaks to the melting of the waiststring, and other jewels, and to the use of the resultant gold for the setting work of three pendants. He further says that when jewels were given to workmen, this fact was not entered in the regular accounts, but on a separate loose bit of paper for each transaction. Such papers, and also lists of the contents of particular boxes, were regularly kept, & were last seen by witness on 5—11—94, when he, 5 Prosecution witness, Nataraja Aiyar-the Committee member(2nd Prosecu tion witness) and others were checking the existing jewels. Witness says that he *then* told these people that the waiststring had been used for making the pendants. It must be noted that 2nd Prosecution witness flatly contradicts this. Witness also states that prisoner used to suffer from pain in the chest.

17 Being asked to specify the exact jewels melted, he said Waiststring, Crown, Godumani, Munkei tagadu and some small lumps of unworked gold. He was then shown an undisputed temple account (W W) showing that the Munkei tagadu had been melted for some other purposes in Fasli 99 i. e. about one year before witness says he saw it melted. On this he said, "I may have made a mistake".

18. 4th Defence witness is a man who was accountant in the temple for about six months during Fasly 1300. He states that the waistsring, a Crown, Gothumani, and sundry bits of gold were melted and the result used for pendant. No entry about this was made in the regular accounts, but the details were noted on a piece of paper. The brother of this witness is in the private service of Prisoner.

19. 5th Defence witness is a brother of 9th, 10th, 11th Prosecution witnesses. He says Prisoner never pledged any jewels with him. Strictly speaking this is not relevant to the present charge.

20. Counsel for the Defence points out

(1) that there is no direct evidence of any dishonest conversion.

(2) that no Manager paid any attention to Ex. W, therefore no inference adverse to Prisoner should be drawn from the fact that he did not obey it.

(3) That the accounts are by no means perfectly kept, therefore the fact that the melting of the waiststring does not appear in them, should not weigh against prisoner in the face of the Defence evidence, that the transaction was not entered because it was not finally adjusted.

(4) that it cannot be said that Prisoner tried to avoid the inspection,for he was ill, and he offered that his Peshkar should produce the jewels.

(5) that there is a conflict of evidence about the inspection after the alleged burglary, and that the police, or 2nd Prosecution witness, may have made away with the loose pieces of paper, by the production of which the *bonafides* of Prisoner would have been proved.

21. The Public Prosecutor replied

(1) that the jewel was admittedly in the custody of Prisoner as Manager, and is not forthcoming. It is therefore on him to account for it,

(2) his attempt to account for it cannot be believed, because the line of defence was kept concealed till the last possible moment. Then it was considered best to account for all articles, which were (a) not forthcoming, (b) not included in the list of property lost in the alleged burglary, (c) not accounted for by any remark in Ex. C, by saying they were all melted up, on the same occasion, and used for pendants. But the Defence overlooked the fact that the Munkei tagadu (item 96 in C) should have had a remark against it, as by W W it is clear it was melted in Fasly 1299. As soon as this was pointed out to 3rd Defence witness, the next witness dropped the Munkei tagadu and inserted bits of sundry gold, not mentioned by

c 462/mag of 95

2nd Defence witness, to make up the required weight. There is also discrepancy as to whether the leg ornament was melted or not. From this Public Prosecutor argues that, either the defence is tolally concocted to cover all items " without remarks " or that the memories of the witnesses are so vague that we cannot trust that they really saw the waiststring at all.

(3) With regard to the alleged loose pieces of paper, it is absurd to suppose that the Committee Members would join the Police in burking them.

(4) That the explanation for non entry in the regular accounts is incredible. No workman would wait quietly for over a year with his wages unpaid.

(5) The waiststring was not useless, and not out of order. There was no reason why it should be melted at all.

(6) There is a conflict of evidence as to whether any new jewel was made after the date of the melting. 4th Prosecution witness and 8th Prosecution witness should be believed.

(7) According to the Defence story the sockets, or foundation, of the pendants were made a year before the waiststring was melted and used for setting. There is no reason for so long a delay, and this throws doubt on the Defence.

(8) The conduct of Prisoner in disobeying order W and especially in putting off the inspection by false excuses is most suspicious.

22. After carefully explaining that the whole gist of the charge lay in the dishonest intent and that they must deduce the intent from the evidence, I specially put to the Assessors, men of intelligence and position, to whom the Pleaders for the Defence took no objection, whether they believed (1) the evidence for the Prosecution or (2) that for the Defence and whether they were satisfied, beyond reasonable doubt, that the intent of Prisoner was dishonest. After a short retirement each stated that he did not believe the Defence and found Prisoner guilty.

23 I agree with this finding. The Defence evidence did not impress me favourably. I cannot believe that the Committee Members made away with documents material to the case. The absence of any entry, in the accounts, of the alleged melting of the jewel, seems to negative the *bonafides* of Prisoner. The excuse about non-settlement of the goldsmith's account, seems to me too flimsy to merit any consideration. The conduct of Prisoner in delaying the inspection by the Committee is also suspicious. The presumption that would arise from the status of Prisoner, is negatived by the fact that he is in debt to a considerable extent; while that which would arise from the small value of the article charged, is negatived by the fact that jewels to the value of Rs. 4500 are unaccounted for, even if, for the purposes of this case, we assume that Prisoner's version of the temple burglary is true.

24. Concurring with the assessors I convict Prisoner of Criminal Breach of Trust under section 408 I. P. C. and sentence him to two years' rigorous imprisonment and a fine of Rs. 1000 (One thousand) in default six months additional rigorous imprisonment.

(Signed) R. D. BROADFOOT.
Ag: Sessions Jndge
30—3—95.

Dis 388/mag of 95 Desp 30-4-95

Note: This Judgment was kept back till the close of the Jury trial that Prisoner might not be prejudiced. In passing sentence I consider the sentence passed in C. C. 8/95.

(Signed) R. D. BROADFOOT.
Ag: Sessions Judge.

TRICHINOPOLY SESSIONS COURT
30th MARCH, 1895

(True copy)

~~*Ag: Sessions Judge.*~~

(By order)
[illegible]
Sheristadar

To The District Magistrate of Trichinopoly

Copy forwarded to [illegible] Magistrate Trichy Taluk and the Town [illegible] Magistrate Trichy.

[illegible] 25/4

[illegible]

5/

Back paper No. 189

Further paper No. 189

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TRICHINOPOLY DISTRICT.

Magistrate Series.

DATED 25-4- 1895.	
Despd 30.4.95	

ENCLOSURE

Dis No. 388 / Mag of 95

To whom sent Town Sub Reg? & Dy Mag? Trichy

[Disposal Abstract.]

Forwarding copy of judgt in CC No. 7 of 95 on the file of the Sessions Court

25 Judl Dept. Enclos. No 4 To 2214

Item No.

Trichinopoly District Magistrate's Office
29th April 1895.

CURRENT No. 2214

From
E. A. Elwin Esq
Ag: District Magistrate of
Trichinopoly

To
The Chief Secretary
to Government
Judicial Department
Madras.

Sir,

I have the honor to submit for the orders of Government the question as to what fee is to be paid to the Public Prosecutor, Trichinopoly, for having successfully prosecuted the Tiruvanakaval temple theft case.

2. The case was one of great importance. Jewels worth Rs 40,000 were reported to have been stolen from the temple on the night of the 31st October last. The circumstances under which the theft was reported to have been committed created suspicions against the trustee of the temple and other temple servants, who were accordingly arrested. While the case was being investigated by the local police, 4 men were arrested in Madras as having been involved in the theft and brought to Trichinopoly together with considerable property by the City Police. The accused were all placed in due course before the 2d class magistrate of the Trichinopoly Town, who, after a protracted preliminary enquiry, committed them for trial to the

Court of Sessions. Before the Sessions Court the Case was split into three, one against the trustee for Criminal breach of trust, another against the trustee and his Subordinates for the theft in the temple, and the third against the Madras accused for receiving Stolen property. The first two Cases ended in Convictions, and the last in the acquittal of the accused. I enclose Copies of the Judgments of the Sessions Court in the three Cases.

3. The Public Prosecutor was instructed to Conduct the prosecution both in the Lower Court as well as in the Sessions Court. In the Lower Court he was engaged for twenty-two days and in the Sessions Court for 21 (20?) days. The first two Cases were intricate ones and the public prosecutor Says that they were rendered much more so by the line of defence adopted, that he Conducted them single handed, and that they Cost him a great deal of labour. I enclose a Copy of his letter on the Subject. He claims a fee of Rs 1240.

20? [illegible] Public Prosecutor's letter

4. Having regard to the importance of the Cases and the length of time occupied in their trial, Rs1000 will, I think, be a fair remuneration: it will practically give the Public Prosecutor Rs 20 a day for the days he was engaged in the Lower Court and Rs25 a day for the period occupied before the Sessions Court.

20 x 22 = 440
20 x 25 = 500
940

I have the honor to be,
Sir,
Your most obedient Servant

A. Krishnasamaiyar
for Ag. District Magistrate.

[G. / 25.]
600—8-3-95.

Jud. DEPARTMENT.

C. No. 2214

FOR ORDERS.

The Public Prosecutor was engaged for 22 days in the Sub Magistrate's Court and for 20 days (not 21 days as stated in D. M's letter) in the Sessions Court. He claims a fee of Rs 1240, at the rate of Rs 20 a day for the days he attended the Sub Magistrate's Court & Rs 40 a day for the period occupied before the Sessions Court. The D. Magistrate ~~Tanjore~~ Trichinopoly considers that Rs 1,000 will be a fair remuneration for his services.

D
9.5.95.

This is a large fee but it is I submit fair and not too large for the work done

[initials]
13/5

Rs1000 sanctioned
[initials]
14/5/95

Order. d/ 18th May 1895 No. 1051

The Dist. Magte's recommendation is accepted & sanction will accordingly be granted for the payment of a fee of Rs 1000 to M.R.Ry K. S. Ganapati [illegible] for his services in the prosecution of the cases mentioned

The Dist. Magte (Tr.)
The Acct. Genl. (p. r.)

DESPATCHED 24 MAY 95 M.S

[initials] 17/5/95

Copied 21/5

[initials] 21/5/95

Fee for the Public Prosecutor,
Tanjore, for conducting the
prosecution in the Jambukeswarar
Temple case

FOR ORDERS.

given for copying ____
copied ____
examined ____
signed ____
} 189.

AGAIN G.O., No. 189, DATED

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MENT WITH DITTO.

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

N.B.—
A = Copy in full.
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P = Copy abstract only.
Q = Copy heading only.

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