

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1104

Dated 23rd May 1895.

INDEXED.

[Despatch Abstract.]

APPEAL.

Declining to-----against the order of acquittal passed by
the Sessions Judge, Viragapatam, in Criminal Appeal No. 6 of 1895.

N.B.—There are papers connected with this
order in the confidential records.

BACK PAPERS.

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

FURTHER PAPERS.

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

C. P. 17-11-94.-700.]

RENT NO. 20/2

Judicial DEPARTMENT.

FROM

THE COLLECTOR OF VIZAGAPATAM.

TO

The Chief Secretary to Govt.
Judicial Department
Madras.

UNDER SECRETARY
27 APR 95
PUBLIC DEPT.

Dated 23rd April 1895.
Received 27th
Regd 28th

Re. C. No. 1304

ENCLOSURES (one file
+ one record)

Subject.

Requesting to direct the
Public Prosecutor to present
an appeal to the High Court
against the order of acquittal
passed by the Sessions Judge
Vizagapatam in Criminal
Appeal 6 of 1895 on his
file.

HM.
Please see note for orders
uttered by mistake on the revised
the enclosure which contains the
Sessions Court judgment
5-5-95

Sp 339/95 his court & police
1799/94
825/95
448/95

T. C. No. 1304
~~Deposit~~

CURRENT NO. 2072

VIZAGAPATAM COLLECTOR'S OFFICE.

Dated 23 April 1895

From

F. D'A. O. WOLFE-MURRAY Esq^r.

Ag. Collector, Magistrate

Vizagapatam District.

To

The Honorable J. J. Price,

CHIEF SECRETARY TO GOVERNMENT,

Judicial DEPARTMENT,

MADRAS.

SIR,

I have the honor to forward herewith the records in Calendar Case no 75 of 1894 on the file of the Head Assistant Magistrate, Vizagapatam and request that the Government may be pleased, if my views are thought correct, to direct the Public Prosecutor to present an appeal to the High Court against the decision of the Sessions Judge, Vizagapatam in Criminal Appeal no 6 of 1895. I need hardly point out the importance of the case from the point of view of public

CONFIDENTIAL.

Collected with G.O. No. 11074, Judicial,
dated 22nd May 1895.

Order and proper Conservancy of the forests.

2. The Complainant, a temporary watchman of the Forest Reserves of Lokivada reported the occurrence of the crime to his Range Officer. This crime occurred on 23rd November.

The guard was beaten on the head with a stick by one of the persons who attempted to rescue certain sheep being driven to the pound from the Reserve: at the same time also he

received a contusion on the chest. Next day this guard went to the Hospital and was under treatment for a week.

The wound on his head was 2 inches deep and the Hospital Assistant thought it caused by a stick as also was the contusion on the chest. The guard reported to the District Forest Officer who

on the 18th December wrote to the Head Assistant Magistrate forwarding the statements recorded by him (District Forest Officer) of the temporary watchman, the Village Munsiff, the two Village barikies and the barber who were present at

the scene of offence. The Head Assistant
Magistrate

Magistrate thereupon ordered the Inspector of Police to investigate the case and prosecute the offenders before himself. Then the Police after enquiry charged five persons of being guilty of the offences falling under sections 147, 324, and 353 I. P. C.

3. The facts of the case are:—

On 23rd November 1894, Prosecution 18th witness and Complainant, a temporary watchman of the Forest Reserves of Lokivada finding some goats and sheep grazing in Veridilova at about 11 A.M. sent a bariki (village servant) who accompanied him for the purpose of assisting him to seize the animals trespassing upon the Reserves, to bring the Village Munsiff to bear witness to goats and sheep grazing in the Reserve, as the goats and sheep of the accused had been rescued by force from his custody on a previous occasion. The village Munsiff and another bariki went to the place, observed the animals in question grazing there and then returned to their village. The

temporary watches, the bariki who accompanied him, and the bariks began to seize the goats and sheep to drive them to Kondakista pound. But at a place belonging to the Maharajah of Vijayanagram beyond the village of Panchadhasla where the forest reserves terminated, the accused came and tried to rescue the animals. The temporary watches and his followers prevented them from so doing, when a conflict took place and the 2nd accused hit the complainant on the back of his head from behind with a bamboo stick 6 feet long and 1 inch in diameter. The complainant fell down, but recovering himself, got up and resisted the attack once more when the 3rd accused hit him on the chest with a stick. The rest of the accused used their fists and kicked him with their legs. Thereupon he became insensible but after a while recovering his senses went away to the village of Gokivada with his followers and at 8 P.M. reported the matter to the village Munsiff who came to

to the forest reserves in the day time. On the morning of the 21st November 1894 he went to Ellamanchili, informed the Ranges of the Commission of the offence and then went to the Hospital which he attended for a week.

4. Prosecution 2nd Witness, the Village bariks corroborating the 1st Witness deposes that a month previous to the date of trial the Complainant, a bariki and himself went to Gokivada from Panchadhasla hill, that they saw goats and sheep grazing in the reserve, that the Complainant sent a bariki to fetch the Munsiff alleging that the accused had forcibly rescued the sheep on a previous occasion, that when the 1st Witness and he got up the hill there were 6 accused, that as soon as they saw them, 3 of them ran away leaving the 2nd, 3rd, and 5th accused behind them, that the Complainant with his followers began to drive the sheep to the pound when the

the 3rd accused obstructed him and was stopped by the Complainant, that the 2nd accused struck him on the head with a bamboo stick from behind, that the Complainant fell down, got up again and prevented the accused from rescuing the sheep when the 3rd accused gave him a blow on his chest with his fist, that the Complainant again fell down, that the 3rd accused, who ran away at first, returned and joining the remaining three beat the 1st witness with their fists and kicked him, that when he and the bariki tried to separate them the accused pushed them away and they fell down. He implicates the remaining accused also.

5. The village bariki as Prosecution 3rd witness corroborates the Prosecution 2nd witness in every particular and adds that he and the bashes were also beaten, because they tried to prevent the accused from rescuing the sheep.

The

7
The Prosecution 4th witness corroborates the 3 previous witnesses and further states that he observed the wound on the back of the head and blood stained cloths at 8 P.M.

The prosecution 5th witness confirms the statements of the previous witnesses.

6. All the accused pleaded not guilty.

7. On the aforesaid evidence the Head Assistant Magistrate charged the 2nd accused under Section 324, I.P.C. and all the accused under Sections 323 and 353 I.P.C.

8. The accused cited 8 witnesses mainly to prove an alibi and that the injuries received by the Complainant were the result of a fall.

Defence 1st witness tries to prove an alibi on behalf of the 1st accused and Defence 2nd witness does the same with regard to 2nd accused. On the other hand the 3rd accused set up a similar plea through defence witnesses 3 and 4. But defence 3rd witness proves nothing though he evidently came to speak

Speak on behalf of the 3rd accused, while
Defence 4th witness fails to state on what
particular date the 3rd accused brought
his sheep to his field.

The story for the 4th and 5th accused is
slightly different as deposed to by
Defence witnesses 5, 6, 7 + 8. Defence
witnesses 6, 7 + 8 Corroborate Defence 5th
witness who deposes that on a certain
day, which he does not exactly remember,
while he was grazing his own bullocks
at the foot of the Panchadharla hill,
4th and 5th accused who were also grazing
their sheep on the hill which belongs
to the Maharajah Remonstrated with
the Prosecution 1st witness and his
followers who were driving their sheep
down the hill to the effect that their
sheep were not grazing in the Reserve
and that Prosecution 1st witness
hurt his head on account of falling
on his back in running after the sheep
with shoes. It is not quite clear from
the

the recorded depositions of Defence witnesses
where the sheep were grazing and where the
Complainant fell down. The statements that
the sheep were grazing "near the temple at
Panchadharla hill" and "on the hill" cannot
both be true.

9. The Hospital Assistant who examined
the injuries of the Complainant was
examined as a Court witness by the
Head Assistant Magistrate. He
deposed that the Complainant was under
his treatment for 6 or 7 days, that he
saw an oblique contused wound on
the back of his head, 2 inches long
and a contusion on the left side of
his chest, that the said injuries might
have been caused by a stick and
could not have been caused by an
accidental fall and indeed it is
obvious that a man if running after
anything cannot possibly fall on
the back of his head, nor could he
in falling contuse his chest and
wound

wounded himself in the back of his head at the same time, that the complainant was not very badly hurt, and that he had given a certificate which was read and filed as an exhibit in the case.

10. The Head Assistant Magistrate being convinced of the truth of the prosecution theory, convicted the accused. Against this decision the accused 5 in number appealed to the Sessions Court which acquitted all of them on the following grounds:-

(1) The Police maliciously concocted the case by suborning witnesses who were the direct subordinates of the Village Munsiff a person under their thumb, by not binding witnesses that ought to have been bound over, by suppressing all mention of the contusion on the chest in the charge sheet and by omitting 6 out of 11 persons originally charged, because they were directed by their superiors, who believed

believed in the story, as the case was sent up to him by the District Forest Officer, who in his turn acted blindly on the information supplied to him by the Ranger.

(2) It is improbable that a Brahmin of 17 who is only a temporary watchman should have acted so valiantly, even after the serious injuries alleged to have been received by him.

(3) He believes that only an altercation took place but that the injury was of such a character as might have been caused by a mere fall.

(4) He implies that the Head Assistant Magistrate is assisting the concoction because of the omission of the age of the complainant at the head of the deposition recorded by him.

(5) He thinks that the story was rendered improbable by the contradictions abounding in it such as the following:-

(a) That the contusion on the Chest of the Complainant was said by the Prosecution 1st witness to have been caused by a stick, while Prosecution 2nd witness states that it was caused by a blow of the fist.

(b) That the statement of the Medical witness to the effect that the Complainant was not very badly hurt conflicts with the statement of the Complainant and of the Village Munsiff.

11. The following are the replies to the grounds adduced by the Sessions Judge.

As regards No. 1, I beg to state that a perusal of the Record would show that everything was done in the ordinary course of business and that there was nothing to prove that the Officers of the Police, Forest, and Magisterial Departments acted in concert. It seems to me to be very natural and in fact there was no other alternative for the Complainant than to apply to the Village authorities for

for necessary assistance in apprehending ¹¹ Offenders against Forest Laws seeing that the village generally do not look on Forest Reservations with favor. The Ranger in ordinary course of business reported the occurrence to his Departmental Head, the District Forest Officer forwarding the statements which he had recorded merely for the information of his superior, who thinking that it would be safer to leave the matter in the hands of the Divisional Officer sent the Report and the statements to the Head Assistant Magistrate. The District Forest Officer would have done well had he referred the Complainant to the Police instead of corresponding with the Head Assistant Magistrate on the subject, which has unfortunately prejudiced the Judge though apparently there was no reason for it. The Government is well aware of the opinion the Judge has unfortunately contracted regarding cases prosecuted by the Police here and of the ^{No.} reasons which have caused him to contract that

Opinion. The fact of the District Forest Officer having submitted the Ranger's report together with the statements to the Head Assistant Magistrate of his own accord cannot but fail to convince unbiassed persons of the bonafide nature of his communication.

It is in evidence that some sheep and goats found grazing by the Complainant in the Gokivada Reserve were rescued from his custody on a previous occasion, and that he went and asked the Village authorities for assistance in order to prevent the repetition of such interference. Thus the persons who were eye witnesses of the offences were the Village barbers and the bariki. Under these circumstances, I fail to understand who else could be cited as witnesses except these. That they were servants under the Munsiff cannot by itself be taken as a ground to discredit their evidence.

Beyond

Beyond this single fact the Judge was not able to assign any other reason for disbelieving them. No doubt the Police omitted to bind over the Medical witness but the Head Assistant Magistrate has remedied the omission by examining him as a Court witness, and his evidence is clear and strongly in favour of the prosecution. The Police might have overlooked the necessity of it or might have thought it unnecessary because the certificate given by the Medical Officer was filed by them before the Magistrate. The absence of all mention of a contusion on the chest of the Complainant in the Charge Sheet might perhaps be due to the slight importance attached to it by the Station House Officer. In the light of the abundant evidence on record proving a scuffle, blows dealt and injuries received, the slight contradiction which may be found and which are made much of by the Sessions Judge do

is not in my opinion deserve serious Consideration. They might have been due to defective cross examination. On the other hand the fact that one man said the contusion was caused by a fist and another by a stick goes far to show the case was not concocted because if it were, the witnesses would have been very carefully instructed on this point. The man who received the contusion himself said it was caused by a stick. There is no doubt the mark was seen on his chest next day and he ought to know. Others could not know so well for in a scuffle in which several are concerned it is not so easy to see where a fist and where a stick lands on its mark. It is no doubt true that the Police have thought fit for reasons best known to themselves to prefer the charge only against five leaving the rest of the persons originally charged. The remaining 6 might have been mere spectators inadvertently included by the watchmen

in his complaint as having been present while the offence was committed. At any rate the discarding of the 6 others does not afford any reason for discrediting the evidence as against the five persons who were actually charged, more especially against the man (2nd accused) who wounded the Complainant on the back of his head. In para 4 of his judgment it was stated that the 2nd accused charged the Village Munsiff with having taken a bribe from him in some petition filed before the Judge. The accused in his Examination before the Head Assistant Magistrate has not alluded to it at all.

12. As regards No 2, I beg to state that the fact that the Complainant was a temporary watchman does not afford any reason for disbelieving his evidence and branding his story as untrue. On the other hand it might

serve as an incentive to the lad for dis-
linguishing himself in the estimation
of his official superiors and gaining
permanent employment, neither are all
Brahmins by any means necessarily
cowards. There is nothing improbable
in a lad of 17 to have resisted the
attacks so resolutely when he was supported
by the consideration that his conduct
was consistent with his duty and law
and would find favour with his Superiors.

Further there were only 3 persons at the
time when the conflict took place opposed
to 3 persons on his side including himself.

The Medical evidence is clear to the
effect that the Complainant was not
very badly hurt. Had the Medical
witness been closely examined he would
have been able to explain whether such
a blow on the head could make
a person insensible and at the same
time not hurt him very badly.

13. As regards No 3, I beg to state that
if only an altercation took place
these

there does not appear any reason for the
injuries received by the Complainant.
The Complainant as prosecution 1st
witness says that he attended the Hos-
pital for a week and he is corroborated
by the Medical witness who says that
he was under his treatment for 6 or 7
days. The latter was of opinion that the
injuries might have been caused by
the blows of a stick but he was quite
sure that they were not caused by a
mere accidental fall. The defence
theory is that the injury on the back
of the Complainant's head was the
result of a fall when running after
sheep. No man by falling could
possibly be wounded on the back
of the head and on the chest at
the same time.

14. As I have shown above there
being no doubt of the Complainant's
injuries the only other possible assump-
tion to prove the Judge's theory is that
this

His boy's Deal for Government and the
Concocted story is so great that he
allowed himself to receive from his
friends the tolerably severe injury on
the head, a wound 2 inches long, and
that on the chest, merely to suit the
convenience of the supposed Concoctors,
which is absurd.

15. For remarks on ground no 4, vide
para no 12.

16. As regards ground no 5 (a) there is
no doubt a slight discrepancy with
regard to the cause of contusion on
the chest which may safely be attri-
buted to defective Cross Examination
as suggested above in para 11 or more
probably to actual ignorance on the
part of the attesting witnesses. In this
connection it may also be mentioned
that the village barbers and the bariki
did not escape hurt from the accused.

And as regards 5 (b), the Judge seems
to have overlooked the fact that the
Village

village Munsiff saw the wound at P.M.
on the very day of the occurrence and did
not take actual measurements; he said
it was 2 inches long and 1 inch deep
and it was certainly 3 inches long next
morning, where as the medical practitioner
had the Complainant under his observation
as an outpatient for a week and certi-
fied to the dimensions of the wound
after actual measurement. It was
2" long, $\frac{1}{4}$ " broad and $\frac{1}{4}$ " deep. In spite
of the injuries received by him he was
able to attend the Hospital for about
a week walking from the confines of
the Forest Reserve to the Village of
Lokivada, a short while after he
received the injuries. It cannot
therefore be considered that he was
very badly hurt.

17. Under the circumstances the Sessions
Judge might have ordered a retrial
exercising his powers under Section 428

C. P. C. or should have himself taken further evidence.

18. Looking to all the above circumstances I cannot but conclude that there was no concoction at all and that the Complainant undoubtedly received the injuries in the way he says he did and that the accused should be severely punished. Their acquittal will render such attacks on honest Officials more frequent in future. I beg therefore that the High Court may be moved in the matter if the Government please.

I have the honor to be,
Sir,
Your Most obedient Servant.

For Agt. D. Magistrate

[G.]
53
1,000-303-95.

Department.



PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following paper:—

C. 2042 of 23 April 1895 from the Dist. Magistrate of Vizagapatnam

Order of 23rd May 1895 No 1104
The Govt does not consider the case to be one in which an appeal should be preferred

for.
25/5/95
The Dist. Magistrate, 30/5/95
IN M.S.

Official note

Copies of Hon. Members notes on J. & C. current no. 2042 of 1895 is communicated to the Public Department for record & the necessary action

20.5.95

For
The govt has been kept

AA
11/11

Applied as
a copy

65

(for order)

When sent for copying _____
When copied _____
When examined _____
When signed _____

189 .

READ AGAIN G.O. No. _____
189 .

DATED

CURRENT No. _____

ENCLOSURES TO O. No. _____

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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

N.B. -

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