

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1127

Dated 24 May 1895

INDEXED.

[Despatch Abstract.]

APPEAL AGAINST ACQUITTAL.

Directing the Government Pleader to present an appeal to the High Court against the judgment of acquittal in Criminal Appeal No. 73 of 1894 on the file of the Sessions Court of Tinnevely.

BACK PAPERS.

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

FURTHER PAPERS.

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Urgent Urgent

1895

CURRENT NO. 252/
Judicial Department.

Go. 27/95

TINNEVELLY District Magistrate's Office.
Camp Perungulam.

From

The District Magistrate of

Tinnevely.

To

The Chief Secretary to
Government

Fort St. George.

Dated 14th
Received 20th

May 1895

Camp No. 64895

ENCLOSURE.
3 files sent
separately

Requesting the Public
Prosecutor, Madras to present
an appeal to the High Court
under Sec. 417 Cr.P.C. against
the order of acquittal passed
by the Sessions Judge, Tinnevely
in Criminal Appeal No. 73
of 1894.

R 21/5

For orders

as to whether an appeal
may be preferred in this case
the D. Magistrate's letter sets
out the case clearly. The appeal
time expires on the 10th June
the District Magistrate, it is submitted, a
sufficient reason for an appeal. The
judgment of the Sessions Court is most
curious & certainly does not contain grounds
sufficiently enough to justify the acquittal of
the accused. The strength of the case against
them lies in the facts that no attempt has
been made to prove the existence of a motive
to bring a false case against them, & that
the prosecution will tell a reasonable story
having to different villages.

21/5/95

I suppose we must appeal
as the D.M. has taken so
much trouble about the
case. But I think it is a
bit that we submit up

21/5/95

Order d/24th May 1895 No. 1127

The Dist. Pleader will accept be
instructed to present an appeal against
the judgment of acquittal in Criminal Appeal
No. 73 of 1894 on the file of the Sessions
Court of Tinnevely.
The Dist. Pleader (P.O. 22/5/95)
The Dist. Pleader (P.O. 22/5/95) with enclosure to be sent

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old and - 1 -

map.

Magistrate of

Dated Perungulam, 14th May 1895

From

CURRENT NO. 2521

Camp No. 64 of 95

Inspector Magistrate of

Tinnevely,

To

The Chief Secretary to Government,
Judicial Department,
Fort Saint George.

Sir,

I have the honor to request that the Government may be pleased under section 417 of the Criminal Procedure Code to direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal passed by the Sessions Judge, Tinnevely, in Criminal Appeal no. 73 of 1894.

2. The facts of the case are as follow: -

3. On the 12th September 1894, Perumal Azari of Karisaludamangulam in Tinnevely taluk, who is the complainant and first witness for the prosecution in Calendar case no. 78 of 1894 on the file of the Head-quarter Deputy Magistrate, Tinnevely, went to Pattukulam in the said taluk with three members of his family to attend a ceremony in a house of one of his relatives. He returned alone on the next day (13th September) and was sitting down at about 12 noon on the bank of the Tinnevely channel, chewing betel when he was set

Shidhi Rowlen, 2. S. K. Pir Mohideen ... are residents of Melapalayam and Pettai respectively in the said taluq. The 2^d accused held the complainant by the throat, while the 1st removed the ear-rings worth Rs. 7 from his ears. The 1st accused also took a bundle of three female cloths worth Rs. 15 which the complainant had with him. Both the accused made off with the property.

4. The complainant raised an alarm and pursued the accused. Thangam Pillai of Karungadu in Tirunelveli taluq, 2^d witness for the prosecution, who was tending cattle in the field near at hand, heard the alarm and gave chase. The 3^d witness (Muthukrishna of Karungadu) for the prosecution, who is a Brahmin and who was on his way to the river to bathe, joined in the chase. The accused dropped the cloth bundle on their way. The complainant picked it up and continued to run. The 4th, 5th and 7th witnesses for the prosecution, who are maravars by caste and who reside at Karunkadu and who were sowing seeds in their seed beds in their fields at the time, heard the noise and saw the accused and others running. They immediately ran towards the accused who then turned in the direction of Athinadu, a village in Tirunelveli taluq. The 1st accused was arrested by the 4th witness, and the 2^d by the 5th witness near a granary at Athinadu. The 1st accused on being beaten on the cheeks put the ear-rings out of his mouth.

A little ...
old and ... to carry a bundle with him near the place. The village munsiff who received information of the occurrence at 2 P.M. on the same day went to Athinadu and sent a yadask to the Police station after enquiring on the same day, with the prisoners and the stolen property.

5. Including the complainant, eight witnesses have been examined for the prosecution. The ~~complainant~~ ^{complainant} is corroborated in his statements by witnesses 2, 3, 4, 5 & 7. The 6th witness is a native of Athinadu and the 8th witness is a native of Narasinganallur. They and the 3^d and 7th witnesses corroborate the 4th and 5th witnesses as to the arrest of the accused at Athinadu, and witnesses 2, 3, 4, 5 and 7 as to the finding of the ear-rings in the mouth of the 1st accused.

6. The 1st accused pleaded before the Lower Court that on his way to his fields in Karunkadu in a bandy, one Nagar Rowthen and Sankarappa Naider, a Police constable, came to him and pulled him from the bandy, took him to the granary of Varir Rowthen, ill-treated him and brought this false case against him. The 2^d accused also stated that while he was standing in a bazaar at Pettai, Sankarappa Naider, a Police constable called him and took him to the Police Station at Pettai, where he found his enemy Nagar Rowthen and that he and the constable flogged him with

ship and asked in
which he refused to do.

7. Two witnesses were examined by the defence.
Both are residents of Mela Thiruvannathapuram in
Tinnevely taluk. The 1st defence witness (Lakshmana
Aiyer) supports the first defendant, but states that
neither he nor the bandyman questioned the persons that
dragged the 1st accused from the bandy. Nor did the
1st accused, who says that the Mussulman who took
him is his enemy, ask him why ^{he} did so. This does
not appear to be the natural course of things. The 2^d
defence witness speaks to the 1st accused getting down
from the bandy and going to Athimadu accompanied by
some persons and states that he did not notice
anything else. After being examined so far, this witness
was dispensed with by the defence on the ground that
he was tampered with. The 2^d accused did not examine
any witness.

8. ~~No~~ evidence was adduced as to the enmity
between the defendants and Nagar Rowther referred to.

9. The defendants in their written statement put
in before the Lower Court urged in their favor amongst
other matters the respectability of the accused; the
enmity existing between them and Nagar Rowther;
the absence of marks of injury on the complainant
and the immediate recovery of the whole of the stolen
property; the complainant's return to his village in
advance with the female clothes; the difference between

old and new 17
to the presence of the 2^d witness
The futility of these arguments
has been discussed at length in the judgment of
the Deputy Magistrate, to which I respectfully invite
the attention of Government.

10. The Deputy Magistrate did not believe the
defence and found the accused guilty of the offence
of robbery under section 392 I.P.C. and sentenced
them each to six months' rigorous imprisonment
and to pay a fine of Rs. 50.

11. Against this decision the accused appealed
to the Sessions Judge, who acquitted the accused. The
grounds of appeal were

- (a) that the story of prosecution is false, the case
having been concocted at the instance of Nagar Rowther;
- (b) that it is clear from the evidence of the 1st witness
that he could not have owned the property in question;
- (c) that the reasons given by the 1st witness for return-
ing alone and for bringing away the women's clothes
with him are very suspicious;
- (d) that the story of the chase ^{nearly} for two miles
and the discovery of earrings in the 1st accused's mouth
are utterly incredible;
- (e) that the circumstances of the case clearly show
that all the witnesses for the prosecution are men
got hold of to support a false case;

(f) that

with Nagar Rowther because the 1st accused stole a case charged by the prosecuting head constable (vide defence exhibit);

(e) that there are serious discrepancies and contradictions in the evidence for the prosecution, which render it unworthy of credit;

(h) that there is little or no independent evidence on which a conviction could be based;

(i) that it is not likely that a man like the 1st accused who had hitherto led a respectable life could have committed the theft of a paltry pair of gold ear rings in broad daylight and on a public path, as stated by the prosecution;

(j) that the evidence of the very respectable witness examined on behalf of the 1st accused fully supports his plea, and the reasons assigned by the Government for discrediting it are not sound;

(k) that the witnesses summoned on behalf of the defence were all tampered with by Nagar Rowther and the Police; and

(l) that this allegation of the accused is proved to a great extent by the fact that one of the witnesses who was brought to the Court to give evidence was tampered with even in the precincts of the Deputy Magistrate's office.

2. On none of these points has evidence been adduced by the defence. They will however be discussed

Serial

13. (a). This is of no avail in the absence of evidence establishing enmity.

14. (b) This argument especially from a native is strange. The complainant is a blacksmith by profession. There is nothing strange in the statement that he wore ear rings worth Rs. 7. However poor a family may be, it always keeps in reserve a few ornaments of superior quality according to its status - to be used on occasions of festivities.

15. (c) Again here, there is nothing extraordinary in the action of the complainant. The poorer is the family, the greater is the precaution taken by its elder members in preserving the clothing intended for special occasions, as soon as the necessity for wearing the same is over. Moreover on occasions of festivities thefts are common, and the complainant might have brought the cloths with him to save them from being stolen. The festival proper was over on the 12th September 1894 (vide the evidence of the 18th witness for the prosecution).

16. (d) Why the story is incredible is not explained. To avoid falling into the hands of the marava witnesses who came running in the opposite direction, the accused turned toward Athineedu. It was broad daylight and the witnesses pursued the accused wherever they went and eventually arrested them.

17. (e) The cross examinations of the several prosecution witnesses show that the evidence of none of them has been impeached. Five out of eight witnesses belong to Karunkadu. The remaining three witnesses belong to three different villages, while the two accused belong to villages different from the above. Even excluding the evidence given by the Narava witnesses of Karunkadu (4, 5 and 7), who are alleged by the defence to be the Kavalgars (watchmen) of Nagar Routhen but who deny being such, there is sufficient independent evidence. The denial has not been disproved by the defence. The prosecution witnesses include a Brahmin and two Vellalas. The complainant (1st witness) is a blacksmith - boyars old - . It is not explained why these men should perjure themselves against the accused. If the version of the 1st defendant, viz. that he went in a bandy is true, there was nothing to have prevented him from citing the bandyman as a witness. The 1st defence witness speaks to the carriage being driven by a bandyman.

18 (b). A copy of a deposition in a criminal case before the Stationary De Vass Magistrate of Timmelly is produced. In this, the 1st accused in this case stated (as a witness) that he could not identify a certain prisoner. In my opinion, this is not sufficient to

to show that the Police are at inimical terms with the accused and that they joined Nagar Routhen in concocting a case against the accused.

19 (g). This carries no weight in the absence of any specific instances of the alleged discrepancies.

20 (h). There is no reason to doubt that the evidence of the witnesses (2, 3, 6 and 8), who are independent witnesses, is trustworthy.

21. (i) This argument is irrelevant to decide the point at issue, viz. whether or not the accused committed the offence in question, in the absence of other evidence. The place is no doubt a public one, but it cannot be compared to a public street in a town. The only precaution that a thief has to take is to see whether there are lookers on in the neighbourhood.

22. (j). I would respectfully invite the attention of Government to the deposition made by this witness, a perusal of which will show that the Deputy Magistrate is right in his opinion.

23. (k) and (l). These are unsupported statements. It appears that the witness did not answer favorably the questions put by the party by whom he was cited. From this it does not necessarily follow that he was tampered by the opposite party.

24. There are one or two points in the

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marked with
red tape

Sessions judge's judgment which

The Sessions judge remarks that the 1st appellant admittedly owns some property and he ~~was~~ ^{has} always borne a good character; that the complainant lives from hand to mouth and that his evidence could easily be procured.

25. The deposition of the 1st witness shows that he owns two marakals of land and that he cultivates 5 or 6 marakals of land belonging to others in addition. The 1st defendant has only a few more marakals of land. There is nothing on record to show that he has borne a good character all along.

26. It is also remarked in the judgment that the name of the 2^d witness has not been mentioned in the first complaint. In the yadast written by the village magistrate to the station house officer on the 13th September 1954 (the date of offence), it is stated that Arumayyan (the witness for the prosecution) and others arrested the accused redhanded. In the complaint given by the complainant on the same day to the Police, there is no specific mention of the 2^d witness (Thangam Pillai) for the prosecution. But it is stated that people that were in the neighbourhood ran and arrested the accused. By the information given to the village magistrate and

and reported by him in his yadast to the Police shown ^{is} considered to be the 1st complaint, then we see that the name of the Brahmin also (3^d witness for the prosecution) is not mentioned. Irrespective of the complaints to the village magistrate or Police, it may be safely argued from this that the omission was not intentional. A complainant is not likely to mention all the witnesses at first. Some people are so simple that they give information on specific points only if they are asked about them.

27. Another important point which requires notice is this. Both the defendants say that the case has been concocted owing to the enmity existing between them and Raju Rautheer. According to the statements of the two defendants they were arrested in different villages. The 2^d defendant says he was taken to the Police station by a constable from the hazaar. But on the other hand, as soon as the village magistrate went to Athimedu, he saw the two defendants there and sent them to the station in charge of Telayarai. If the 2^d defendant's version has any basis, the village magistrate's conduct should have been seriously impeached for aiding in concocting a case. But not a word is said about him. From this it is clear beyond all reasonable doubts that the plea of the defendants is false.

sessions judge's judgment with
 from some 3
 29. In conclusion I beg to submit that the evidence
 on the prosecution has been given in a straightforward
 manner; and that there is no reason to question
 the veracity of the witnesses; and that a strong case
 has been proved against the accused; and that a
 miscarriage of justice has resulted from the sessions
 judge acquitting the accused, and recommending
 that an appeal be presented to the high court
 against the order of acquittal.

29. As the appeal time expires on the 10th June 1895,
 I request the favor of early orders on the subject.

30. The material records of the case with the
 English translations of the same are submitted
 as particularized in the accompanying list.

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

Carver

District Magistrate.

14.5.95.
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189.

AGAIN G.O., No.
 189

DATED

RENT No.

ENCLOSURE TO G. No.

ORDER OF GOVERNMENT

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A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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