Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1345

Dated 24th June 1895

INDEXED.

[Despatch Abstract.]

KOLLURU TEMPLE CASE.

Recording letter from the Inspector-General of Police reporting on the conduct of the South Canara Police in the-----.

BACK PAPERS.

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

FURTHER PAPERS.

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Encl. No G.O. No 2755 J 13-11-94
(Returned)
17.10.94

JUDGMENT.

In the Court of Sessions, South Canara.

Session Case No. 9 of 1894.

Present: W. C. Holmes Esq.

Queen Empress *Vs.*
1. Bhadra Deseth Brahmachari.
2. Rama Das. (68)
3. Mangaldas.
4. Lala.
5. Suliman.

(All the accused are undefended).

(Committed by Mr. A. Devappa Punja, 2nd Class Stationary Magistrate of Udipi Taluk).

Charge: *Against 1st, 3rd, 4th and 5th:*—(1) House-breaking by night with intent to commit theft—Sec. 457 I. P. C.

(2) Dacoity with attempt to cause grievous hurt—Sec. 395 and 397 I. P. C.

Against 2nd:—(3) Assisting in concealment of stolen property—Sec. 414 I. P. C.

(4) Belonging to a wandering gang of thieves—Sec. 401 I. P. C.

(5) Abetment of commission of house-breaking by night—Secs. 109 and 457 I. P. C.

Jurors: Messrs:—(1) G. Narnappaya. (2) Padmanabhaya. (3) K. Laxuman Shanbhog. (4) K. Panduranga Rau. (5) D. Bunyan.

Verdict of the Jury: The Jury found accused Nos. 1, 3, 5 guilty under Sec. 457; and accused No. 2 guilty under Secs. 414, 109 and 457 I. P. C.

(*Note:* The Jury, under direction of the Court, found the accused not guilty under the 2nd charge against 1st, 3rd, 4th, 5th and under the 2nd charge against the 2nd.)

Finding of the Judge: Concurred with the Jury.

Sentence and Order: Accused 1, 2, 3 and 5 are each sentenced to 10 years' rigorous imprisonment; the 4th accused is discharged.

Charge to the Jury: There has been some confusion introduced into this case by the number of charges which were read against the accused. There were altogether five charges read.

At the last stage of the case when the Public Prosecutor's time arrived for addressing you, a motion was made to the Court to add another charge, a charge under Section 460 of the I. P. C.; but I thought it better, so as to prevent confusion and as I think cases should be laid before a jury as simply as possible, to refuse to add the other charge proposed. Moreover, it would not have been right in my opinion at the very last stage of a case to add a more serious charge than any

of those that the accused understood they were being tried on. For these reasons I did not comply with the request the Public Prosecutor made.

2. The second charge that was read against all the accused except the 2nd was one of dacoity. I will not trouble you to consider that charge but will direct you to return on it a verdict of not guilty. However serious the offences they may have committed, there was technically no offence of dacoity. If five or more persons go to a place intending to commit theft with violence, and if in committing theft violence be used, all who joined would be guilty of dacoity. The common intention of the party must be inferred from the circumstances of the case. If the party went armed with sticks or other weapons, the inference would be that they went prepared intending to use violence. In the present case, no doubt violence was used by some of the persons who broke into Dasa Ballala's house, but it does not appear that any one of the party except one, who had a small knife, had any weapon with him; so that, there is no fact proved from which it could be inferred that it was the common intention of the party to use violence in committing the theft. There was therefore no dacoity.

Besides this you will recollect that Dasa Ballala's account of the affair was that the violence was used not in carrying away the property or in attempting to carry away the property. The violence was used after Dasa Ballala had seized one of the thieves, and the object of the violence was not to carry off property but to escape from arrest. There was therefore no robbery committed in this case and consequently no dacoity.

You need not therefore pay any attention to the second charge. Under the direction of the Court you will return a verdict of "Not guilty" on that charge.

3. There is no legal evidence to support the 4th charge, and on that under the direction of the Court you will have simply to return a verdict of "Not guilty."

4. In the rest of the case I do not think you will find much difficulty. The charge against the 1st, 3rd, 4th and 5th accused is that they actually went to Dasa Ballala's house, broke into it and committed theft in it. It is not the prosecution case that they all entered the house; some of the party remained outside to take the property as it was passed out through the hole that was made in the wall, but those who remained outside as well as those who went in are guilty of house-breaking by night with intent to commit theft.

According to the prosecution case, the 2nd accused did not actually go to Dasa Ballala's house. The case against him is that he joined in the conspiracy to commit the house-breaking and that he aided in its commission by going to the house to find out where the property in the house was kept, and the charge against him is abetment of the offence of house-breaking by night.

There is no doubt that Dasa Ballala's house was broken into on the night of the 10th—11th February last. It is also clearly proved that the box and the articles that were produced which were in it were stolen. Dasa Ballala gave a clear account of what happened and so did his son Ramakrishna. Dasa Ballala was sleeping with two of his children in the room above the Padsala. Ramakrishna was sleeping on the ground floor. The plan that was prepared in the case showed the position of the rooms where the people of the house were. During the night Dasa Ballala was wakened by some noise and went downstairs to the Padsala. He then heard some one breathing heavily and he went across the room and seized the man and there was a struggle. Ramakrishna heard the noise and went into the Padsala and then he was seized by another man and there was a struggle between them. The thieves or one of them used a knife and Dasa Ballala had some wounds on his

person. In the meantime, Shiva Rama, one of Dasa Ballala's children, who was upstairs heard the noise and came down and lighted a lamp and he saw his father struggling with the two thieves. The man Dasa Ballala was holding escaped and ran out, and Ramakrishna and the man he was holding went into the veranda. The man got free and went to a room at the end of the veranda perhaps thinking it was a way out, opened the door, went into the room and returned to the veranda, and took a rice pounder from the top of the door and made a blow at Ramakrishna; but the rice pounder struck the beam and Dasa Ballala took it and struck the thief who, according to the evidence, made for Ramakrishna with a knife and, Ramakrishna struck him with the handle of a pickaxe and the man fell down in the yard where after some hours he died. Information was at once sent to Udipi 1 mile off and the Police Inspector promptly came to the place and afterwards the Magistrate and the Apothecary.

The Police Inspector's evidence is important. He went to the temple where the accused had been stopping. He had no information that the house breakers were there. He went to see if he could get a clue as to who the deceased was. He found the first three accused there and he took them and some temple servants back to Dasa Ballala's house, and there the temple Achari identified the thief who had been killed as one of the party to which the accused belonged that had been stopping at the temple. That led to the discovery of the whole affair. The bundles of the accused the Inspector had brought with him were searched and in the bundle of one of them some stolen property was found, and the next morning the 1st accused produced a bag containing all the stolen jewels and the 2nd accused showed where the box in which the jewels had been kept had been sunk in a tank and the box was taken out. A Constable was sent in pursuit of the other members of the party and the 5th accused was arrested on the 13th February at Kundapore and the 4th at Kumta in North Canara on the 28th February.

5. On another point Ramakrishna, Dasa Ballala's son, gives important evidence. In the forenoon of the day on which the house was broken into he was bathing in a tank near his house and the 1st accused came to him and said he had a "Saligram" (a kind of fossil) that his father wanted and offered to sell it. He went to his house with the 1st accused, and there found the 2nd accused sitting outside the door, and Ramakrishna was about to sit down there, but the 1st accused said they should go inside, so they went in and sat at the door of the Padsala and there was some discussion about the price of the Saligram and Ramakrishna went inside and 1st accused followed him. Ramakrishna opened the box which was subsequently stolen to get out money. There was again some difference as to the price and the accused went back to the room and was again followed by the 1st accused and he asked if the room where the hole was made the following night was the kitchen.

6. The case for the prosecution against the 2nd accused is that he went along with the 1st accused to Dasa Ballala's house that morning to see how the property could be obtained. It is for you to say if you think he went there for that object. The mere fact of his having gone to the house that morning would not be sufficient to support a conviction, but there is further evidence against him. He was, as I have said, taken by the Inspector to Dasa Ballala's house on the 11th February, and the next day he informed the Inspector where the stolen box would be found, and the tank which he mentioned was searched and the stolen box taken from it. Before the Magistrate he made a long statement confessing the part he took in the affair. Before this Court he withdrew his confession and represents

himself as an innocent member of the party that was at the temple. He also produced 3 small boxes, part of the stolen property, and a boring instrument.

7. Against the 1st accused the charge is that he was one of the party who went to Dasa Ballala's house and committed house-breaking. If you are satisfied that he was present at the time the house-breaking was committed, though he did not actually go into the house he would be guilty of an offence under Section 457 I. P. C. He went as I have said to Dasa Ballala's house on the 10th February with the object of finding out where the property was kept. On the 12th he produced a bag containing all the stolen jewels and in addition he made a full admission of his guilt to the committing Magistrate. Here he made a rambling statement apparently to show he was innocent. That is the case against the 1st accused.

8. The 3rd accused was taken by the Police Inspector to Dasa Ballala's house on the 11th February and his bundle was then searched and in it two small items of the stolen property, a piece of musk and a penknife, were found. In addition he made a full confession to the Magistrate. Here he represented that he was innocent.

9. The case against the 4th accused is somewhat peculiar. There is the clear and satisfactory evidence of the temple Achari that he was one of the 7 men who were associating together at the Udayavar temple. This witness also says he was then there on the evening before Dasa Ballala's house was broken into. The next morning he was gone but he was followed and was arrested at Kumta in North Canara on the 28th February by Constable Jacob Pinto. There is also clear evidence of the house-breaking by night, of the theft, and there is evidence that 3 people entered the house and the 5th accused who was one of the men with whom the 4th accused was associated in the temple was one of the men who entered the house. The thief who was killed in the house was one of the men with whom the 4th accused was associating in the temple. This evidence would not be sufficient to support a conviction against the 4th accused. But there is I think other evidence that you can take into consideration. The 1st, 2nd, 3rd and 5th accused made long statements before the Magistrate. These statements have been read in evidence at this trial in which those men are being tried for the same offence as the 4th accused is. Under Section 30 of the Evidence Act the confession that these men made can be taken into consideration against the 4th accused. These confessions alone would not be sufficient to support a conviction of the 4th accused. But taken into consideration with the circumstantial evidence against the 4th accused to which I have referred it may be that a conviction can be legally supported. You will consider in the 4th accused's case and find whether you think the evidence sufficient to convict him.

10. With regard to the 5th accused Syed Suliman, Dasa Ballala deposes that he was the man whom he seized. He says he identified him when his son Shiva Rama lighted the lamp. Shiva Rama who is a boy of 13 deposes that the 5th accused is like the man who fought with his father. Constable Jacob Pinto followed up this man and arrested him at Kundapore on the 13th and he had fresh injuries on him and on his person was found the touchstone produced before us which the complainant identifies as part of the stolen property. This accused also made a full confession to the Magistrate. Here he says he was beaten.

11. The case for the prosecution is that the 1st, 3rd, 4th and 5th accused committed house-breaking by night with intent to commit theft and that the 2nd accused abetted the offence.

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12. The jury acquitted the 4th accused and he was discharged. The jury convicted the others.

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13. Court to 1st, 2nd, 3rd and 5th accused.

The offences of which you have been convicted are most serious. The house-breaking you committed or abetted was deliberately planned and carried out in a skilful and daring manner. You appear to be strangers to this District and to have come from various and distant parts of India and have associated together for the purpose of house-breaking and theft, and you are too dangerous members of society for me to pass on you a lesser sentence than 10 years' rigorous imprisonment to which you are each sentenced.

Mangalore,
31st May 1894.

(Signed) **W. C. Holmes,**
Sessions Judge.

Exd. M. Krishnaya.

(True copy).

IN THE COURT OF SESSIONS, SOUTH CANARA.

SESSION CASE No. 9 OF 1894.

Charge to the Jury.

500—9-93.

DEPARTMENT.

No. 1196

CORRENT NO. 1131

~~CHIEF~~ OFFICE OF THE INSPECTOR-GENERAL OF POLICE,

~~Madras~~, 6th March 1895.

FROM

M. Hammick Esq. I.C.S.,

INSPECTOR-GENERAL OF POLICE,

To

THE Chief Secretary
to Government,
Fort St George.

SIR,

Enclosures.
(One)

With reference to G.O. 13th November 1894, No. 2755, regarding the Kollur Temple case in Canara and the Housebreaking case tried in Sessions Case No. 9/94 on file of the South Canara Sessions Judge, I have the honor to say that I will report on the conduct of the South Canara police in the Kollur Temple case when the case now before the Sessions Court has been disposed of.

2. With reference to the other points— the burglary which formed the subject matter of Sessions Case No. 9 was not considered specially reported to Colonel Porteous or the Deputy Inspector General as the property taken did not amount to Rs 500

Colonel

Colonel Portcous, of course, must have the usual report of the case in the Superintendents Weekly Report and I notice that he called for a history of all the members of the gang when he received the Sessions Judgment.

3. The Superintendents report on the steps taken to watch and follow up the 4th Prisoner, who was acquitted, is unsatisfactory. It appears that the man was a prisoner in the Bangalore Jail undergoing a sentence of six months for theft in another case and was released from there in November 1894. His release was notified to the Superintendent of Police, Benares, but, not apparently to the Dharwar or North Canara Police. It is said now that the man is believed to have gone to North Canara. I shall see the Superintendent of South Canara in a few days and will very strongly impress upon him that I must have characters of this kind watched much more effectually than appears to have been the case hitherto. Mr Scott in another instance, which has come to my notice, failed lamentably to take the interest he should have done in trying to trace one of the men suspected in the Comorin case.

4. I may mention that it is fairly clear that there was no connection whatever between the Kollar case and this Burglary. The two crimes were committed by two different gangs, who, as far as can be discovered, were not connected at all. The Kollar gang were apparently only in the District a few hours before committing that crime.

I have the honor to be,
Sir,
Your most obedt. Servt.,

M Dunnett
Inspector General of Police

Judl. (1895) DEPARTMENT. 1131

G.O. 2755 13.11.94 Mis. & papers.

G.O. 264 : 7.2.95 }
G.O. 238/9 : 4.2.95 } Mis.
294 : 30.4.94 }

FROM

H. Hammick Esq. I.C.S.

INSPECTOR-GENERAL

OF POLICE.

Do 259/94

CHIEF SECRETARY
-7. MAR. 1895
GOVERNMENT OF MADRAS

No. 1196

Dated 6 } March 1895.
Received 7 }
Regd 8.

No. Encl of C.M. 5859 of set.

SUBJECT.

Reporting with reference to G.O. 18. November 1894, No. 2755 that he will report on the Conduct of the South Canara Police in the Kollur Temple Case when the Case before the Sessions Court has been disposed of.

8/3

L.S. 9/3/95.

Forwarded

[G/69.]
2,000—19-1-94.

CHIEF SECRETARIAT, MADRAS.

Judicial DEPARTMENT.

Memorandum.

No. 905

Dt. 25.4.95

~~READ the following~~

With reference to para. 1 of his letter of 6 March 1895, No. 1196, the I.G. of Police is requested, if possible, to expedite the further report promised therein on the conduct of the S. Canara police in the Kollur Temple case.

D
22.4.95

To
The I.G. of Police. Despd.
25/4

MR 22/4/95

To be kept intact & sent to Refce.

Please issue here
24/4

NOTE FOR THE UNDER SECRETARY.

Please see para. 1 of G.O. Dt. 28.5.1894, No. 2369, Judl., Mis. As the I.G. does not appear to have yet ~~has not yet~~ reported to Govt. with the result of his further enquiries into the Kollur temple theft case, may not he be reminded thereof please? The Govt. deferred their final orders on Mr. Scott's conduct until the result of the further enquiries into the case became known.

Yes. D
with special refce. to para 1 of that G.O.
Pending at D 8.3

Note for U.S. MR

Please see Lr. No. 1131/95 7/3/95 since received in which I.G. promises another report. As a para. may be added to the order on that letter, a sep. reminder is now considered unnecessary?

CURRENT No. 2576

Jud^l. (1895) DEPARTMENT.

Refce No 905: 25.4.95 Li

G.O. 238/9: 4.2.95 mi ~~Prev~~ papers
2511: 30.11.94: G.O. 2597/13.7.94
2755: 13.11.94:
2369/70: 29.9.94
2070: 28.8.94 .ch
G.O. 3012/3: 10 Dec 94
2947: 4 Dec 94
2923-5: 1. Dec 94.
G.O. 2051/94

} Cape Comorin Theft case

FROM

M. Hammick Esq. I.C.S.

INSPECTOR GENERAL

OF POLICE.

2070-28.8.94

No. 3104

Dated 21 } May 1895.
Received 23^d }
Reg^d 24^th
Encs. 3.

CHIEF SECRETARY
No.
23. MAY. 1895
GOVERNMENT OF MADRAS

SUBJECT.

Furnishing report on the results of Sessions trials in the Kollur Housebreaking case.

MR 24/5

Enclosure No 1 to Letter No 3104 d/21 May 1895 from I.G. of Police

Recd 2.4.95.

COURT OF SESSION OF THE SOUTH CANARA

OFFICE OF THE INSPECTOR GENERAL OF POLICE 6 APR 95 MADRAS

CHARGE TO THE JURY.

In the Court of Sessions, South Canara.

Session Case No. 1 of 1895.

Present: W. C. Holmes Esq.

Queen-Empress *Vs.* 1. Rahimulla (defended).
2. Saheb Shah (do.)

(Committed by Mr. B. Shivaya, Town Magistrate, Mangalore).

Charge: (1). House-breaking by night with intent to commit theft—Sec. 457 I. P. C., (2). Theft in a building—Sec. 380, (3). Dishonestly breaking open a closed receptacle—Sec. 461 I. P. C.

and

(1). House-breaking by night with intent to commit theft—Sec. 457 I. P. C. and (2) Theft in a building—Sec. 380 (3). Dishonestly breaking open a closed receptacle—Sec. 461 I. P. C. *or* dishonestly receiving and retaining stolen property knowing it to be stolen property—Sec. 411 I. P. C.

Jurors: Messrs. (1) Gudlimar Narnappaya (Foreman), (2) Sujir Shiva Rao, (3) Adige Srinivas Rao, (4) C. Aiman (4) M. Manjaiya Shetti.

Verdict of the Jury: Majority of the Jury found both the accused not guilty.

Finding of the Judge: Concurred with the majority.

Order: The accused are acquitted and set at liberty.

Charge to the Jury: The two accused, Rahimulla Khan and Saheb Shah, are charged under Section 457 I. P. C. with having broken into the Kollur Temple on the night of the 31st May last, and under Section 380 I. P. C. with having stolen from the temple, property worth nearly 7 lacs of rupees, and under Section 461 I. P. C. with having dishonestly broken open a closed receptacle. This I may call the first count of the charge. They are also charged *in the alternative* either with having committed the above offences, *or* under Section 411 with having dishonestly received and retained certain articles of stolen property knowing them to have been stolen. This I may call the 2nd count of the charge.

The charges in the *alternative* as it is called were sent up by the Magistrate who committed the case. The first count of the charge was added in this Court.

The first count of the charge against the accused is by far the more serious. The charge is, in plain language, that they broke into the Kollur temple, and there stole a very large quantity of property. That is a very serious charge.

The 2nd count of the charge against each man practically only comes to this—that he was dishonestly in possession of some of the property stolen from the Kollur temple on the night of the 31st May. That charge is a comparatively minor charge and is only punishable with three years' imprisonment. Whereas, the first charge, the more serious charge, is punishable with 14 years' imprisonment.

On one point in the case there is not the very slightest doubt. There is not the slightest doubt that on the night of the 31st May, the Kollur Temple was broken into and a large quantity of property stolen. The first witness proves this, and there is no doubt I think about it.

The prosecution contends that it has proved that the two accused are two of the men who broke into the temple and stole the property. There is no *direct* evidence in this case that the two accused committed the offence, that is to say, no witness comes forward and says he saw them breaking into the temple. The evidence against the accused, on which the prosecution say they ought to be convicted, is what is known as circumstantial evidence, that is to say, the prosecution contends that it has proved a number of circumstances, which puts it beyond reasonable doubt that the two accused committed the offence.

In the case of the first accused, the two circumstances that the prosecution mainly relies on to prove that he broke into the Kollur Temple are, *first* that he was seen near Kollur a few hours before the temple was pillaged, and that he was there under suspicious circumstances, and *secondly* that shortly after the theft, namely, on the 18th June, he had possession of this cloth which was part of the property stolen from the temple on the night of the 31st May.

I may at once say that to succeed in proving the first or more serious count of the charge, the prosecution has to prove both these circumstances. It would not be sufficient for them to prove the first circumstance only, that is to say, that 1st accused was at Kollur. If that were all that the prosecution could prove, there would be nothing but a suspicion against the 1st accused. It might be a very strong suspicion, but still nothing more than a suspicion. To legally prove the offence, the prosecution must prove the 2nd circumstance, namely, possession of part of the stolen property.

I shall at once proceed to deal with the question whether the prosecution has proved that this cloth, which was undoubtedly in the 1st accused's possession, is part of the stolen property, that is to say, whether it was part of the property stolen from the temple on the night of the 31st May. The question is one of very considerable difficulty, and I shall have the evidence about the cloth read to you.

(Evidence about the cloth read).

The evidence that has *just been read to you* was recorded about a fortnight ago, and I thought it better to have it read over. I shall discuss the evidence to-morrow. It would be impossible to finish this difficult case this evening.

Now, with regard to this cloth. The 1st witness Subbraya, who is the managing Moktessor of the temple, says it was not one of the some thousand best cloths the goddess has. It was an ordinary cloth with which the goddess was daily dressed except when it was sent to be washed. He says he has himself dressed the idol with it, and he said he saw it on the idol at noon on the 31st May when he actually entered the shrine. The cloth measures some 24 feet, and the length of the stolen cloth as entered in the list, dictated by the 1st witness on the 3rd June, was only 7 cubits—a length not half so long as the length of this cloth. His explanation was that the writer must have made a mistake. This witness pays an assessment of Rs. 200, but of course he is interested in the temple, and I think he has detracted from the value of his evidence by going too far; for, how can one credit him when he said he could identify the 1000 *Sadis* of the temple when he admits they have no particular marks on them? The question for you is – Do you rely on him when he says this is the *Sadi* that was stolen?

The 2nd witness Subba Bhatta is the man who took turns with another man to daily dress the idol. He is an old man of 69 and has very defective eyesight. In cross-examination he said he lost his eye-sight when he was 55 or 60. But in re-examination he said that since 4 or 5 months his eye-sight was bad. He deposed that this was one of two cloths regularly used for dressing the idol, and that it had been in use for 4 or 5 years. In examination-in-chief and in cross-examination he expressed himself quite positively about it, but at the end of re-examination he said "I say on a guess (Sumar) that this is the *Sadi*."

It is for you to say whether you can rely on this witness.

The 3rd witness Appanna Joishi, a Moktessor of the temple, had also considerable opportunities of being acquainted with the cloth. He had been daily in the habit of pouring water on the *Linga* close to the idol dressed with the cloth. He says this is the cloth. It is for you to say whether you believe him or whether you think he is trying to deceive you.

It has been argued by Mr. Nambiar in his very able speech that this witness generally saw the cloth when the lamps were lit in the shrine and that he was not able to give a clear description of the other cloth that was in daily use. These are points that you must take into consideration when deciding what weight you will give to this witness's deposition that this was the goddess's *Sadi*.

The way the cloth was found was this:—The Police at Hubli made a raid on the Pathans' houses in Hubli on the 18th June. Jamedar Fakeeruddin, the 8th prosecution witness in this case, searched the 1st accused's house. He discovered Rs. 340 in a carpet-bag and Rs. 80 in a cloth. Both the bag and cloth were, he deposed, in a box of which 1st accused gave him the key. In the box there were a number of old petticoats and jackets and this cloth, this silk *Sadi*. *It was the only silk cloth in the box.* Fakeeruddin did not seize the cloth. But on the 22nd June, the Chief Constable Hussan Beig sent for it and the 1st accused, and the 1st accused brought it and handed it over to the Chief Constable. He then said what he says now—that it was his wife's.

His wife was not called as a witness, and it is said she is Gosha. But her mother was the 1st defence witness and she deposed that this cloth was given to her by her eldest daughter's husband some 10 years ago at Bombay and that she gave it to the 1st accused's wife when she married the 1st accused.

In examination-in-chief she was asked if there was any particular mark by which to identify the *Sadi* and she said there was a tear on the border; and after some difficulty, she found a tear in the cloth. You no doubt recollect her looking for the tear.

It is for you to say what weight you would give to her evidence.

The 2nd defence witness Haji Ismail Sahib, a man employed on the Railway at Hubli on a pay of Rs. 1¼ a day, deposed that he knew the 1st accused as he lived at one time near him, and he said he saw the 1st defence witness wearing a *Sadi* like this on the occasion of the 1st accused's marriage. He could not say it was this *Sadi*, but it was red and like this.

This evidence was of course brought to corroborate the 1st defence witness. On the other hand, Hussan Beig, the Chief Constable, when he searched the 1st accused's house in January 1894 saw, he deposed, neither this cloth nor any cloth of the kind in the house.

That is all the evidence about the *Sadi*, and on that evidence you must decide whether the prosecution has made out that this cloth was the cloth stolen from the idol on the night of the 31st May. You can of course examine the cloth

and see if you find on it any marks of its having been worn by a woman. The cloth would be worn over the woman's head, and there might be expected to be some stain on the part of the cloth that rested on the top of the head. You can examine the cloth and see if there is any, and if not, you will consider whether the defence could, notwithstanding the absence of any stain, be true. You must, however, go further than discrediting the defence evidence— you must believe that the prosecution case, that this is the temple cloth that was stolen on the 31st May, has been positively made out. Three witnesses depose it is. You know what they said and the means of knowledge they had. It is true the cloth was incorrectly described in the list of stolen property so far as its length was concerned. On the other hand, the temple authorities could hardly have known how much would turn on the identification of this cloth at this trial; and why should they have claimed a useless old cloth as the temple's at Tinnevelly, unless it were really the property of the temple? The Magistrate said that it was possible to detect the smell of temple perfumes on the cloth. I do not know that that is possible now, and the 1st witness says sandal was not put on the idol. That appears to be all there is to say about the cloth and the question for you is—Is it the temple *Sadi* that was stolen on the night of the 31st May?

I have discussed the question of the identity of this cloth at considerable length, because if you are not satisfied that this is the temple *Sadi*, the 1st accused would be entitled to an acquittal at your hands on both heads of the charge that there are against him.

The next item of evidence that I shall deal with is the evidence that about dusk on the evening of the 31st May, the 1st accused and the 2nd accused were seen in the village of Kollur.

The 4th witness examined in this case Dasappa deposed that on the evening of the 31st May at about 6. 30 P. M., he saw the two accused near the Kollur bazaar on the Nagodi road. He says he asked them where they were from and that 1st accused told him they came from Sagar and were going to Bhatkal and asked him the way to the shops and he showed him the way. He said the other man was in all probability the 2nd accused. I could not help noticing this man's manner in the witness box, but it turned out that he was suffering from fever. During tiffin he became delirious and his cross-examination had to be postponed.

In reply to a question put by the 4th Juror asking if the men had long or short cut beards or whether they were shaved, he said they were as they were now.

This man's evidence is chiefly important against the 1st accused. He said he was close to him when he spoke, and though it was getting pretty dark, it seems difficult to think he could not see the man sufficiently well to be able to identify him.

The witness has nothing to say to the temple, and his father with whom he is joint is a man paying an assessment of Rs. 200. He is thus an independent witness, and he did not seem to be exaggerating, for he only identified the 2nd accused in a qualified way.

The 5th witness for the prosecution was Upendra Baliga who has a shop at Kollur. He deposed that on the evening before the temple was broken into, two Mussalmans came to his shop just after the lamp had been lit, and bought some things. He in examination-in-chief said the accused were the two men who came. You know what happened in cross examination. He was made

to examine the accused closely. He adhered to his statement that the 2nd accused was the man who came. The 2nd accused's face is covered with small-pox marks and he has a small black mole on the right side of his nose, and the witness did not give either of these marks in the description he gave of the man to the Police shortly after he saw the man. He described the man as then having red patches on his cheeks. The 2nd accused has certainly no red patches now. The witness has good eye-sight and could see, he said, from the box to the dock that the 2nd accused had small-pox marks on his face. He said he had not observed small-pox marks on the man who came to his shop. Still, it may be that the small-pox marks and the small mole did not attract the witness's attention. As a matter of fact, I think, we recollect faces by their general appearance and not by any specific marks.

In cross-examination, after examining the 1st accused closely, he said one of the men who came to his shop was like the man shown to him. The 1st accused then went back to the dock, where he stood next the second accused, and a man, apparently a friend of the 1st accused's, was standing behind the 1st accused's Vakil instructing him. The witness was asked with reference to the 1st accused "This is not the man who came to your shop?" He said "Not he, another." He then said that another man had been made to stand in the dock to confuse the identification. He was then asked with reference to the 1st accused's friend if that was the man, and said he was certain he was and persisted in saying so to the end of his examination.

The 6th prosecution witness Kristappa is a shop-keeper in Kollur.

Kristappa is a man of 45 years of age or so, and has been keeping a shop at Kollur since his boyhood. He gave his evidence, I thought, in a remarkably clear and straightforward manner. He said that on the 31st May, the two accused came to his shop about a Galige after lamp-light. He sat on that dais in the way he sat in his shop, and showed how his boxes were arranged in front of him and showed how the Kerosine-oil lamp hung over the boxes and how the two accused sat on the Jugli—one on his right hand, and the other on his left—close to him, so close that he could have stretched out his hand and touched either of them. The 1st accused sat on his right. The 2nd accused sat on his left. They were at his shop for 2 Galiges. The 1st accused did not speak to him, but the 2nd accused spoke to him a good deal with reference to a number of purchases he was making. I shall afterwards refer to what was purchased. I would at present only bring to your notice that if the witness's story is true—and I must myself say I see no reason whatever to doubt it—the witness had ample opportunity of being able to identify the men. They were sitting with their feet hanging down to the road but they were, he said, talking to one another as they sat on the pyal. Both accused are men with marked features. The 2nd accused has an oval face of a shape that is not likely to be forgotten. The 1st accused has his upper teeth long and prominent and he is a man who would be easily identifiable.

The witness Kristappa said that both men had their beards short. He said that their beards appeared to have been shaved *(not clipped)* and to have been shaved 3 days about before he saw them. This was the only difference he noticed in their appearance.

It appears that there was some rioting between the Pathans of Hubli and some Mahomedans, and the Magisterial case about it ended in May last. The 1st accused's mother-in-law, the 1st defence witness, said the 1st accused remained at home after that case was decided. A carpenter living at Hubli close to 1st

accused's house, Kasim Sahib, who was examined as the 3rd defence witness, first said the 1st accused might have been in his house after that case and then said he was. His evidence was very vague.

It is on the foregoing evidence that you have to decide whether the two accused were, or either of them was, at Kollur shortly after dusk on the evening of the 31st May.

If you are satisfied they were, or that either was, the evidence is of the greatest importance.

Kollur is a very small village at the foot of the ghauts. It is an isolated village surrounded for miles on all sides by jungle. At some seasons there is a great deal of traffic through the village, as one of the ghaut-roads passes through it. But on the 31st May last traffic was practically stopped. If the accused were there a few hours before the theft, their being there is evidence of the greatest importance. They deny they were there. Indeed, the only course open to them if they were the men who were there, was to deny it; for, they could have had no honest business there at the time that we can imagine.

And it is not only that they were at this isolated place, but they said they came from Sagar, and we know that the accused come from Hubli and not from Sagar. Besides, they bought provisions for a number of persons and represented that their families were there. It does not appear that the 2nd accused has any family, and the 1st accused's wife was at Hubli. They also, contrary to the custom of Mahomedans, had shortly before been shaved.

These facts make the evidence that the accused were at Kollur the more important.

I have practically finished now with the case against the 1st accused and I go on to the rest of the evidence against the 2nd accused.

The evidence of the 10th prosecution witness, Shripad Dattoba, is very important.

Dattoba is a land and house owner in Hubli and he trades in gold, buying and selling it.

He deposes that on a date corresponding to the 14th or 15th June, that is to say, a fortnight after the Kollur Temple was plundered, a Pathan named Azimulla met him on the road and made a statement to him, in consequence of which he went to a house. The house he went to he afterwards showed to Chief Constable Hussan Beig, and Hussan Beig has deposed that the house was the 2nd accused's house. At that house, Dattoba found three Pathans sitting on a carpet. The 2nd accused was one of them. When Dattoba went in, the 2nd accused asked him to sit down, and one of the men went into a room and brought out in a piece of cloth some precious stones, rubies, emeralds and diamonds—about as many as would fill the palm of his hand. The 2nd accused also brought out from the room a small basket containing broken pieces of gold-ornaments from which the precious stones had been removed. The value of the gold, Dattoba estimated at about Rs. 3000. Dattoba said that he recognized two of the ornaments to be a Goddess's girdle and shoulder ornaments. He knew the gold to be temple property from its appearance.

I did not see any reason to doubt this man Dattoba. It is for you to say if you believe him, and his evidence, if true, is most important; but it would have been much stronger if we had clear evidence that ornaments of the kind Dattoba identified had been stolen.

If you believe the evidence that the 2nd accused was at Kollur after dusk on the 31st May, and if you believe Dattoba that a fortnight after he had seen a basket of broken pieces of gold from which the stones had been removed and some of which were temple ornaments and his companion had a handful of rubies, emeralds and diamonds, there is evidence against the 2nd accused that would throw on the 2nd accused suspicion of the strongest character. But these two items of evidence would not amount, I think, to legal proof of the 2nd accused's guilt. Something more would be necessary to convert this very strong suspicion into legal proof. It is the difficult question in this case whether that extra evidence is forthcoming.

I now pass on to the next items of evidence against the 2nd accused.

There is no doubt of the circumstances under which these 4 rubies and this gold leaf were found.

On the 18th June last, the Police of Hubli made a raid on the houses of the Pathans of Hubli, who were suspected in the Cape Comorin Temple Case, and searched 10 or 12 of their houses. Among the houses searched was the house of the 2nd accused. The Police Officer who conducted the search of that house was the 9th witness examined here, Hanumanta Row. He went to the house with five Constables and found in it the 2nd accused, and a man named Azimulla, who appeared to live in it, and two other Pathans who were apparently not residents of the house. Hanumanta Row found concealed in a crevice of the wall a currency note for Rs. 500. He found in a bag of which 2nd accused, he said, gave him the key some clothes and Rs. 178 in cash. He found in a second bag, of which also 2nd accused gave him the key, Rs. 100.

He also found on the floor of the house this little piece of gold leaf and this ruby, that is, the smallest of the four rubies produced in this case. Hanumanta Row before this Court said he found them on the floor near the place where the contents of the bags had been emptied. But he did not tell this to the Magistrate.

On a further examination of the house in the 2nd room of the house, Hanumanta Row found on the floor close to the wall the other three rubies produced in this case.

A very important question in this case is—Can you infer that these 4 rubies and the little piece of gold were found in the 2nd accused's possession? If they had been found in the carpet bags of which he had the keys, you might reasonably find that they were in his possession. But they were found on the floor of the house which not only he but another man occupied. It is apparent, I think, they were forgotten there. They were forgotten in a house to which the 2nd accused was not the only person who had access. It would be, I think, a very strained inference under these circumstances for you to hold that the rubies and the gold leaf were at any rate in the actual and exclusive *possession* of the 2nd accused. The fact, however, that they were found in his house taken into consideration with the evidence of Dattoba, that 2nd accused had in his possession gold from which precious stones had been removed, and another man evidently, as I think, acting in conjunction with the 2nd accused had a handful of precious stones, is, I think, most important evidence in this case.

It would not, I think, be going beyond what can reasonably be inferred from these facts for you to hold that in all probability these rubies and this little gold leaf were part of the property that had been in the possession of the 2nd accused and his coadjutor a few days previously and that that possession was joint possession. I am not prepared to say that it would not be open to you to infer that

the rubies and the gold leaf found on the floor of the 2nd accused's house were in his possession, but I, as I said, myself think that the inference would be somewhat strained, and I think that it is an inference that you should not draw without great caution and deliberation.

I shall now go on to discuss the contention of the prosecution that it has been proved that these 4 rubies and this little gold leaf are actually Kollur Temple property and that they were stolen from the temple on the 31st May.

With regard to this little piece of gold. The 1st witness says it contains an image of the goddess Ammanavaru, and he tells us that it is the practice of the temple for 4 of such little golden representations of the goddess to be made every year and to be placed after certain ceremonies, in which they are used, in the Treasury of the temple. Now, as the temple is very old, there would, if this practice has continued, be an accumulation of such little medals in the treasury unless they were melted down, which one witness said they were. As a fact, no person knows how many there should be. The temple accounts do not show the number, and the number in the temple has never been counted so far as we know. It is not known when this particular piece of gold was made or who made it. It is, in fact, impossible as it seems to me to be able to say positively when it was taken from the temple. It is, I think, impossible *positively* to say it was taken from the temple on the night of the 31st May.

The 2nd prosecution witness, the Bhatta who carries the idol, gave very vague evidence about this little piece of gold. He said votaries gave such things as offerings. He is only a temple servant and would not know much about these matters.

The 3rd witness, Appanna Joishi, is one of the Moktessors of the temple. He told us that the value of this little piece of gold was 4 annas. He said this was the temple image. In cross-examination he said that there were 4 or 5 such pieces of gold among 100 or 200 other small pieces of gold in a box in the temple treasury, and he admitted he could not say that he had actually seen this particular item of property in the box.

It seems, therefore, to me that all that can be said is that this was very like one of the pieces of gold that were in the temple and that pieces similar to this were stolen on the 31st May, and that possibly—I may say even probably—this was one of them.

I will now take the case of these four rubies. Two of them, the two largest, are about the same size and are somewhat similar in shape. One of the others is quite a small ruby, and the other is intermediate in size between the small one and the 2 largest. The 1st witness says they came from a '*Vale*' or a ear-ornament worn on grand occasions by the goddess. There would appear to have been a pair of '*Vales*' stolen from the temple treasury on the 31st May last. They contained 97 rubies, 16 diamonds and 64 pearls—that means, I think, in both. Of the 97 rubies, 34 were large rubies and 63 small rubies. The 1st witness could not say what particular part of the '*Vales*' any of these four rubies occupied. Thousands of rubies were stolen from the temple, and in temples and with private people in India there are no doubt thousands of rubies more or less similar to these. But it seems to me to be almost an impossibility—or exceedingly improbable—that the 1st witness could say that these 4 rubies are 4 of the identical 97 rubies that were in the *Vales*. They may be like them. I do not doubt they are—at least that the 2 bigger are. But they have no special mark. The weight or size is not known. They are not cut in a special way; so, it seems to me to be exceedingly difficult for the

1st witness to be able to be certain that these are 4 of the rubies in the *Vales* stolen from the temple.

I think these remarks apply with equal force to the evidence of the 2nd and 3rd witnesses, and indeed it is not pretended that they can really identify any except the two larger.

I think that the utmost that can be said is that a pair of *Vales* was stolen and that the two bigger rubies produced are similar to those that were in these *Vales*.

A practised eye could, I presume, identify a ruby from its color and shape. You probably know much more about the identification of rubies than I do, especially about the identification of the polished but uncut rubies generally used in India. It may be that you will see your way to holding, as it is contended by the prosecution you should, that these two bigger rubies belonged to the *Vales* that were stolen from the temple on the night of the 31st May.

I tell you plainly that unless you are satisfied on that point, there would be, in my opinion, no case proved against the 2nd accused. The other evidence would amount to the highest suspicion, but would not amount to proof of his guilt. To convict him you should be satisfied that these two bigger rubies belonged to the stolen *Vales*.

If you are satisfied that the 2nd accused was the man who was at Kollur at dusk on the 31st May and under suspicious circumstances, and if you believe the 10th witness Dattoba that on the 14th or 15th June, the 2nd accused offered to sell a basket full of pieces of gold worth about Rs. 3,000 to him, and if you are satisfied that Dattoba can be relied on as having identified some of the gold pieces as pieces of temple jewels, and if, further, you are satisfied that the man who had a handful of rubies, diamonds and emeralds at the 2nd accused's house on the 14th or 15th June was acting in conjunction with the 2nd accused, and if you are satisfied that the little piece of gold and the four rubies that were found on the floor of the 2nd accused's house on the 18th June—any of them, say, this piece of gold or the two bigger rubies—are Kollur temple property and if you are satisfied that they or some of them were stolen on the 31st May, then if you are satisfied on *all* these points, there would be evidence against the 2nd accused and it would be open to you to find him guilty of the 1st count of the charge against him. You should be satisfied that the evidence raises more than a suspicion against the accused and that it amounts to proof of his guilt.

In the case of the 1st accused, if you are satisfied that he was the other man at Kollur on the 31st May, and if you are satisfied that this *Sadi* was the *Sadi* stolen that night, you would be justified in finding him guilty of the first count of the charge against him.

The 2nd count against each man is virtually that he had possession of stolen property knowing it to be stolen. If you are not satisfied that the graver charges are made out, you will consider that charge. This charge hardly arises unless you consider that the prosecution has not proved that the accused were at Kollur. If so, you will consider whether the 1st accused had dishonest possession of this *Sadi* knowing it to be stolen property and whether the 2nd accused had dishonest possession of these rubies and this gold leaf or any of them, knowing them to be stolen.

With these remarks I leave the case in your hands and ask you for your verdict. Do you find the accused guilty or not guilty, and if guilty of what charge? If, when considering your decision, you want any evidence read or want

any explanation and let me know, I shall have the evidence read and give you any explanation you want.

The Jury, after a prolonged consideration, found the accused not guilty on all charges. The Jury was not unanimous. The verdict was that of the majority.

COURT TO ACCUSED.

The majority of the Jury has found you not guilty on all the charges against you. The verdict of the Jury is, therefore, one of acquittal.

I concur with that verdict in the case of the 2nd accused.

In the case of the 1st accused the matter is not so clear. But there is no sufficient reason for my differing from the verdict of the Jury. All I would say is that the question of the identity of the cloth was one on which there might well be two opinions; but on carefully thinking over the matter, I am of opinion that the prosecution has by no means placed it beyond reasonable doubt that the cloth was temple property.

The accused are discharged.

Mangalore,
19th March 1895.

(Signed) W. C. Holmes,
Sessions Judge.

Exd. U. Narasinga Rao.

(True copy).

Sessions Court
Surantadar

To
The Superintendent of Police
South Canara

IN THE COURT OF SESSIONS, SOUTH CANARA.

SESSIONS CASE No. 1 OF 1895.

QUEEN-EMPRESS *Vs.* 1. Rahimulla.
2. Saheb Shah.

1895
Trial Dept.
Enclos. No. 1
To
C. No. 2576

Charge to the Jury.

THE COURT OF SESSION OF THE SOUTH CANARA

CHARGE TO THE JURY.

In the Court of Sessions, South Canara.

Session Case No. 8 of 1895.

Present: M. D. Bell Esq.

Queen-Empress *Vs.* 1. KESAR MULL.
2. ZARDATH KHAN.
3. ALAM CHAND.
4. DILWAR KHAN.
All defenses.

(Committed by Mr. B. Shivaya, 2nd Class Town Magistrate, Mangalore).

Charges: *Against all*—(1) House-breaking by night—Sec. ~~411~~ 457 I. P. C.
(2) Theft in a building—Sec. 380 I. P. C.
(3) Breaking open a closed receptacle containing property—Sec. 461 I. P. C.
and
(1) House-breaking by night—Sec. ~~411~~ 457 I. P. C.
(2) Theft in a building—Sec. 380 I. P. C.
(3) Breaking open a closed receptacle containing property—Sec. 461 I. P. C. or dishonestly receiving and retaining stolen propety knowing it to be stolen property—Sec. 411 I. P. C.

Jurors: Messrs. (1) M. Joshua (Foreman). (2) K. Timmappaya. (3) Rudrappa Shetty. (4) J. M. Tellis and (5) T. Pearl.

Verdict of the Jury: All the accused guilty under Sec. 411 I. P. C.

Finding of the Judge: Concurred with the Jury as regards the 1st accused; dissented from the Jury as regards the 3rd and 4th accused; differed from the Jury as regards the 2nd accused with reference to the verdict of guilty on charge under Sec. 411 only.

Sentence and Order: 1st accused sentenced to 2 (two) years' rigorous imprisonment; the case of the 3rd and 4th accused will be referred to the High Court; the case of 2nd accused will also be referred for conviction under Sec. 457, 380 and not 411 I. P. C.

Gentlemen of the Jury,

The four accused in this case are charged with having committed house-breaking by night, theft in a building and with having broken open closed receptacles and, in the alternative, with the dishonest receiving of stolen property knowing it to have been stolen.

2. The Kollur temple was broken into on the night of the 31st May last, and a large quantity of valuable jewels stolen from it. It is alleged for the prosecution that portions of this stolen property were found in the possession of each of these four accused. No direct evidence that these accused actually broke into the temple and removed the jewels has been put forward by the prosecution. Possession of stolen property, immediately after the theft is, however,—in the absence of any

satisfactory explanation—very good evidence of theft of that property—that is to say if a person is found in possession of stolen goods within a short time, after the theft was committed and cannot explain how he came by them, the natural inference is that he stole them. This inference can, however, only be drawn if the theft has been of recent occurrence. The longer the interval between the theft and the finding of the property is the weaker the presumption as to guilty knowledge becomes.

3. The only evidence practically against the accused is that certain property was found in their possession which is alleged by the prosecution to have been stolen from the temple on the 31st May. The first two witnesses for the prosecution have identified the property as belonging to the temple. The first point you will have to determine is whether you consider it to have been proved beyond any reasonable doubt that all or any of the property found in the possession of these four accused belongs to the temple. There seems to be no reason to doubt that a burglary really did take place in the temple. This is not disputed. The case of each accused will have to be considered separately. To prevent confusion I propose to go through the evidence which concerns each accused in turn and to take your verdict regarding each one before proceeding to consider the evidence against another.

4. In the case of each accused then you will have to determine (1) is all or any of the property found in his possession temple property and (2) if it is, do the circumstances under which it was found in his possession, justify the conclusion that he is guilty of either of the offences with which he is charged? In determining the second question you will have to take into consideration the time that elapsed between the theft and the finding of the property and the nature of the property itself—*i. e.* whether it is property which could easily be disposed of or not. It is obvious that unidentifiable property such as money is much more easily disposed of than well known temple jewels. A thief who had stolen well known jewels from a temple would have to exercise great caution in disposing of them and might have to keep them a considerable time before a favourable opportunity of doing so occurred. I must repeat that you will have to consider the case of each accused separately. You must not be prejudiced against one accused by any opinion you may form concerning another.

5. In order to convict on the alternative charge you must be satisfied that each accused knew or had at the time of receiving the property reason to believe that it was stolen. No proof of receipt is offered. Guilty knowledge on the part of the accused can only be inferred from the nature of the property itself—*i. e.* if you consider that the nature of the property is such that it ought to have raised suspicions in the mind of any ordinary honest man. The finding of the property in their possession is admitted by all the accused. The 1st, 3rd and 4th accused do not admit that the property found in their possession ever belonged to the temple and contend that they came by it honestly. The 2nd accused is in a different position. By far the most valuable property was found in his possession and he does not deny that it belongs to the temple. I will therefore take his case last.

6. The first and 2nd witnesses for the prosecution are respectively the present and a former manager of the temple. They are both hereditary "Moktessars." They speak to the identification of the various items of property found in possession of the accused and their evidence is by far the most important in the case. It is upon the value which you may attach to their evidence as to identification that your verdict will mainly depend. It is urged for the defence that these witnesses

are interested, because, they are Moktessars of the temple. It cannot be denied that they are interested in the temple, but I must point out that it would not be possible to adduce independent evidence as to the identification of the jewels, because, it is only the temple officials that could be familiar with the details of the temple property.

7. A catalogue of the jewels in the temple was prepared in 1866 (Exhibit A). In 1879 some jewels hitherto unknown to the temple authorities were found in the temple and a list of them was made out (Exhibit B). Some of the items alleged to have been stolen are said to be described in one or other of these lists. There is no record in the temple at all of some of the property.

8. It will have probably struck you as somewhat remarkable that no steps have been taken to register the property presented to the temple since 1866. Since that year a vast amount of property must have been acquired by the temple in the shape of offerings. No account is kept of these offerings. According to the 1st prosecution witness they are placed first of all in a box. When the box is full the contents are weighed and placed in a metal vessel which is kept in the treasury room. Some of these offerings are said to be among the articles found in the possession of the accused, and we have to rely for their identification entirely upon the verbal statements of the first two witnesses. I will now proceed to put before you the evidence as to the different articles found in the possession of the 1st accused.

The first item Exhibit D35 is a piece of gold evidently a portion broken off a large gold ornament and bearing the inscription "Kara Kumara Basavappa Naikara's offering." The 2nd prosecution witness says that the full inscription was originally "Keladi Virabhadrappa Naikara Kumararu Basavappa Naikara's offering." He is unable to say, however, and there is nothing to shew where the missing words came in. The words as they now stand begin from the border of the gold plate and there is no room for any others. A silver plate is produced bearing a similar inscription to what the witness says was originally there. The piece of gold is said to be a portion of the "Pucker" of the procession idol described as a "gold Pucker" in item No. 7 of list A. There is no detailed description of it on record in the temple and no mention is made of the inscription in list A. The witnesses say they can identify the grooved ornamentation on the piece of gold. The witnesses had, of course, only seen the Pucker in its entirety. They had not seen it broken in pieces.

Exhibit D36 consists of other pieces of gold said to belong to the same Pucker and identified by the ornamentation.

D37 consists of two pieces of gold said to belong to the crown of the mask of the goddess. This is described in item No. 2 of list B as a "gold Kohole with image." The 1st prosecution witness says that these two pieces together form one piece of the crown. He cannot, however, say of how many pieces the crown consisted. No mention is made of the crown in the description. The mask was kept in the treasury room and not used.

The 2nd prosecution witness said at first that he could not say to what one of the pieces belonged, but said afterwards that it belonged to the crown.

Exhibit D38 are pieces of gold which are said to be the plates of the diamond waistband worn by the goddess—described in item 64 of list B as a waistband of 20 plates set with diamonds and rubies. There are no stones in the pieces now. With regard to this item the 2nd prosecution witness stated at first that he could not remember whether the waistband contained any other precious stones except diamonds. Afterwards he said that it contained rubies but that they were smaller than the diamonds.

Exhibit D39 is a piece of gold said to be part of the mask of the goddess (Kohole) D37. The witnesses say that it represents the hair of the head. They cannot say what position this particular piece occupied.

Exhibit D40 are pieces of a gold necklace worked with a pattern of "Tumbe" flowers. There is nothing particular to connect this with the temple and there seems no reason to suppose that similar necklaces are not in common use.

D41 consists of 5 pieces of gold lace said to have been used as lining to the gold plates on the sides and back of the goddess' waistband. It passed through gold loops and filled up the space between the plates. The gold lace was originally all in one piece. There seems no reason why similar gold lace should not exist elsewhere besides in this temple. The gold lace is not mentioned in the description of the waistband in list B.

D42 is a piece of a bracelet which the 1st prosecution witness professes to recognise by the border.

D43 is a bracelet—fellow to one which is said to have been picked up in the temple on the morning after the theft. You have seen the two together. D43 has been straightened out and is evidently the fellow of the one produced. The weight of the pair corresponds to the weight given in the list A. It is admitted, however, that bracelets of this description are of a common kind.

D44 are 2 gold loops through which the gold lace of the waistband D38 is said to have been passed.

D45 are said to be fastenings of the same waistband. The 2nd prosecution witness cannot identify them.

9. This is all the property found with the 1st accused. The accused says that he got all these articles from one Devaraja. This man was cited as a witness for the defence, but he could not be found. There is nothing to shew that the 1st accused did not intend to have him examined in good faith. He said at once when the property was found on him that he had got it from Devaraja and he cannot be held responsible for his non-appearance.

The first defence witness who is the Station master of Hubli states that Devaraja is a cloth merchant and money lender and purchased Rs. 1,000 or 1,200 worth of cloth from Bombay every year.

This accused has examined another witness who gives him a good character and has also examined Devaraja's servant who says that he saw his master give him a handful of pieces of gold. As regards this accused you have to determine first of all whether it is proved beyond reasonable doubt that all or any of the articles found in his possession were stolen from the temple. The property consists principally of fragments of ornaments.

For their identification you have to rely entirely upon the memory and veracity of the first two witnesses for the prosecution. It is for you to say whether their evidence has satisfied you beyond all reasonable doubt that these articles are part of the stolen property.

The theft occurred on the 31st May and the accused was arrested with the property in his possession on the 18th June. As I pointed out before you will have to take this interval as well as the nature of the property into consideration in forming your opinion as to his innocence or guilt.

10. I will take the 3rd accused next.

Seven gold ingots (Exhibit D47) comprise the first item of the property found in his possession. Ten gold ingots are said to have been in the temple at the time of the theft. The first two witnesses profess to be able to recognise one

of the ingots found on the 3rd accused as temple property because one end of it is doubled over. This they say was done by hammering it with a stone because it was longer than the others. You can form your own opinion as to whether the ingot looks as though it had been hammered with a stone. The witnesses cannot mention any other identifying marks. The accused's Vakil points out that there is a dent in one of the ingots which is a noticeable mark. This is not spoken to by either witness.

D48 (Gopu) is a gold ornament said by the prosecution to be the goddess' girdle. The 3rd accused says it was his own neck ornament. He was wearing it round his neck when he was arrested by the Police. The 1st defence witness—the Hubli Station master—says that he has seen the accused wearing a similar ornament round his neck for 2 or 3 years. No reason has been suggested to discredit this witness.

As you have seen there is a dent in D48. The 1st prosecution witness says that this dent was not there before the girdle was stolen, whereas, the 2nd prosecution witness says that it was always there. The girdle is not mentioned in any of the temple lists. It was not mentioned in any list given by the 1st witness to the Police of the stolen property. This is somewhat remarkable.

The girdle was tried on to the goddess by the Tahsildar. He says it would have fitted with a larger hook such as the prosecution witnesses say it had.

Exhibit D49 is a gold wrist ornament which the first 2 prosecution witnesses say is described under item 61 in list B. Item No. 61 is described as "a gold Padaka set round with diamonds and rubies and having a gold chain." It is evident that D49 does not answer to this description. In the first place it is not a Padaka. The prosecution witnesses admit that Padakas are always worn round the neck and that they have never known any except this one to be worn on the wrist. In the 2nd place it has not a gold chain but a "Patti." Then again the most prominent object in D49 is a large emerald in the middle. No mention is made of this in item 61 of B. The witnesses admit that with this emerald it ought to have been described as a "Paccha Padaka." The weight agrees with that given in the list, but it is urged for the defence that with the hooks which 2nd prosecution witness says it had it must have weighed more. They both insist that it is the Padaka described in No. 61.

The 1st defence witness says that he has seen the accused wearing a wrist ornament like this.

D50 is a piece of ordinary gold wire commonly used by goldsmiths in manufacturing jewels. The 3rd accused is a goldsmith and there is nothing peculiar in his having either the gold wire or the ingots.

D51—3 pieces of gold lace. The accused says he was going to make a girdle out of these pieces. You saw him begin making a similar piece here.

The prosecution witnesses say that these pieces were lying in the box along with the other offerings. There is nothing particular to identify them and they were not mentioned in the list of the stolen property given to the Police.

Exhibit D53 are pearls. The witnesses say they can identify one large pearl which was in a Muguti worn by the goddess. It seems an ordinary kind of pearl.

Exhibit D55 is a Saphire which the prosecution witnesses say was in front of the head dress on the idol of Virabhadra. The stone is flat and has an image engraved on the back of it. No mention of this image is made in the temple lists and the first 2 prosecution witnesses were not aware of its existence.

These are all the items found on the 3rd accused which the prosecution witnesses profess to be able to identify.

It is somewhat curious that the only one of these items (D49) which is said to be described in the list does not answer at all to the description given.

Exhibit D48 (the gold girdle) is, one would suppose, an important jewel. It is unfortunate for the prosecution that there is no record of it in any of the temple lists and that it was not mentioned by the 1st prosecution witness in any of the lists of stolen property which he gave to the Police. It is said to have been always worn on the goddess' waist—one would think therefore that he ought to have remembered it. He gave 3 lists to the Police. The accused has adduced evidence—that of the Hubli Station master—that he was in the habit of wearing articles like D48 and 49. The other things found on him are such as any goldsmith might have.

This accused is said to have been seen at Kollur between two and 3 months before the theft. This is not very important and is contradicted by the 6th prosecution witness before the committing Magistrate. The 1st prosecution witness made no mention of this to the Police Inspector though he travelled with him and the accused from Tinnevelley to Bangalore. Thousands of people from all parts go to Kollur for the Jatras and even if the accused was there I cannot see what inference could be drawn against him.

The property on this accused was also found on the 18th June—18 days after the theft. If you come to the conclusion that any of the property is proved beyond all reasonable doubt to belong to the temple you will have to take the interval into consideration when forming your opinion as to the guilt or innocence of the accused.

11. On the 4th accused the following articles were found.

Exhibit D58 a silver ring of a pattern worn by Brahmins. The 1st prosecution witness cannot say whether this ring was in the temple before the theft or not.

D59 are 12 Mugutis which the 1st prosecution witness says are those shewn in item No. 44 of list A. They do not, however, correspond to the description of the Mugutis given under item 44 of list A. The 1st prosecution witness says he can recognise some of them. He admits, however, that the Mugutis in the temple weigh *over a maund*. So that his assertion that he is able to recognise any particular ones is somewhat improbable.

Exhibit D60 consists of some "Puttalis" and a "Tale" said to belong to the same necklace. The 'Tale' is said to be engraved with an image of the goddess. The image on the 'Tale' has, however, only 2 hands whereas the goddess has four.

Exhibit D63 is said to be a silver cradle received as an offering in the temple. It might be anything.

The Constable who searched the 4th accused's house says that he found these things hidden inside the house. This the accused denies. He has made no statement himself. His Vakil says on his behalf that the articles were secured in a bag. No witness has been called to corroborate the Constable's account of the search.

The accused says that the property came to him from his mother who died three years ago.

The Constable says that when they went to search this accused's house a woman called Chandma was sitting with him and they were both picking up pearls. This woman has not been produced.

The account of the search given by the Police Constable seems to me to be open to suspicion and it would have been more satisfactory if independent evidence had been adduced on this point.

The house was searched on the 18th June. The questions you have to decide in the case of this accused are the same as in that of the 1st and 3rd.

12. We now come to the case of the 2nd accused. This accused is in an entirely different position from the other three. The property found with him is of enormous value. The big emerald alone is worth a fortune. He admits that the property is not his and does not deny that it belongs to the temple. The circumstances under which the property was found are in the highest degree suspicious. He was found at Rovalpindi about to make his way across the frontier into Afghanistan. He left his house, business and family at Hubli suddenly. Some of the property was found in a tin box hidden among flour. The rest was found in a bag.

His story is that when he was grazing his goat one day near the Matt the goat put its foot through the ground and exposed the property buried underneath. He admits that he appropriated the property and said nothing about his find to any body. He pointed out the spot where he had taken the property out of the ground and some other articles which have been identified as temple property were dug up by the Police close by.

It may reasonably be presumed that whoever buried the property at Hubli was concerned in the theft from the Kollur temple. Do you believe the 2nd accused's statement that he knew nothing about the burying of the property there, but simply happened to come upon it by chance? Do you think it likely that the person who buried this enormously valuable property would do it in such a way that it might be revealed at any time by the footstep of a stray goat?

The finding of other temple property buried near the same spot would go to shew that the thief or thieves belonged to Hubli and had chosen this spot to bury their spoil prior to disposing of it. The theory for the prosecution is that the 2nd accused was the thief or one of the thieves who buried the property there. You will have to consider whether this theory or the accused's story is true.

If you accept the accused's story you will have to consider whether when he retained the property he knew or had reason to believe that it was stolen.

Some gold ingots were found in the same neighbourhood by a boy. These, however, appear to have been dropped and were not buried in the ground.

If you believe that the accused buried the treasure in the ground himself or that he was privy to the proceeding this will be of course very strong evidence that he was concerned in the theft from the temple. His own statement may perhaps amount to an admission of criminal misappropriation but he is not being tried on that charge here. You have to return a verdict on one or other of the charges that have been read out to you here.

Mangalore,
8th March 1895.

(Signed) **M. D. Bell,**
Ag. Sessions Judge.

Verdict.

1st accused—guilty of dishonestly retaining stolen property knowing it to have been stolen (majority of 4 to 1) under Section 411—not guilty on other charges.

3rd accused—guilty of dishonestly receiving and retaining stolen property under Section 411. We find it is not proved that Exhibits D48 and D50 are temple property. Not guilty on other charges (unanimous).

4th accused—guilty under Sec. 411—not guilty on the other charges (unanimous).

2nd accused—guilty under Section 411 not guilty on other charges (unanimous).

Mangalore,
8th April 1895.

(Signed) **M. D. Bell,**
Ag. Sessions Judge.

I concur with the Jury in the case of the 1st accused. He is sentenced to undergo rigorous imprisonment for 2 years under Section 411.

I do not consider that the evidence warrants the conviction of the 3rd and 4th accused. A reference will be made to the High Court.

I am of opinion that the 2nd accused should have been convicted under Sections 457 and 380 and not under Section 411. A reference will be made to the High Court on this point also.

Mangalore,
8th April 1895.

(Signed) **M. D. Bell,**
Ag. Sessions Judge.

Exd. J. S. Saldanha,
Sheristedar.

(True Copy)
J. S. Saldanha
Sheristadar

To
The Superintendent of Police S
25.4.95

THE COURT OF SESSIONS, SOUTH CANARA.

SESSIONS CASE NO. 8 OF 1895.

QUEEN-EMPRESS *Vs.* 1. Kesar Mull.
2. Zardath Khan.
3. Alam Chand.
4. Dilwar Khan.

1895
Jud. Dept.
Enclos. No. 2
To
Q. No. 2576

Charge to the Jury.

Enclosure No. 3 to Letter (3) No. 3104 [illegible] May 1895 [illegible]

THE COURT OF SESSION OF THE SOUTH CANARA DIVISION

JUDGMENT.

In the Court of Sessions, South Canara.

Session Case No. 9 of 1895.

Present: **M. D. Bell Esq.**

Queen-Empress *Vs.* 1. THORKAN (defended)
2. AGAJAN.

(Committed by Mr. B. Shivaya, 2nd class Town Magistrate, Mangalore).

Charge: (1). House-breaking by night—Sec. 457 I. P. C., (2). Theft in a building—Sec. 380 I. P. C., (3). Breaking open a closed receptacle containing property—Sec. 461,

and

(1). House-breaking by night—Sec. 457 I. P. C., (2). Theft in a building—Sec. 380 I. P. C., (3). Breaking open a closed receptacle containing property—Sec. 461, *or* dishonestly receiving and retaining stolen property knowing it to be stolen property—Sec. 411 I. P. C.

Jurors: Messrs. 1. Hosangadi Venkat Rau (Foreman), 2. T. Krishnappa, 3. Jamsetji Nowroji, 4. T. Chudappa, 5. Abboo Baker Shet.

Verdict of the Jury: Not taken.

Finding of the Judge: Not guilty.

Order: The case being withdrawn by the Public Prosecutor under Sec. 494 C. P. C. the accused are discharged and set at liberty.

Charge to the Jury: The Public Prosecutor having withdrawn the case with the permission of the Court the accused are acquitted under Sec. 494 C. P. C.

Mangalore,
9th April 1894.

(Signed) **M. D. Bell,**
Ag. Sessions Judge.

Exd. M. Krishnaya.

(True copy).

[illegible]
Sheristadar.

To
The Superintendent of Police South Canara.

25-4-95

IN THE COURT OF SESSIONS, SOUTH CANARA.

SESSION CASE No. 9 OF 1895.

QUEEN-EMPRESS *Vs.* 1. Thorkan (defended).
2. Agajan.

1895
Jud. Dept.
Enclos. No. 3
To
C. No. 2576.

Charge to the Jury.

No. 3104

CURRENT No. 2576.

~~CHIEF~~ OFFICE OF THE INSPECTOR GENERAL OF POLICE,

Ootacamund ~~Madras~~, 21st May 1895.

FROM

M. Hammick Esq. I.C.S.,
INSPECTOR GENERAL OF POLICE,

TO

THE Chief Secretary
to Government
Ootacamund.

SIR,

Enclosures.
Three.

I have the honor to furnish the report called for in G.O. 28th September 1894. No. 2369 J.D.; G.O. 13th November 1894, No. 2755 J.D., Official Memorandum No. 905, 25th April 1895, J.D.

reminder D/ 1.6

2. The result of the last* Sessions trials in the Hollar housebreaking case reached my office on 7th May 1895. As regards all the prisoners arrested whose names were given in the statement which accompanied Mr. Meredith's report, read in G.O. 4th February 1895, No. 253, the trials give the following results:—

1. Saheb Shah – acquitted – Sessions Case of 1895.
2. Azimullah Khan – not committed by the Magistrate
3. Dilwar Khan – convicted by jury under 411 I.P.C. but judge differed and has referred the case to High Court – Sessions Case 8 of 1895.

× Dishonestly receiving stolen property.

4.

4. Khokhan - acquitted - Sessions case 9 of 1895.
5. Rahimullah Khan - acquitted - Sessions Case 1 of 1895.
6. Alam chand - convicted by jury - Sessions case 8 of 1895 - but referred with case against No 3.
7. Hasar Mall - convicted and sentenced to two years rigorous imprisonment under 411 I.P.C., Sessions case No 8 of 1895.
8. Goragee - not committed by Magistrate.
9. Agajan - acquitted - Sessions Case No 9 of 1895.
10. Lardath Khan - convicted by jury - 411 I.P.C. The Judge has referred the case as he considers the man should have been convicted of housebreaking.

I enclose the judgments in the cases.

3. The result is very unsatisfactory. The only convictions which we can rely on finally obtaining are those against Nos 9 and 10. In the case of No 10 the Sessions Judge considers apparently that the evidence would justify a conviction for housebreaking. Mr Meredith however considered that the probability was that the accused Lardath Khan had merely been sent up North with the most valuable of the stolen property and that he was not really one of the actual Housebreakers.

4.

Sup. 0/28-9-94
WOS. 2369/70 Judl Mis.

4. The Government has before it Colonel Porteous' report as regards Mr Scott's conduct in the case and I need not add to what he has already said. It is clear enough that Mr Scott did delay supplying the Chief office with information when the report of the crime first reached him, and that his subsequent reports were not despatched as regularly as they should have been. It is clear also that he formed an incorrect idea from the first of the way in which the crime had been committed. He suspected the Semple authorities and acted on that suspicion. He reached the scene of offence as soon as he could, and apparently did what he could when he got there. It was unfortunate that he adopted a wrong view of the case at first, but he cannot be much blamed for that. Mr Scott's failing has always been a very careless and slovenly way of writing, and the impression I formed after seeing him for a short time was that he is probably not such a bad officer as he shows himself to be in his reports and diaries. He is undoubtedly an inferior officer, but from his diaries you would gather the impression that he was doing hardly any or no work. I don't think

think this. Mr Welsh, the District Magistrate told me that he constantly saw him about cases and appeared to take trouble to understand them and I found his head-quarter Division in fair order. I found also that he had a fair knowledge of local crime and other matters. He undoubtedly is most careless in reporting and has no liking for his work. He has no detective ability and is and will always be a very poor officer.

5. As to the suggestion of the Government that the Police in Canara were, as far back as February 1894 aware of the presence of strangers in the district and so should have prevented the Kollur Temple Robbery. (Go. 13 November 1894, No. 2755 Jd.). I have already reported that although the Police did not sufficiently watch the accused in the Session case No. 9 of 1895 yet those accused had as far as we know nothing to do with the Kollur Housebreaking. The Kollur case was a very difficult one. The temple itself is situated in a very remote corner of the District close to the frontier. It had never been robbed before and was out of the way of observation. It is certainly close to a Police Station, but the station is a solitary one, situated at the foot of the ghats surrounded by miles of jungle. The Inspector-General of Police owing to the information received in the Comorin case had formed the idea that temple thefts were being carried out by the foreigners, but the local South Canara Police had no special reason for supposing that such was the case. It was indeed far more probable taking the evidence afforded by the history of former temple thefts that the housebreaking was the work of the temple servants and that was the idea which at once suggested itself to the local Police. The "foreigners" who committed the offence, were able to approach the temple through sky-bare territory unobserved, and escape again after the case by the ghat-roads on which at that time there was hardly any traffic. They were probably not in the district more than two or three days and it is, therefore, not surprising that they had not been observed. Had the Cape Comorin case not occured before it and had the Sinnerelly Karavars not given the Police the clue in that case, I don't suppose to this day we should have discovered any of the accused in the Kollur

Vide para 4 of Go. No. 1131/95

Kollur case. It was the close connection in time between these cases which led the Chief office in Madras to connect the two, and it should be remembered that when Mr. Scott first reported he had not the information possessed by Colonel Portéous, and for this reason cannot I think, be blamed because he failed to form the conclusion which Colonel Portéous formed on the evidence available to him.

6. When in Mangalore I pointed out to Mr. Scott that he must be more punctual and keep me better informed than he was in the habit of doing during Colonel Portéous' administration. He has been more punctual in the submission of his diaries in this year, but he continues to give very scanty information of what is going on. I am perpetually reminding him of his duties in this respect. He suffers from bad health which accounts in some degree for the poor quality of his work.

I have the honor to be,
Sir,
your most obedt. Servt.,

M Hammick
Inspector General of Police.

Judicial Department.

[G. 25.]
5
600—7-5-95.

C. Nos. 1131 & 2576/95.

From the Ig. of Police.

FOR ORDERS.

These are Ig's replies to Gos. 28 Sept. No. 2369 Judl. & 13 Nov. 94, No. 2755 Judl. on the conduct of the S. Canara Police in connection with the Kollur horse-breaking case. In the first of these Gos. the Govt. have already observed that Mr. Scott's conduct was very unsatisfactory, but deferred final orders until the result of the further enquiries into the Temple theft case became known. In the second Go. the Ig. was asked to state his opinion regarding the conduct of the S. Canara Police in connection with the Kollur Temple robbery & to report whether the burglary which formed the subject matter of

Sixth Canara

S.Cos. Case No. 9 was reported to him or to the Dy. Ig.; & he was also required to inform Govt. what steps were taken to watch and follow up the 4th prisoner who was acquitted.

Mr. Hammick now reports that the result of the trials has been very unsatisfactory & forwards copies of the judgments for the perusal of Govt.

He thinks that Mr. Scott is undoubtedly most careless in reporting & has no liking for his work; but states that he has been of late more punctual in the submission of his diaries, &c. ~~the result of the D.G's constant reminding him s~~

The D.G. considers that Mr. Scott's bad health accounts to some extent for the inferiority of his work. It appears that there was no connection whatever between the Kollur case & the burglary disposed of in Sessions Case No. 9. Mr. Scott's report on the steps taken to watch & follow up the 4th prisoner who was acquitted is spoken of as unsatisfactory. Mr. Hammick is of opinion that the local S. Canara Police had no special reasons to suppose that the temple thefts were being carried out by foreigners; & for this reason acquits the Supt. ~~also is not~~ from blame for not having realized the nature of the case at an earlier stage

~~The burglary which formed the subject matter of Sess. case No. 9 was not specially reported to Col. Porteous or the Dy. D.G. as the property taken did not amount to Rs500~~

The original enclosures to Col. Porteous' letter of 19 Sept. 1894 which included Mr. Scott's reports were returned to the I.G. with G.O. 2369 / 28-9-94

D / 7.6.95

Mr. Hammick has spoken to me about this matter. He considers that the Police cannot be blamed and they apparently cannot very well be as in nine cases out of ten in which a temple robbery occurs it is the [illegible] who are the offenders. They make away with the property and when they find things becoming too hot for them manufacture a burglary e.g. the [illegible] case the other day [illegible]

Conduct of the S. Canara Police in the Kollur Temple case

FOR ORDERS.

[illegible]

K. C. 431

[illegible] 25.
600—7-5-95.

Judicial DEPARTMENT.

C. No.

FOR ORDERS.

I don't see what we can do but record this report — Mr. Hammick must be left to use his discretion about sending Mr. Scott before a Medl. Bd.

[illegible]
18/6/95

Suspicion would never have lit upon the Kabulis had it not been for the Cape Comorin Case.

Mr. Scott was undoubtedly slack in reporting but Mr. Hammick ~~says~~ has told me that he was certainly ill. He says that Mr. Scott is always suffering from neuralgia fever and like ailments and he mentioned that he had an idea of sending Mr. S before a medical Board. Should he be told to do so or should this be left to his discretion.

Mr. Scott is unquestionably a very indifferent police officer but there are others in the force who are as bad if not worse than he

[illegible]
15/6/95.

C mis

Order d/24th June 1895 No. 1345

Recorded

[illegible]
22/6/95

The I.G. of Police Rd [illegible]

Copied 27/6

FOR ORDERS.

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