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Judicial (1895) Department.

ORDINARY MS.

G.O., No. 151

DATED 22nd Jan. 1895

INDEXED.

[Despatch Abstract.]

APPEAL FROM AN ACQUITTAL

Directing that the judgment of the High Court in Criminal Appeal No. 289 of 1894 be communicated to the District Magistrate of Vizagapatam, together with a copy of the Government Pleader's letter No. 1026, dated 1st November 1894, and that his particular attention be drawn to the remarks as to the way in which the prosecution was conducted in the two cases referred to and that the local Public Prosecutor be called on for an explanation.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	1799		21/7/94				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	338		15/2/95				
C. 561			95				

501348 5694

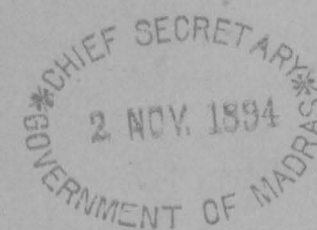
5877

Just. Dept.

From

THE GOVERNMENT PLEADER,

Madras.



Dated

Recd.

Rev.

No.

ENCLOSURE

With its Enclosures returned

Stating that the acquittal in S.C. No. 11 of 94 on the file of the Sessions Court of Vizagapatam was set aside and a retrial by the Criminal Sessions Court was ordered.

To send copy of report

6/11

No. 1014

5877
Government Pleader's Office,
High Court,
MADRAS, 1st November 1894.

From

E. B. POWELL, Esq.,
GOVERNMENT PLEADER,
Madras.

To

THE Chief Secretary to Government,
Fort St. George.

SIR,

With reference to the Proceedings of Government dated
5th June 1894, N^o 1348 Judicial, I have the honor to
state that Criminal appeal N^o 289 of 1894 preferred to the
High Court against the judgment of acquittal in S.E. N^o 11
of 1894, on the file of the Sessions Court of Vizagapatam, came
on for hearing on the 31st ultimo, and that the acquittal was
set aside and a retrial ^{by the Criminal Sessions Court} was ordered.

I have applied for copies of the judgment which will be
forwarded to you on receipt.

I have the honor to be,
Sir,

Yours most obed^t Serv^t,

E. B. Powell

Government Pleader.

+ Enclosed returned

Just

CURRENT NO 5876

Just. Dept.

Lodged at No 4213/94
801799: 21.7.94
1680: 7.7.94

From

The Government Pleader,

Madras.



Dated 1st
Recd 2nd
Recd 3rd } November 1894.

No 1026.

Enclosures ~~at~~ No 3209
with its enclosures ~~at~~

Reporting that the acquittal was
set aside in Ser. Case No 6 of 94 in the
file of the Vizag. Ser. Court and a retrial
by the Criminal Ser. Court was ordered.
To await copy of report

6/11

CR No. 3112

VIZAGAPATAM District Magistrate

Office Dated 23 June 1894

From

W. A. Willcock Esq. J. D. D. Wolfe Murray Esq.
Ag. Magistrate,
Vizagapatam District.

To

The Honorable J. F. Price,
CHIEF SECRETARY TO GOVERNMENT,
Judicial DEPARTMENT,
MADRAS.

SIR,

In forwarding herewith a printed copy of Judgment in Sessions Case 6 of 1894 on the file of the Sessions Judge, Vizagapatam and the connected papers, I have the honor to request that Government may be pleased to direct the Public Prosecutor under Section 417, Criminal Procedure Code to present an appeal to the High Court against the order of acquittal passed by the Sessions Judge.

What is the case? This is another case in which the accused appears to have been improperly acquitted by the Sessions Judge.

The S. of Police sent up 2 cases, I remember. Didn't we refer one or both of them for report by the D.M. I think so.

This murder was a cold blooded one perpetrated by one Cheubolu Lomanaiah on a girl named Kokkurajada Venkayamma of 5 years ago.

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4. Thirteen witnesses were bound over by the
Committing Magistrate to give evidence on behalf of the
prosecution but only 6 were examined by the Sessions
Judge. The following is a brief summary of their
evidence.

The Complainant (1st Prosecution Witness)
is the father of the deceased girl. On Saturday, the
27th of January last at 8 Am, the deceased obtained
3 pice from her father for buying some dahl and
went out into the street in Chintalapalem; she did
not return home. When she left the house she had on
her ornaments worth about Rs. 40 or 50. The
parents of the girl searched for her in vain up to
12 o'clock in the noon in all the adjoining houses,
in the wells &c. The matter was reported to the
Villagallenciff and the head of the village and also
proclaimed by beat of tom-tom but nothing was
heard of the child that day nor the next day, but
on the evening of the 3rd day, Monday the 29th the
Headman sent for the 1st Prosecution Witness and
took him to a prickly pear bush to the west of
the new washerman's tank in the village and there
showed him the legs of a girl having silver anklets on.
From the anklets and the color of the skin left on the
bones the 1st Prosecution Witness recognized the
remains to be his daughter. On Tuesday, 30th

identified as those worn by the deceased and left
the house.

The 2^d + 3^d prosecution witnesses who are son and
father respectively are two professional stinkies. They
both went to hunt for wild pigs at night over a month
ago in the jungle at Siparadapalem a koss pou
Chintalapalem (the scene of the offence) which lies
between Siparadapalem and Bangarappeta - the
native village of the hunters and which they must
cross when going to Siparadapalem. They shot nothing
that night. The next morning (i.e. on the morning on which
the murder was committed), while returning home to
Bangarappeta they approached Karasujbille a
village 200 yds off Chintalapalem, when the 3^d prose-
cution witness went into the village to buy some
Cheroot and told his son the 2^d witness to march on
and meet him at Gobbur. The latter accordingly pursued
his way and when he went to a well on the outskirts
of the Chintalapalem village, he heard from a prickly
pear hedge close by the noise of a child as if in pain.
When he examined closely he saw the child's head and
something like anklet on its leg and the prisoner
(whom he used to see not then before he being a
prisoner of Karasujbille, a hamlet adjacent to his
own) pressing his foot on the child's stomach and

twisting
forwarded to him, the medical officer at

of the head and chin. Being himself a lad of 14 years he was greatly terrified at the spectacle and without saying a word to the accused traced his way and waited at the appointed place for his father, 3rd witness. After his arrival the son told the father of what he had seen near the well but the latter did not believe him on the ground that such a thing could not have happened in broad day light and what was worse he was angry with his son for telling him such an incredible story. The son did not insist or argue as the father was angry with him. After repairing home he told his mother also what he had seen that morning. 8 days afterwards the Odice came and questioned him and he told them all he had seen.

The 3rd prosecution witness admits that his son, the 2nd witness told him that he had seen a brahmin kill a child and that he looked upon the idea as absurd and did not believe him.

The 4th witness is a woman resident of Karasujbille. She states that she knew the deceased as the daughter of the Complainant, that she came to her on a Saturday morning a month ago, that she saw her on the road near the village goddess in Chitalapalem or Karasujbille, that she thought of taking the child home but the

Child

child had run off, that as she saw the prisoner some 3 or 4 fathoms off, she had let the child alone considering that he is her cousin and that he would consequently take care of her, and that a Mussalman woman was near the accused.

The 5th prosecution witness is the Mussalman woman referred to. She states that the accused came to her on a certain morning and asked her to stitch a jacket for him and that she had seen a brahmin child in the company of the accused eating a piece of sugarcane.

The 6th witness is the Village Munsiff of Chitalapalem. He states that on the 27th January the Complainant told him of the loss of the child, that he reported the matter to the Sub Magistrate of Anakapalli and the Odice, that the child's legs were found on Monday evening with silver anklets on them, that a piece of sugarcane was found in the same place, that on Tuesday when the Inspector came and questioned the prisoner the latter dug out near the wall of the Complainant's verandah and gave up the jewels worn by the deceased. The body was eaten up by vultures and jackals. No post-mortem was therefore possible. On examining the bones - especially the pelvic - forwarded to him, the Medical Officer at

Anakapalli states that they belonged to a child and that the child must have been a female.

The prisoner retracting the three confessions made before the Committing Magistrate, pleaded not guilty to the charge attributing the confessions to police torture.

To sum up, the deceased left the house at about 8 Am on the 27th January last, she was last seen in the company of the accused on the same morning by the 4th and 5th witnesses and another man named Sakka Sanyasi - the 6th prosecution witness in the Committing Court (this witness was not examined by the Sessions Judge though he was one of the witnesses bound over), the poor girl was actually seen in the act of being murdered by the prisoner, by the prosecution 2^d witness. Not even a single witness contradicted himself. The evidence given was so straight forward that the majority of the witnesses were not cross examined.

5. All the witnesses satisfactorily proved the case against the accused, but the Sessions Judge in para 2 of his judgment says that the evidence was very weak. The Sessions Judge acquitted the prisoner on the following grounds.

(1) The prisoner pleads not guilty withdrawing

a confession given before the Magistrate.

(2) The evidence was very weak.

(3) The prisoner was last seen near his Cousin (deceased) in the village street.

(4) It was not until 3 days after the evidence of the father and son - Prosecution witnesses Nos. 2 and 3 respectively - came out.

(5) The legs of the child which had been severed from the body were found in a bush 2 days after the child had disappeared.

(6) The Medical Officer could not state the cause of death.

(7) The prisoner first of all stated that the idea of murdering his Cousin for her ornaments suddenly came into his head when he met her in the street.

(8) He (prisoner) produced certain ornaments now in Court some 3 days afterwards from a hole in the floor of the house where he and his uncle - the Complainant live.

(9) He (prisoner) says his Confession was the result of police torture and that he did not produce the property produced in Court.

(10) The motive was insufficient.

(11) The retracted Confession has no sufficient

Confirmation to warrant its being made the basis of a Conviction.

6. These may be answered thus:—

(1). The accused did not make a confession but freely admitted his guilt on 3 different occasions, one before and two in the course of the inquiry before the Committing Magistrate.

(2). Thirteen witnesses were bound over by the Committing Magistrate but the Judge examined only 6 of them, one is an eye witness and two have seen the accused in company with the deceased not only in the village street but also outside it near the scene of offence. Besides these there are also witnesses who have seen the accused in company with the deceased and before whom the accused freely and voluntarily admitted his guilt. These should have been examined if the Judge was dissatisfied with the evidence recorded by him.

Without doing so and without giving due weight to the evidence before him, it is hardly consistent to say that the evidence is very weak.

(3). This statement is not in accordance with the evidence: the accused was last seen

by

by 3 witnesses (4th & 5th of the Sessions Court and 6th of the Committing Court) in the company of the deceased not only in the village street but also in two different places outside the village and near the scene of offence.

(4). The offence was committed on the morning of the 27th January. On the 27th & 28th nothing was heard of the missing girl. It was on the evening of the 29th that the remains of the deceased were found in a prickly pear bush near the Chitala-palem tank. On the forenoon of the 30th January the Anakapalli Sub Magistrate repaired to the scene of offence for inquiry and it was then that the 2nd and 3rd prosecution witnesses — the son and the father respectively, came forward and told the Sub Magistrate what each had seen and heard. Thus it was only four and not 8 days (as stated by the Judge) after the commission of the offence, that the evidence of the father and son was obtained.

(5). There is nothing improbable in this. The Prosecution 7th witness in the Committing Court who has not been examined by the Judge was the first man who saw the legs of the deceased girl with anklets on them in a bush and reported the matter to the Village Munsiff of Chitalapalem.

(Prosecution 6th witness of the Siphious Court) on the evening of Monday the 29th January, i.e. two days after the commission of the offence. This witness and witnesses 8, 9 & 10 and another man immediately proceeded to the place and held an inquest at once.

Besides the legs they also found the skull and several other bones of the body. The Siphious Judge ought therefore to have examined all or some of them if he had any doubt regarding the matter.

(6) When the whole body was not produced or seen how could the Medical Officer or any human being state the cause of death?

(7) This requires no comment. The prisoner might have been previously premeditating to murder the deceased girl or the idea of murdering her for her ornaments might have suddenly come into his head when he met her in the street. In either case it makes no difference when he had actually murdered her.

(8) The Judge's remark would lead any one to suppose that the ornaments taken from the deceased's body were produced by the accused three days after the discovery of the murder, but this is not the case. The jewels were produced

produced three days after the actual commission of the offence, only some hours — not even a day — after the discovery of the deceased's legs in the bush and immediately after the arrest of the prisoner. The deceased's legs were found on the evening of the 29th January and the prisoner confessing that he had perpetrated the crime produced the property on the morning of the 30th Idem.

The prisoner produced the ornaments ^{not} from a hole in the floor of the house where he and his uncle, the Complainant live, as stated by the Judge, but from a place near the wall of the Complainant's (his uncle's) verandah as borne out by the evidence of the 6th Prosecution Witness. The accused was not living in the Complainant's house but in that of the Complainant's divided brother who is the father of the accused. If the Judge had any doubt regarding this point he should have examined the other witnesses.

(9) This is the usual plea of an accused person when he wants to retract a confession already made and it is due more to the tuition of his fellow prisoners in the jail than to any police torture. The offence was committed on the

the 27th January and the remains of the murdered girl were discovered in a bush on the 29th evening. On the morning of the 30th Idem the Police Inspector arrived and in the course of his investigation the accused was suspected and arrested and he immediately confessed voluntarily to his having committed the offence for the sake of the jewels and delivered them before several people then present. The same day only an hour or two after, he made a confession before the Taluk Magistrate, Anakapalli. From this it will be seen that there was hardly any time for the police to torture before the prisoner made his confession. The accused was placed before the Taluk Magistrate on the 31st by the police and a remand was granted till the 3rd February 1894. Since then the accused made two more confessions on two different occasions, viz., on the 6th and 7th Idem during the course of the trial which commenced on the 3rd. Next as regards the denial of the accused that he had given up the property produced in Court it is observed that prosecution witnesses Nos. 8, 9 & 10 before the Committing Magistrate deposed that the accused took them, the Police Inspector and several others with him, dug out in a corner

7
of the Complainant's wall situated in the yard and produced the property. The Judge had examined only one of these witnesses — 9th prosecution witness before the Committing Magistrate. The other witnesses also should have been examined if further evidence was required. There is no reason to disbelieve this evidence and give credit to what the prisoner had stated in retracting his confession. They were quite disinterested and independent witnesses.

(10). The deceased was murdered for her ornaments, the value of which was Rs. 47, which I think is a sufficient motive for the crime. Many murders are committed for much smaller amounts. The law does not require that the motive for the crime should be proved, especially in murder cases, though any thing which proves such motive may be admitted in evidence as a relevant fact. What is wanted is the intention of causing death or knowledge that death will be caused by doing the act. Moreover the value of the property robbed cannot be a criterion to determine the motive of a culprit.

(11) There

(11) There is not only one retracted confession as observed by the Judge but there are three such confessions, one made before the prisoner was remanded and placed in police custody and two made subsequently. The Judge's remark is rather misleading. These confessions are more than sufficiently confirmed by the direct evidence of the 2^d prosecution witness who actually saw the prisoner killing the girl and the circumstantial evidence of the 1st, 3^d, 4th, 5th and 6th witnesses before the Sessions Court, besides the evidence of the majority of witnesses bowed over by the Committing Magistrate and left unexamined by the Sessions Judge.

7. Under these circumstances, I consider that the accused was improperly acquitted and should the High Court be pleased to order a new trial, I request that the case may be transferred to the Sessions Judge, Godavari.

I have the honour

Yours most obed^t servant

Mamarr
By D. J. Subudh Majistrate

Government Pleader's Office,

High Court,

No. 1026.

MADRAS, 1st November 1894.

From

E. B. POWELL, Esq.,

GOVERNMENT PLEADER,

Madras.

To

THE Chief Secretary to Government,
Fort St. George.

SIR,

In reference to the Proceedings of Government dated 4th July 1894, N^o 1680, Judicial, I have the honour to state that Criminal Appeal N^o 293 of 1894 referred to the High Court against the judgment of acquittal in S.C. N^o 6 of 1894 on the file of the Sessions Court of Vizagapatnam, was heard on the 31st ultimo and stood over for consideration till this day, when the acquittal was set aside and a retrial by the Sessions Court of Ganjam was ordered.

2. I am bound to say that both in the present case as well as in Criminal Appeal N^o 289 of 1894, referred to in my letter N^o 1014 of this date, the manner in which the cases were put before the Court showed either gross incompetence or great negligence.

3. I will merely extract a portion of the High Court's

+ Enclosure returned.

3
Sant's judgment delivered this morning for the information of Government - "The case against the Prisoner was dismissed on the grounds (1) That the evidence was weak (2) the facts improbable (3) the motive insufficient. As regards the first point we cannot but observe that the evidence if it be believed is conclusive and its weakness appears to be owing to the manner in which the case was conducted in the Sessions Court for which both the Judge and the Public Prosecutor must be held responsible. 14 witnesses were examined before the Magistrate of whom only 6 were called before the Sessions Court. With inexcusable negligence the Public Prosecutor did not even call the boy Mookiah (1st witness before Magistrate) who first found the remains of the corpse."

"The delivery of the lost jewels by the Prisoner was spoken to before the Magistrate by two Village Munsiffs and the Kurnam. This was most important evidence, yet only one of them was called and his examination in chief is contained in about ten lines of print, though he has been fully examined before the committing Magistrate. This witness was not ^{even} cross examined."

"We set aside the acquittal and direct the case to be retried by the Sessions Judge of Gaupur."

3 In Criminal appeal No. 289 of 1894 the High Court made very similar remarks and asked me if it was my duty to inform the District Magistrate of the conduct of the case before the Sessions Court. I replied in the negative, but said I would report the matter to Government.

4 I have applied for a copy of the judgment, which will be forwarded to you on receipt.

I have the honor to be,
Sir,

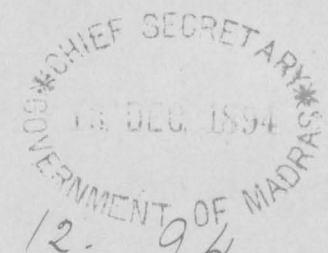
Yours most obedt. Servt.,

W. S. M. S.

Government Pleader.

CURRENT No. 6653
Jud Sept

From
THE GOVERNMENT PLEADER,
Madras.



Dated 13-12-94
Recd. 13/12/94
Regd 14/12/94
No. 1196

ENCLOSURE. 1

Forwarding a copy
of the Jud ment in
last appeal No. 289/94
on the file of the High Court.

CHN. 5877/94

Not put up
This is already in the file
10/12/94
Inferiorly J.C. 10/12/94

Order

The judgment of the
High Court in Criminal
Appeal No. 289 of 94
will be communicated
to the D.M. Vizagapatam
in continuation of
G.O. of 1840 of
5 June 1894.

To the D.M. Vizagapatam (proper)
with Encls: 2 (10)

The J.G. of Poles (pro)
17.12 I don't think this is
enough. Copy of the Govt. Pleader's
letter 1026 1-11-94 should be sent to
the D.M. whose particular attention
should be drawn to the ~~Govt~~ remarks
as to the way in which the prosecution
was conducted. The local public
prosecutor should be called on for
explanation & if he is inefficient
the D.M. should take steps to get
a better one. B.S.
9/1/95

CURRENT No. 6653
Government Pleader's Office,

High Court,

MADRAS, 13th December 1894.

No. 1196-

From

E. B. POWELL, Esq.,

GOVERNMENT PLEADER,

Madras.

To

THE Chief Secretary to Govt.
Fort St. George.

SIR,

In continuation of this office letter No 1017 of the 1st November 1894, I have the honor to forward herewith a copy of the judgment in Criminal Appeal No 289 of 1894, on the file of the High Court.

I have the honor to be,

Sir,

Yours most obed^t & serv^t,

W. Powell

Government Pleader.

Papers to be read in Proceedings:—

Again G.O., dated

18 , No.

Again G.O., dated

18 , No.

Current No. 5877

of 1894, dated 1 Novr from the Root Pleadin

Current No. 6653

of 1894, dated 13 Decr from the Root Pleadin

Order 22 Jan'y 1895 No 151

In continuation of G.O. No 1348:
Jal. of 5 June 1894 the judgment of the
High Court in Criminal appeal
No. 289 of 1894 will be communicated
to the Dist. Magr of Vizagapatnam
together with a copy of the Root
Pleadin letter no. 1026 of 1 Novr
1894. The particular attention
of the Dist Magr will be drawn to the remarks as to
the way in which the prosecution was
conducted in the two cases referred to.
The local public prosecutor should
be called on for an explanation, & if
he is inefficient the Dist. Magr
should take immediate steps to
replace him by a more competent
man.

of the Dist Magr

(from orders)

24/12/11 11 Jan. DESPATCHED

The D.M. of Vizagapatnam with info. &
The J.P. of Police (pro) of the Dist

Recd by me 21/11/11

Appeal from an acquittal

C.P.
(from orders)

Given for copying _____
Copied _____
Then examined _____
Then signed _____

189 .

READ AGAIN G.O., No.
189 ,

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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

N.B.—

A = Copy in full.
B = Not to be copied
P = Copy abstract only.
Q = Copy heading only