

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 168

DATED 25th Jan. 1895

INDEXED.

[Despatch Abstract.]

CRIMINAL APPEAL

Declining, with remarks, to present an appeal to the High Court against the judgment of acquittal passed by the Sub-Magistrate, Cannanore Town, in calendar case No. 909 of 1894.

BACK PAPERS.

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FURTHER PAPERS.

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Jud Dept.

For orders.

FROM

~~COLLECTOR~~
THE DISTRICT MAGISTRATE OF MALABAR.

TO

THE Chief Secretary
to Government
Judicial Department
Madras

Dated 14th
Despatched 15
Received 17 } January 1895.

CHIEF SECRETARY
No. 442
17 JAN 1895
GOVERNMENT OF MADRAS
Enclosure. 2

Subject.

Suggesting that the Public
Prosecutor may be instructed
to prefer an appeal against
the order of acquittal passed
by the Sub Magistrate Cannanore
Town in case 909 of 1894

To,

The Joint Magistrate of
Malabar.

Petition under section 435 C.P.C. presented by Kadala
Kela Nayanaathil Raman Nambiar of Kadambur
Desam, Muzhappilangad Amson, Chirakkal Taluk.

I complained against 1. Puthusseri Kougat
Mheuan Nambiar and 2. his younger brother Kama
Nambiar under section 552 J.P.C. in Calendar Case
No. 909 of 1884 on the file of the 2nd Class Magistrate
Jannamre Torou. A counter complaint was pre-
ferred by the 2nd accused against me and another.
Both the complaints were heard by the said Court,
and after recording evidence on the prosecution
as well as on the defence side, were dismissed under
section 245 C.P.C. on the 20th Oct. 1884. Hence the
occasion for this petition.

As the complaint lodged by me was true
and the evidence adduced was unquestionably
true, the opinion expressed by the said Court
that all that had taken place was an altercation
and not an assault was one which was based
on mere surmise and not on record and the con-
sequent dismissal of the complaint has
caused me much grievance and injustice.
It is also a matter of regret to me that the
said Court disbelieved the evidence of some of

in presence of the
the prosecution, on the alleged ground that they
were relations. That the Complaint was made
to the Amson Ashigari on the very night the assault
took place, and the marks of violence were also
shown to him, was proved by the evidence of
that officer, and the Court believed the evidence
as true. I am a younger member of the family
and as such had to obtain the consent of the Elders
to lodge a Complaint and this occasioned a
delay of about two hours. In consequence of
this delay, the Court has unjustly and without
reason expressed its opinion that the marks of
violence were self-inflicted. This is a great in-
justice. The lower Court properly held that the
evidence of the two Sub-Inspectors examined for
the defence to show that the 18th accused (Abdasi
Pettu Officer) was not present at the scene of
the offence, is not true (and that their receipts
produced by the accused were fabricated. For
this as well as for the fact that the counter
Complaint proved that at the same place
and time ^{in fact} in the Complaint there was an
assault, the dismissal of my real Complaint
is a miscarriage of justice. As the 18th accused
and his witnesses, are foot servants, and as
such, are to uphold the Cause of truth and justice.
They

they have nevertheless not only acted contrary
to the truth but has also countenanced gross
malpractices. Hence the said decision of
the lower Court is opposed to law, evidence
and justice.

Under these circumstances I humbly
request that the records of the case may be
called for, and the discretionary powers vested in
your honor under section 435 Cr.P.C. may be
exercised, and my grievances redressed.

16th November 1894.

(Signed) Raman Nambrai

(True translation.)

For a District Magistrate

Decd

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In the Court of the 2nd Class Magistrate of Lannauetown.
Calendar Case No. 909 of 1896.
Dated 20th October 1896.

Present — M. D. by H. Gopala Menon.
2nd Class Magistrate.

Complainant - Kadala Kalshi Kaganadathil Thama
Kambiyar.

Dependants — Puthisherry Kongat Ouduman Nambari,
2. Brother Kannaan Nambari.

Prosecution Witnesses - 1. Hunkan Nambiar
2. Karuvan
3. Father Nambiar.

Defence witnesses — 1. Sundron Dyer.
2. Shrinivas Kama Kuy.

Offence and Law - Assault under Section 352 I.P.C.

Finding of the Magistrate - Not guilty.

Sentence or order. — The accused persons are
acquitted under Section 245 T.P.C.

Fridgman Club

This is a complaint of Assault presented
by one Kethalakel Koyantathil Raman
Nambiyar against 1. Puthisseri Kongath Othuman

Encl: Vol. 1 to the Malabar
Dist: Master's letter 6/10/06
dated 14th Jan. 98 2nd 44 m
A

a Salt Petty Officer and 2. his brother Thannan.
There is also a Counter-Complaint by the 2nd Accused
against the Complainant and another one Raman
Nambiar.

2. The facts, as stated in the petition of
Complainant are that on the evening of the 6th
September last at 6 P.M. the accused persons assaulted
Complainant at a field, the 1st Accused struck
him with a rattan, because he (Complainant)
insulted the sister of the accused persons by sending
her away from his house where she had been in
reference to a Ceremony. The Complainant had a
treatment of a blow with a rattan, and I have noted
it on the back of the Complainant.

3. The Counter-Complaint by the 2nd Accused
is that he was assaulted by the Complainant
and another, about the same time at the field
and forcibly rescued Complainant's cattle which
he was taking to the pound.

4. Complainant Raman Nambiar
deposed that at about 6 P.M. he was returning
home along the paddy field below the house of
the accused persons, 1st Accused was gathering
paddy scattered on the bank of the field, with
a rattan, the 1st Accused went to him, called him
"dog's son" "you insulted my sister when she came

to your house" and struck him one blow with a
rattan, the 2nd Accused who was cutting grass
came running and struck him on his back
with his hand, that witness Kunlan Nambiar
came and seized 2nd Accused and took him
away, that he and the 1st Accused struggled
for the rattan, Kunlan Nambiar asked him
to leave the rattan, he left the rattan, 2nd witness
Karnwan was working in the field, that he return-
ed home and informed his uncle about this
and also went to the Adhigari and showed
marks, that there was a Ceremony in his house,
accused persons' sister went to his house, caste-
people refused to associate with the sister, and
that he asked her to go to another room. In
Cross Examination the witness added that it is
half a mile from his house to the place of
quarrel, and that the place of quarrel can-
not be seen from the house of the accused persons.

5. Complainant's 1st witness Kunlan Nain-
bhar deposed he had been to the accused's
paramba to pluck Cocoanuts, on his returning
at 6 P.M. from the paramba, the 1st and 2nd
accused persons were in the field just below,
Complainant was coming from the South

to the North when Complainant heard the accused persons, 1st Accused saying, "What dog's son, you insulted my sister." Struck the Complainant on his left shoulder with a rattan, the 2nd Accused who was cutting grass came running and struck Complainant on his back with his hand, that he went soon and separated the 2nd Accused from the Complainant, that the Complainant and the 1st Accused struggled for the rattan and that the former left the rattan at his (witness) request. In cross examination the witness added that he was the husband of the Complainant's sister, and has children by her, that he has divorced her, that Raman Nambiar, 2nd Accused in the Counter Case is his relation and that the place of quarrel can be seen from the house of the accused persons.

6. Complainant's 2nd witness Karmwan deposed that on the evening in question he was working in his field, he saw 1st Accused striking Complainant one blow on the shoulder with a rattan. 1st witness came running from the paramba, 2nd Accused who was cutting grass came soon and struck Complainant on his back with the hand, that Complainant caught hold of the 1st Accused's rattan and that the 1st witness separated the 1st Accused and the Complainant.

7. Complainant's 3rd witness Rathan Nambiar - as the Adhigari of the Muzhapilangad Cushtu deposed that at noon on the 6th September, the accused went to his house, that he, and 1st Accused went to the Complainant's house that the 1st Accused complained to him that his sister was not admitted by the Caste-profile assembled at the Complainant's house, for a ceremony that morning that he went to enquire into the matter at the request of the 1st Accused, he found the Complainant to be true and went away, that on the following morning he met the 1st and 2nd Accused persons in the field and that the 2nd Accused did not complain to him of the Complainant's bull getting into his crop. The witness, also deposed that on the night of the 6th September Complainant did not go to him at 10 Maligas after dark and complained that the accused persons struck him, and the 1st Accused with a cane, that he examined the Complainant and found a rattan mark on his back.

8. 1st Accused Othenan Nambiar denied the charge and stated that the 2nd Accused is his brother and that this is a return complaint to the one presented by his brother, including himself also.

9. 2nd Accused Raman Nambiar denied having assaulted the Complainant,

and Contended that this was a counter-complaint to his and that his evidence was the one adduced in support of his complaint.

10. 1st Accused's witnesses are two Sub-Inspectors of the Salt Department. 1. Sundara Dyer of Kaliashani Range, and 2. Srinivas Kamathi of Cherukunnu Range. The 1st accused has filed his note-book containing two witnesses' entries made by the Sub-Inspectors acknowledging receipt of pay from him on the 6th September, 1st witness Sundara Dyer deposed that the receipt entered by him ^{in the book} was written by him on the 6th September, that the 1st accused took his pay to him at 8.30 P.M. on the 6th September, he received it and wrote out the receipt in the note-book and that the 1st accused left him at half past four that day, and that from Kaliashani (his place) to Muzhapilangad is to the house of the 1st accused is 18 miles. 2nd witness deposed that the 1st accused is a petty officer under him, that the entry of receipt of pay from him was written by him, that at 7 P.M. on the 6th September he received the pay, that on the 6th September he sent the 1st accused to Tellicherry to get the pay for Angkor, and that from his (witness's) house in Cherukunnu to Muzhapilangad Anson Fitcherry it is about 20 miles.

11. The 2nd Accused's evidence is the one recorded

recorded in the counter case is in support of his complaint.

12. Complainant's 1st witness is an interested party being a relation. Complainant says the place of quarrel cannot be seen from the house of the accused persons, just opposed to the evidence of his 1st witness. 1st witness says he separated the 2nd accused from the complainant whereas the 2nd witness says that the 1st witness separated 1st accused and the complainant. I don't lay much stress upon these trifling discrepancies. I give full credit to the evidence of the Adhigari whom I thoroughly believe. The offence occurred at 5 P.M. and the complainant went to the Adhigari at Maligas after dark. The Adhigari lives very close. This is very satisfactory and I am inclined to infer that the mark of blow ^{with a rattan} was made by the complainant himself. No doubt the parties had a verbal altercation, on account of the non-admission into the Society of the accused persons' sister. Of course they know if they come to Court with mere verbal altercation they won't meet with success and so one party made up a case of forcibly seizing cattle and the other a blow with a rattan.

There is not the slightest doubt that the 1st accused

mere altercation

Accused the petty officer was there on the evening of the 6th September. The Adhigari has no reason to say so if it was not a fact. The Adhigari also saw him on the morning of the 7th. I don't know how the Sub-Inspectors came to make such entries on the 6th September in the accused's notebook, but I am not going to comment upon it further. Since the Complainant's case against him is very weak.

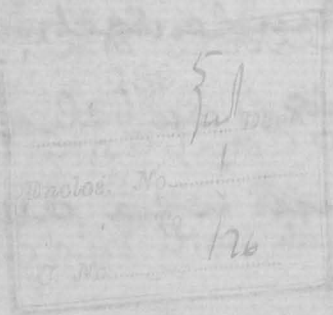
13. I acquit the accused persons under Section 245 of the Criminal Procedure Code.

(Signed) K. Gopala Menon
2nd Class Magistrate

(True Copy)

For Ag District Magistrate

Decd
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Encd 2 to the Malabar Dist. Magistrate's letter of 14th January 1895 No 44 in -

MALABAR District Magistrate's Office,
Calicut, 14th January 1895.

No.

44-76
96-98
FROM

H. Moberly Esquire
Ag District Magistrate,
MALABAR.

To

The Chief Secretary to Government
Judicial Department
Chidambaram.

SIR

I have the honor to report under section 417 C.P.C. the following case for the orders of Government. In Calendar Case No. 909 of 1894 on the file of the 2nd Class Magistrate, Cannanore Town, K. K. Ramani Nambiar complained that two persons abused him and beat him with a rattan, on the alleged ground that he insulted the accused's sister at a social gathering in his house. Three witnesses including the Adhigari were examined on behalf of the prosecution and the accused were put on their defence for an offence under section 352 C.P.C. Two witnesses were examined on behalf of the defence and the accused were acquitted under section 245 C.P.C.

2- The Sub-Magistrate refused to give

any credence to the defence witnesses, & the accused has been finally charged. There would then be a clear case for appeal if the Magistrate acquitted after hearing defence witnesses who he disbelieved 2/15/1

accused the petty officer was there on the evening of the 6th September. The Adhigari has no reason to say so if it was not a fact. The Adhigari also saw him on the morning of the 7th. I don't know how the Sub-Inspectors came to make such entries on the 6th September in the accused's notebook, but I am not going to comment upon it further. Since the complainant's case against him is very weak.

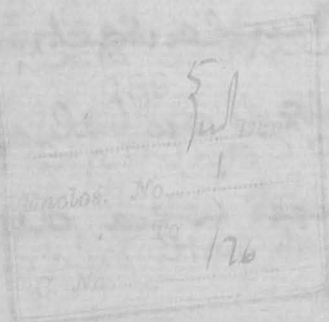
13. I acquit the accused persons under Section 245 of the Criminal Procedure Code.

(Signed) K. Gopala Menon
2nd Class Magistrate

(True Copy)

For Ag District Magistrate

Dist
chr



Encd 2 to the Malabar Dist.
Magistrate's letter of 14th
January 1895 2044 m

176
MALABAR District Magistrate's Office,
Calicut, 14th January 1895.

No. 44-7
FROM 96-7A

H. Moberly Esquire
Ag District Magistrate,
MALABAR.

To

The Chief Secretary to Government
Judicial Department
Madras.

SIR

I have the honor to report under Section 417 C.P.C. the following case for the orders of Government. In Calendar Case No. 909 of 1894 on the file of the 2nd Class Magistrate, Cannanore Town, K. K. Ramani Nambiar complained that two persons abused him and beat him with a rattan, on the alleged ground that he insulted the accused's sister at a social gathering in his house. Three witnesses including the Adhigari were examined on behalf of the prosecution and the accused were put on their defence for an offence under Section 352 I.P.C. Two witnesses were examined on behalf of the defence and the accused were acquitted under Section 245 C.P.C.

2- The Sub-Magistrate refused to give

any credence to the defence witnesses, yet he acquitted the accused. The accused has finally charged: there would then be a clear case for appeal if the accused is acquitted after hearing defence witnesses who he disbelieved 2/15/1

No. 176

From the Dist. Mag. of Malabar.

Dated 14 January 1895.

FOR ORDERS.

The case is of such a petty description & the evidence is ^{so} conflicting that it is very doubtful if the High Court would interfere.

2. The complainant's first witness married but divorced his sister & is also related to the 2nd accused. The presumption would therefore be that his bias was in favour of the 2nd accused rather than the complainant. The complainant & the witness differ as to the place at which the offence is alleged to have taken place; the second witness apparently contradicts the first as to the part played by the 1st witness. The prosecution case is ^{thus} not very free from discrepancies. The 3rd witness - i.e. the Adhigari on whose story the magistrate relies - does not so far as appears from the judgment necessarily contradict the defence witnesses. The Adhigari says that the accused were with him at noon on the 6th September & that he again saw them the following morning. Now the defence witnesses describe the first accused as having been with them at 3.30 pm. 4.30 & 7 pm. on the 6th September at a distance

be acquitted the accused. I have the honor to suggest that the Public Prosecutor may be instructed to prefer an appeal against the Sub-Magistrate's Judgment. The offence if any committed by the accused was lurch (I.P.C Section 355) ^{and not assault (I.P.C Section 352)} and the Sub-Magistrates in this District are too fond of trying, as numerous cases, offences which are really warrent cases.

3. The Complainant has filed a revision petition, a translation of which, as also copy of judgment in the case, are submitted.

I have the honor to be,

Sir,

Your most obedient servant

W. S. S. S.

Actg District Magistrate

Dist.
Mag.

of 18 to 20 miles from the scene of the assault. It is possible that the Adhikanis enquiry which began at noon was over by 12.30 pm. which would leave the accused three hours in which to do 18 miles - an easy task in a paluka which it is possible was allotted to him as he was taking pay to his superior officers. -

3. This by no means improbable that the case is a true one but the contradiction between the defence & prosecution is sufficiently strong to make it inadvisable to appeal in what is a purely private quarrel.

4. As regards the Magistrate's conduct in treating a case of hurt (20C. 5323) as one of assault (20C. 5352), the Dist. Mag. can persuade him to warn him that similar irregularities in procedure in the future will entail deprivation of his magisterial powers.

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It is a matter for surprise that the C. In. should make such a reference in so trifling a matter - In is not, I submit, a case for appeal -

2/1/1911

Order 25-1-1911 No 168

The Govt. is not prepared to present an appeal against the judgment of a Magistrate. It is constrained to express surprise that the Dist. Mag. should have thought it necessary to make an reference to Govt. in so trifling a matter. In the order dated 29/1/1911

Appeal against an acquittal

H. M.

(For orders)

When given for copying _____
When copied _____
When examined _____
When signed _____

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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. -

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