Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1864

Dated 5th Sept: 1895

INDEXED.

[Despatch Abstract.]

SENTENCE OF DEATH.

Declining to interfere on behalf of convict Gowdhanarasu Gopal Sing under-----in criminal appeal No. 307 of 1895 on the file of the High Court, and forwarding to that Court, for such action as may be deemed necessary, the demi-official letter from Mr. Mackenzie, who tried the case in the Sessions Court, to the prisoner's counsel Mr. J.G.Smith, Barrister-at-Law.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	4428.		1895				

FOR COPIES ONLY



In the High Court of Judicature at Madras.
Friday, the eighteenth day of August,
One thousand eight hundred and ninety five.
Present:—
The Honorable Mr Justice Shephard
and
The Honorable Mr Justice Best.
Criminal Appeal No 207 of 1895.
The Public Prosecutor ——— Appellant
Gowdhanagiri Gopalaswig ——— Prisoner

Appeal under Section 417 of the Code of Criminal Procedure against the judgment of acquittal passed on the accused in Calendar Case 204 of 1895 by the Sessions Judge of the Godavari Division.

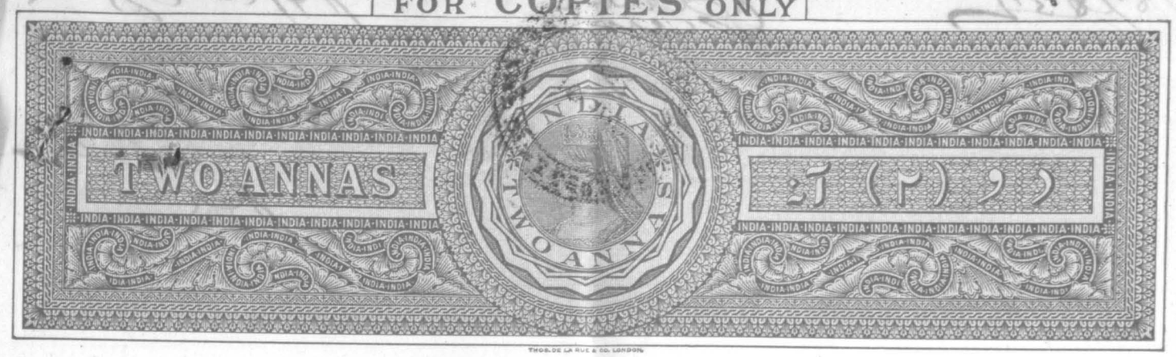
This Appeal coming on for hearing yesterday and today, the Court delivered the following

Judgment:— The Sessions Judge discredits the evidence of the eye witnesses on two grounds. He considers that their evidence is contradicted by the medical evidence which goes to show that the deceased Narasimhulu was shot in the back. The witnesses say that before the Prisoner fired he cried out "Lo" that then Narasimhulu looked up and stopped and the Prisoner came

156 14 Aug.

9822 Secy 4/28/85

FOR COPIES ONLY



came down from the pail and fired. They do not say that he turned round to see the Prisoner, still less that he continued facing him after the warning and until the shot was fired.

It is most probable that the deceased would have stood with his face to the man who was threatening to shoot him. We observe that the witnesses are not asked particularly about the position or attitude of the deceased.

In our opinion the judge was wrong in holding that the witnesses must be disbelieved on account of any contradictions between their story and the Medical evidence.

Then the Sessions judge refers to the opinion of the Magistrate and he refers to what is said to have taken place before the Magistrate about the Prisoner putting blood on his forehead. The depositions of the witnesses taken before the Magistrate were not put in evidence and ought not to have been alluded to by the Sessions judge. We have however looked at these depositions and do not find that they bear out the observation of the judge. Still less ought the Sessions judge to refer to the opinion

190 2nd sheet.

9832

14/8/85

FOR COPIES ONLY

INDIA TWO ANNAS

THOS. DE LA RUE & CO. LONDON

opinion of the Magistrate as to the credibility of the witnesses and make it a ground for his own opinion on those witnesses.

We must say that we can see no reason for discrediting the eye witnesses.

Their evidence is strongly corroborated by the other evidence, especially that of the Sub Magte. It is impossible that the Sub Magistrate can have made any mistake as to the exclamations and conduct of the Prisoner. There is moreover the evidence of the Inspector on that point. The Sessions Judge does not allude to the foul state of the gun belonging to the Prisoner. This is a strong point against the Prisoner, and in no way explained except by the statement of the accused that some constable put powder into it and fired it. No attempt is made to prove this. Nor does the Sessions Judge allude to the words spoken by the deceased when examined by the Magistrate. The point, although not carrying much weight, certainly deserves to be noted.

The Sessions Judge apparently adopts the suggestion that the shot was accidentally

 3rd ~~page~~ sheet — fired

8618 Principal 3-8-85

[illegible]

Copy of Judgment in Crl Appeal No 307 of 95

Mr. J. G. Smith

FOR COPIES ONLY

TWO ANNAS

INDIA TWO ANNAS

THOS. DE LA RUE & CO. LONDON

fired by the Constable Balaji. This suggestion appears to have been made for the first time in the Sessions Court. There is no evidence whatever in support of it.

We see no reason to doubt the guilt of the Prisoner. There is no ground for supposing that the Sub Magistrate and the Inspector are deliberately perjuring themselves and otherwise their evidence is consistent with no other theory than that of the Prisoner's guilt.

We must set aside the acquittal and convict the Prisoner of Murder. Considering the nature of the attack we have no alternative but to pass the sentence of death.

By the Court.

(Sd/) C. G. Todhunter
Deputy Registrar,
Appellate side

113

(True Copy)

S. Ramaswami Aiyangar
A/Superintendent.

4th flat sheet

Copied by
[illegible]

Exd. T. T. Tiruvenkatachari

[illegible]

3827 Godavary 1918/95

STAMP DEPT. CERT. COPY ... MADRAS

A. Cumming

Judgment

Crl. Appl 307/95

5 Jul 2 Dept.

O. No. 4027

HIGH COURT, APPELLATE SIDE.

O. D. No. 2004/95

Application made	20	189
Stamp papers called for	20	189
Do. deposited	20	1895
Copy ready	21 Aug	189
Do. delivered	21	189

SUPERINTENDENT.

FOR COPIES ONLY

INDIA TWO ANNAS

THOS. DE LA RUE & CO. LONDON.

Memorandum of Criminal Appeal
In the Sessions Court of Godavari Division
S C No 4 of 1895
In the High Court of Judicature at Madras.
(Appeal against acquittal)
Criminal Appeal No 307 of 1895

Queen Empress ______________ Appellant

Goudhanaasa Gopalasing ______________ accused

The Government Pleader on behalf of the appellant abovenamed begs to present the (this) Memorandum of Criminal appeal to this Honourable Court against the judgment of acquittal in Godavari Sessions Case No 4 of 1895 dated 9th February 1895 and prays that this Honourable Court will be pleased to convict the accused or order a retrial for the following among other grounds:—

I The Sessions Judge is not correct in saying that the evidence of the three eye witnesses is contradicted by that of the Medical man. There was no adequate reason for disbelieving this evidence.

II No question was asked either in cross examination or by the Court to ascertain in which direction the deceased was facing when the shot was fired.

III That evidence does not however stand alone; it is corroborated by the important circumstance that is that the

179

9320 Subrigen 9. 18620

N Saravanan
Sree

FOR COPIES ONLY

INDIA TWO ANNAS

TWO ANNAS

the Prisoner was at once named as the murderer to the Sub Magistrate and Inspector of Police. It is further corroborated by the accused's own statement in the presence of the Magistrate and the Inspector that he had killed Narasimhulu and accomplished his vow.

IV There is further evidence of the Magistrate that the barrel of accused's gun showed that it had been recently fired. (barrel of the gun - not easily cleaned ...)

V Finally there is the deceased's dying declaration naming the accused as his murderer.

VI The Sessions judge is in error in saying the ~~motive~~ (motive, VII) is not clear. The deceased himself has assigned a motive.

VIII There is absolutely nothing to support the Sessions judge's view that it was an accident

(Sd) E B Powell
Govt. Pleader

Madras
15/7/95

(True Copy)

126

2nd & last sheet

...swami Ayyangar
Ag. Supdt

Copied by
[illegible]

Exd T.T. Tirumenkatachari

9819

[illegible signature]

18[illegible]

[illegible signature]

Crl appl 307/95

Granted

HIGH COURT, APPELLATE SIDE.

C. D. No. 1868/95

Application made 8 - 8 - 1895

Stamp papers called for 9 - 8 - 1895

Do. deposited 9 - 8 - 1895

Copy ready 10 - 8 - 1895

Do. delivered 10 - 8 - 1895

SUPERINTENDENT.

5

Tul

3

4027

INDEX.

IN THE COURT OF SESSIONS GODAVARI DIVISION.

Session Case No. 4 of 1895.

Serial number.	Description of the paper.	Page.
1	The charge	1
2	The plea of the accused Gowdhanassu Gopalasing ...	ib.
3	*Record of oral evidence for prosecution.*	
	1. Ramana Subbarayudu	2
	2. Kudupudi Nagulu	3
	3. Karri Peri Setti	5
	4. Pulusu Jaggayya	6
	5. Moturi Venkamma	8
	6. Vadrevu Kamarazu [Committing Magistrate].	9
	7. Tadanki Venkata Subbarao [Police Inspector].	11
	8. Ginedi Tammayya [Hospital Assistant] ...	12
	9. Suudara Bai	13
	10. Bondili Balaji	ib.
	11. Kissin Sing	14
4	Examination of accused	15
5	*Record of oral evidence for defence.*	
6	Notes of evidence [if any]	
7	Exhibits:—	
	[*a*]. Documents used in evidence.	
	A. Plan prepared by the Committing Magistrate (not printed).	

Cr. A. 307

Serial number.	Description of the paper.	Page.
	B. Statements of the accused	16
	[b]. Material objects produced in evidence ...	
8	Charge to Jury, or Assesors	Vide printed Judgment.
9	Opinion of Assessors or verdict of Jury	
	Finding and Sentence.	
10	Judgment (with 10 printed copies)	
11	Miscellaneous proceedings connected with the case.	
12	Processes.	
13	Other miscellaneous papers [if any]	

IN THE COURT OF SESSIONS, GODAVARIRI.

AT RAGAMUNDRY.

Register Case No. 1 *of* 1895.

Session Case No. 4 *of* 1895.

Versus

The Queen and Empress of India. Prisoner Gowdhanassu Gopalasing.

Charge.

That you Gowdhanassu Gopalasing on or about the 15th day of January 1895 at Amalapur in Amalapur Taluq, committed murder by causing the death of Moturi Narasimham by shooting him with a gun and that you have thereby committed an offence punishable under Section 302 of the Indian Penal Code and within the cognizance of the Court of Sessions.

RAJAHMUNDRY. } G. T. MACKENZIE,
8th February 1885. } *Ag. Sessions Judge.*

Session Case No. 4 *of* 1895.

PRESENT :—G. T. MACKENZIE ESQUIRE,
Ag. Sessions Judge.

Regina *versus* Gowdhanassu Gopalasing.

On the charge being read over and explained to the prisoner, he pleads not guilty. The Public Prosecutor Mr. N. V. Somayajulu, appears for the Crown. The prisoner is defended by Mr. E. C. C Ward.

Assessors.

1. Nalam Kamarazu (Komati).
2. Bondada Gangayya (Komati).

G. T. MACKENZIE,
8—2—95. *Ag. Sessions Judge.*

F. M. M, Crl. A. 307—1

IN THE COURT OF SESSION GODAVARI, AT RAJAHMUNDRY.

Session Case No. 4 of 1895.

1st Witness for Prosecution.

Name	...	...	Ramana Subbarayudu.
Father's name	...	...	Venkatasami.
Village	...	...	Amalapur.
Caste	...	...	Kapu.
Age	...	...	18.
Occupation	...	...	Tobacco seller.

Being solemnly affirmed states.

I remember the day on which Moturi Narasimulu died. It was between 7 and 8 A. M. I was washing my teeth at the fresh water well which is opposite to Narasimhulu's house or nearly opposite. Bondili Gopalsing and his brother Kisini Sing were seated on their pial. Motur Narasimulu was passing along the road towards the bazaar, passed the house of Gopalsing. Gopalsing got off the pial and said "stop! stop! where are you going ?" So saying he went into his house and returned with a gun. He did go indoors. As soon as he got down from the pial he fired. I did not see where he got the gun but as soon as he said "stop! stop! he fire ! the gun at Narasimulu who fell down. The accused then threw the gun in his house and returned with a sword. Then I was afraid and ran away to the bazaar.

There was enmity between deceased and accused because Narasimulu enticed away the wife of Gopalsing. Narasimulu was under remand for three days and was discharged on that very day. I told these facts to the Head Constable. He took a statement from me.

Kissen Sing was seated on the pial beside Gopalsing.

Accused is a Taluq peon. This is the gun and the sword.

Cross-examined.—Accused lives in a palmyra roof hut. The eaves of the palmyra roof hung over the pial. There are three cocoanut trees in front of the house and three on the other side. The house of deceased is in the same row. Before the Magistrate I said that I could not see who were on the pial of Narasimulu's because of the eaves. The eaves of Narasimulu's house overhang more because he has Chunam on his pial.

F. M, M.

When Gopalsing fired the gun, I could see his whole body. He put the gun to his shoulder. He was standing on the east step of his door way. That last step would be on about the level of the road. When Gopalsing levelled the gun, deceased stood still. Deceased did not speak. I do not know Constable Balaji.

When the gun was fired, I did not see any one run out of the house into the street. I did not see a Constable in uniform come out of the house. There were in the street Kulusu Jaggayya, Kaviri Peri Setti and Kudupala Nagulu. He was carrying milk. When the shot was fired, Nagulu had passed me four or five yards and Jaggayya, and Peri Setti were under a tree in front of the Moturi house. I think they came up to the wounded man in front of the house of accused. Accused came out into the street with the sword and walked to and fro. He went to where Narasimulu lay. I saw no more for I ran away, I did not go up to Narasimmalu.

Re-examination.—Jagayya and Peri Setti were sitting under the tree before the gun was fired. I did not see where they exactly were when the gun was fired. There was a mango tree in front of the house of accused and near that the deceased fell. That tree was tene or fifteen yards from the house of accused.

Taken by me.

8—2—95. G. T. MACKENZIE,
Ag. Sessions Judge.

IN THE COURT OF SESSION, GODAVARI AT RAJAHMUNDRY.

Session Case No. 4 of 1895

2nd Witness for the Prosecution.

Name	...	...	Kudupudi Nagulu.
Father's name	...	...	Narasimulu.
Village	...	...	Amalapur.
Caste	...	...	Toddy drawer.
Age	...	...	35.
Occupation	...	...	Schoolpeon.

Being solemnly affirmed states.

I remember the day on which Motur Narasimhulu died. That morning I was carrying milk from the field to the Head Master's house. I was passing the house of Narasimulu and accused. I went

F. M. M.

as far as the well. I saw Narasimulu seated on his pial when I was coming. I heard a shot from a gun behind me. turned and looked. I saw Narasimulu fall down and accused go indoors with a gun. Then accused came out of doors without the gun and with a sword. He was using abusive language. With the sword he went to the house of Bangarayya on the west. He kicked at Bangarayya's door. Then he returned to his own house and on the way I met him near the cocoanut tree. He held me by my shoulder and gazed at me. He said. " Is it you ? Go away !" Then I went away. I returned an hour afterwards. Accused was walking up and down with the sword in his hand in his yard. He said " That man died and I marked my forehead with blood," I was present at the inquest. The Head Constable took a statement from me. I stated these facts. The inquest was held about 9 A. M.

Cross examined.—When I went the second time, many people had assembled at the house of accused. People were crying out "Gopal sing fired the shot."

When I went back after an hour's interval, I stood in the yard of Chinnam Razu. I heard from there the words of Gopalsing. I was taking the milk to the house of Jangam Barayya.

There are palmyra eaves over the pial of the accused's house. There are cocoanut trees between the road and the house of accused. I was near the well. I had not reached the turn of the road. I saw accused in the doorway going into the house with the gun. I saw his back and the gun in his hand. I stayed there until the accused returned with the sword. I did not go up to Narasimulu after he fell. I do not know Constable Balaji. I did not see any one come out of the house of accused after the gun was fired. I did not see a Constable in uniform coming out of accused's house with the gun after the shot was fired. I saw Narasimulu falling.

After the gun was fired, I saw Moturi, Venkamma. I saw her coming out crying.

Re-examined.—The yard of Chinnam Razu is separated only by a hedge from the yard of accused. After the gun was fired, I turned and saw accused under the eaves of his house at the foot of the steps. It was accused whom I saw.

Taken by me.

8—2—95.

G. T. MACKENZIE,
Ag. Sessions Judge.

F, M, M.

IN THE COURT OF SESSION GODAVARI AT RAJAHMUNDRY.

Session Case No. 4 of 1895.

3rd Witness for the Prosecution.

Name	...	...	Karri Peri Setti.
Father's name		...	Ramasami.
Village	...	...	Amalapur.
Caste	...	...	Kapu.
Age	...	...	40.
Occupation	...	...	Cultivation.

Bing solemenly affirmed states :—

I remember the day on which Motur Narasimulu died. I was washing my teeth near Narasimulu's pial along with Jaggayya at a tree by the roadside. Narasimulu rose and passed along the street. Gopal sing and his brother Kissinsing were seated on their pial. When Narasimalu approached them, Gopalsing said "Stop ! Stop ! where are you going? " Then Narasimulu looked up and saw him. Then Gopalsing standing on the last step, fired a gun at Narasimulu. Then Narasimulu staggered about, and fell down near the mango tree. Then Narasimulu's mother called out "my son ! my son ! ". Then I and Palsu Jaggayya went up to Narasimulu to lift him up. The accused then came out of his house with a sword and was springing with his sword in hand. Seeing him we were afraid and ran away. He was saying " There are still two people whom I have to cut off." I was present at the inquest. A statement was taken from me and I stated these facts.

Cross-examined :—When we heard the gun fired, we were not under the eaves of Narasimulu's house. The eaves of Narasamulu's house come down near the pial. The eaves of accused's house do not come so low but are over the pial. A man passing under the eaves need not bend his head. There are cocoanut trees between the house and the road. There are six cocoanut trees. The house of Venkatasami is between the house of accused and deceased. These houses are in a line. There is one cocoanut tree in front of Venkatasami's house—on the western pial of his house a wall.

F. M, M.

When accused fired the gun I could see from his waist upwards. There are two cocoanut trees in front of Narasimulu's house. I looked between the trees and the house and saw him. The wall on the pial of Venkatasami does not prevent us from seeing. He put the gun to his shoulder. When accused aimed the gun at Narasimhulu, Narasimhulu stood still and said nothing. No one came out of the house of the accused in the time when accused was putting away the gun and getting the sword. I saw no Constable coming out of the house. If he had come I must have seen him, When I ran away, Narasimulu was lying near the mango tree. His mother did not run away when we ran away. Her name is Moturi Venkama.

Re-examined :—There was very little time between the firing of the gun and accused returning with the sword. Then we ran away. I must have seen any Constable if he had come before I ran away.

Taken by me.

G. T. MACKENZIE,
Ag. Session Judge,

8—2—95.

IN THE COURT OF SESSION, GODAVARI AT RAJAHMUNDRY.

Session Case No. 4 of 1895.

4th Witness for the Prosecution.

Name	...	...	Pulusu Jaggayya.
Father's name	...	...	Reddi.
Village	...	...	Amalapur.
Caste	...	...	Kapu.
Age	...	...	30.
Occupation	...	...	Cultivation

Being solemnly affirmed, states,—

I remember the day of Narasimulu's death. That morning I was washing my teeth by the roadside near Narasimulu's house. He rose and went along the road towards the house of accused. When he came to the house of accused, the accused said "stop". Then Narasimulu looked up and saw him. Then accused stepped down from his pial, aimed his gun and fired at him. Then Narasimulu staggered about holding his stomach and fell near a mango tree. The accused took the gun indoors and returned with a sword. Narasimulu's

F, M. M.

mother and we went up to Narasimhulu, but being afraid that accused would cut us with the sword, we ran away.

There was enmity between Narasimhulu and accused because Narasimalu had enticed away the wife of accused at the inquest. I was examined and stated these facts. I also was charged by the accused with abetting the enticing away of his wife.

Cross-examined.—That charge was made about two months ago. It was dismissed. I do not know if it was compromised. I was seated under a cocoanut tree by the roadside, on the side of the tree nearest the road. Peri. Setti was sitting with me in a line with me. There are cocoanut trees before the house of accused, Vencatasami and deceased. Perhaps there is a wall on the western side of Vencatasami's pial. I could see the whole body of accused. He put the gun to his shoulder. Narasimulu stood still when the gun was aimed. He said nothing. I saw no one else there except Kissen Sing, the brother of accused. I saw nobody coming out of the house of accused. I saw no Constable in uniform come out of the house carrying a gun. I went to Narasimulu after he fell. Before the Magistrate I said that we went up while he was staggering and that his mother made him lie down. The mother made him lie down in front of Narasimulu's house. I hear read the deposition I gave before the Committing Magistrate. I gave that deposition.

Re-examined.—

When I said that he was staggering about, that was when I saw him from where I stood. The mother made him lie down after I saw him fall down. After the mother made him lie down, I did not stay there. There was nothing to hinder my seeing the accused.

Taken by me

G. T. MACKENZIE,
Ag. Sessions Judge.

8—2—95.

F. M. M.

IN THE COURT OF SESSION GODAVARI, AT RAJAHMUNDRI.

Session Case No. 4 of 1895.

5th Witness for the Prosecution.

Name.	...	...	Moturi Venkamma.
Father's name	...	...	Paddaya.
Village.	...	...	Amalapur.
Caste.	...	...	Telaga.
Age.	...	...	40.
Occupation.	...	...	Widow.

Being solemnly affirmed states:—Moturi Narasumhulu was my son. I remember the day on which he died. On Tuesday morning my son after washing his teeth went to his father in-law's house for his morning meal. He went to his father-in-law's house for the Pongal feast and was still living in that house. I was standing inside the door way. I heard a shot from a gun. I went down the steps and I saw my son staggering and cried out for help; saying "my son is staggering!" Then he fell down near a mango tree. Kulusu Jaggayya and Kari Perisetti came up as soon as I called for help. I saw these men rise from where they were sitting, but I did not see them come. I and two other women lifted up my son and laid him on a cot. While he was lying on the cot in the road accused came up with a sword and said "you whore's son, are you still alive?" So saying he took blood with his finger and marked it on his own forehead. There was enmity between deceased and accused because my son enticed away his wife. The Head Constable examined me at Amalapur. I stated these facts to him that very day. My son was taken to the Hospital. He died in the Hospital.

Cross-examined:—I know my son enticed away his wife. I saw him do it. It was two months ago. I did not see the shot fired. Before the Magistrate I said that my son died from the shot fired by accused because that was my belief because accused marked his forehead with the blood. Several persons were present when he marked his forehead with the blood. Jaggayya and others had run away when they saw the sword. I did not take notice of any body after the shot was fired. I told the Police that I did not see the shot fired but I saw my son staggering. I did not see a Constable coming out of the house. I did not see whence came accused with the sword.

Taken by me.

G. T. MACKENZIE,
Ag. Sessions Judge.

8—2—95.

F. M. M,

IN THE COURT OF SESSION GODAVARI AT RAJAHMUNDRY.

Session Case No. 4 of 1895.

6th Witness for the Prosecution.

Name	...	...	Vadrevu Kamarazu.
Father's name	...	...	Baperazu.
Village	...	...	Amalapuram.
Caste	...	...	Brahmin.
Age	...	...	43.
Occupation	...	...	Stationary Sub-Magistrate.

Being solemnly affirmed states.

I committed this case for trial. I remember the day on which Narsimulu died. A Constable told me that a Taluq peon had killed Moturi Narasimulu and was walking to and fro with a sword in his hand and he asked me to come to the spot. I do not remember if he told me the name of the peon. Without asking any questions. I went at once. I first went to the house of the Taluq peon On the way I heard that his name was Gopal Sing. There was a crowd there with Constables with muskets and swords. I was told that Gopalsing was in his yard. I saw him in his yard walking up and down with a sword in his hand. Then I endeavoured to get him arrested. None of the Constables or the people who were there would dare to approach him. Afterwards the accused went indoors and brought out a gun which he threw over the hedge. He gave up also a bullet some small shot, tin of caps and a powder flask. These are they before the Court. From there the accused went into the street, still carrying his sword. There are two mango trees in the street. Treading the place he exclaimed that here he shot Moturi Narasimulu [Mr. Ward objects I. L. R 9 Madras 224]. Then he ran to Narasimalu's house and pointed out that this was Narsimulu's house. Then he went to the door of the house that is between his house and Narasimulu's house, and kicked at the door and said something to the effect that a woman in that house had driven him to do this.

Then he came up to me with the sword in his hand and said that no one was to arrest him because he himself would surrender. So saying he went back to his house and entered his yard. He sat on a chair with the sword in his hand. After some time the Police Inspector came. He said that he would arrest the accused. He spoke soothingly to the accused standing on the outside of the fence and the accused put down his sword. Then the Inspector entered the yard and arrested him.

F. M. M,

As soon as accused gave up his gun I told a Constable to examine the barrel and it was foul with recent firing. When accused was walking up and down the yard with his sword, his brother's wife gave him grains of cooked rice from a cup which a ate. I had gone to Narasimulu's house the first thing. He was lying wounded on a cot in the street. The wounds were bleeding much and I sent him to the Hospital. I went to the Hospital where the Hospital Assistant was dressing the wounds. I asked him how he had received the wounds. He gave no answer but once in his pain he said Gopal Singh. Some time afterwards he said that Gopal Singh had fired a gun. I recorded what he stated. I asked him if it was correct, but he did not answer. There was enmity between Narsimulu and accused. On 8th November accused lodged a complaint against Narsimulu and three others for taking away his wife. The case was compromised. I prepared a plan of the locality. This is it.

Cröss-examination.—A man sitting at the cocoanut tree could see the house of accused. The three houses are in line with thatched roofs. In the middle house there is a wall on the pial and the eaves hang down so as to obstruct the view, The roof of accused is high and the eaves are high. The door way is on a level with the street. The crowd told me that Gopal Singh had killed the man. So did the Constable who came for me. That was why I wished to arrest him. There was a crowd but not much noise. I cannot give the names of the persons in the crowd who told me. I had not got information from any of the witnesess in this case. No one told me that immediately after the shot was fired, a Constable came out of the house. After the accused had handed over the gun, a Head Constable told me that he had sent for a Constable of Nadivipalle as he heard that this Constable was during the night in the house of accused, The Head Constable did not say that he had inspected the Constable's gun. I heard afterwards that the Constable's gun was examined. He handed over the gun voluntarily.

When the wounded man made his declaration, his relatives were present.

Re-examined.

I did not see any of the witnesses in the crowd.

Taken by me

G. T. MACKENZIE,
Ag. Sessions Judge.
8—2—95.

F. M, M.

IN THE COURT OF SESSION, GODAVARI AT RAJAHMUNDRY.

Session Case No. 4 of 1895.

7th Witness for the Prosecution.

Name ... ... Tadanki Venkata Subba Row.

Father's name ... ... Ramayya.

Village ... ... Amalapur.

Caste ... ... Brahmin.

Age ... ... 30.

Occupation ... ... Inspector.

Being solemnly affirmed states.—

I heard of this case at 10 or 11 A. M. at Machavaram. Then I went to Amalapur. I went direct to the house of accused. There was a crowd there and Constables with muskets and swords, The accused was shouting out that he had killed Moturi Narsimulu, that he had accomplished his vow and that he was a Rajpat. The Stationary Sub-Magistrate was present. I spoke quietly to him and he gave the sword into my hands across the hedge. Then I got across the hedge and accused who sat on a chair brought anothe chair for me. I sat and talked to him for some time and then arrested him and took him to the Station.

This gun is different from the Police carbines which are breach loaders.

Cross-examined.—The Head Constable enquired into this case from the beginning. He has not come as a witness. I have not sought for the bullet with which Narasimhulu was shot. The Police carbine carries a round bullet. The carbine and cartridges of Constable Balaji were examined. I was not present at the inquest when these witnesses were examined. I took no part in this investigation.

Re-examined.—Balaji was a Constable of Nadimpalle who came to Amalapur on treasury escort.

Taken by me.

G. T. MACKENZIE,
Ag. Sessions Judge.

F. M, M.

IN THE COURT OF SESSION, GODAVARI AT RAJAHMUNDRY.

Session Case No. 4 of 1895.

8th Witness for the Prosecution.

Name	... ...	Gainedi Pammayya.
Father's name	... ...	Venkayya.
Village	... ...	Amalapur.
Caste	... ...	Telaga.
Age	... ...	38.
Occupation	... ...	Hospital Assistant.

Being solemnly affirmed states.

Moturi Narsimulu was brought into the Hospital on the morning of 15th January at half past seven. He had a gun shot wound through his body near the lumbar region of the spine. The entrance was on the man's back ½ an inch long and four inches between the seventh and eighth ribs. The exit wound was in front between the seventh and eighth ribs near the costal region. A piece of liver had come out of the exit aperture and was lodged in the shirt of the deceased. There was a hole in the shirt caused by the bullet which had passed right through him. That was his only wound. He died the same morning at 9 A. M. The gun shot wound was the cause of death.

The man's back or rather the back of his right side must have been turned to the gun. I made a *post mortem* and traced the course of the bullet.

Cross-examined.—The entrance was three inches from the spinal cord. He spat blood before his death. That would be from the stomach. The lungs had not been injured. The ball passed through the liver and so must have diverged to the right. It had struck no bone. The track of the bullet was level. I saw only one jacket on him. It covered both apertures. I did not notice a hole at the entrance aperture. It would be an ordinary sized bullet.

Re-examined:—

He had a jacket on. It was not torn.

Cross-examined:—The gun that fired the shot must have been behind and to the right. This is the second case of gun shot I have treated. The exit wound is always the longer. The edges are reverted and the shape irregular. The entrance around was oral with faintly bruised edges. He was a man of 5 feet about the height of the accused.

Taken by me.

G, T. MACKENZIE,
Ag. Sessions Judge.

8—2—95.

F, M. M.

IN THE COURT OF SESSION, GODAVARI AT RAJAHMUNDRY.

Session Case No. 4 of 1895.

9th Witness for the Prosecution.

Name	... ...	Sundara Bai.
Father's name	... ...	Balaji.
Village	... ...	Amalapur.
Caste	... ...	Bondili.
Age	... ...	20.
Occupation	... ...	Married woman.

Being solemnly affirmed states.

I do not remember Narsimulu. He and my husband were friends. Accused is my husband. I do not remember what I said before the Magistrate.

Cross-examination.—On Tuesday morning I heard no gun fired.

Taken by me.

G. T. MACKENZIE,
Ag. Sessions Judge.

8—2—95.

Session Case No. 4 of 1895.

10th Witness for the Prosecution.

Name	... ...	Bondili Balaji.
Father's name	... ...	Balaji.
Village	... ...	Mogaltur.
Caste	... ...	Bondili.
Age	... ...	25.
Occupation	... ...	Constable.

Being solemnly affirmed states,

Tendered for cross-examination.

Cross-examination.—I was in the house of accused on January 15th. I had come on Treasury guard. I had a musket with me. I returned from the yard. I heard a gunshot in front of the house. I went and saw accused in the chavadi with a gun. It was this gun now before the Court. I did not ask him about the gunshot. Then I went to the road and I saw the deceased lying near a mango tree. I then went indoors and put on my uniform and got my carbine. It was not loaded. I had been on treasure escort duty. My carbine was not loaded. Then I came out and went towards my Station which is about thirteen miles distant to the east. I passed the houses of witnesses and went two furlongs outside the village. I have fourteen years service. Constable called me back. I made no investigation into this murder. I was too bewildered. I spoke to no-

F. M. M

Cr. A. 307—4

body and I saw nobody in the street except five or six females. My carbine was not discharged by accident. Several people assembled at Narasimulu's house. I did not ask them why they had collected there.

Re-examined.

I am not related to accused, We do not keep carbines loaded. I had five cartridges.

Taken by me.

G. T. MACKENZIE,
Ag. Sessions Judge.

IN THE COURT OF SESSION, GODAVARI AT RAJAHMUNDRY.

Session Case 4 *of* 1895.

11*th Witness for the Prosecution.*

Name	...	...	Kissen Sing.
Father's name	...	...	Mothu Singh.
Village	...	...	Amalapur.
Caste	...	...	Bondili
Age	...	...	36.
Occupation	...	...	Taylor.

Being solemnly affirmed states.—

Cross-examined.—Accused is my younger brother. I did not see him shoot deceased. Narasimulu and accused were on friendly terms. There was no quarrel about his wife.

Re-examined—I do not remember that deceased enticed away the wife of accused. I did not say that that matter was all hushed up. I do not know if it was compromised.

Taken by me.

G. T. MACKENZIE,
Ag. Sessions Judge.

8—2—95.

F. M. M.

IN THE COURT OF SESSIONS, GODAVARI DIVISION, RAJAHMUNDRY.

Session Case No. 4 *of* 1895.

The 8*th day of February* 1895.

THE QUEEN EMPEESS OF INDIA *versus* G. Gopalasing.

The examination of	...	...	Gowdhanassu Gopalasing, prisoner.
Son of	...	...	Mohanasing.
Caste	...	...	Bondili.
Age	...	...	28 years.
Profession	...	...	Taluq peon.
Residence	...	...	Amalapur.

Q.—Did you make the statements just read over to you to the Magistrate? (Exhibit B).

A.—Yes.

Q.—Have you anything more to say?

A.—The Police Inspector and I have been on bad terms for a long time. He asked me to be a witness on his behalf, when his wife had eloped. I was then serving under the father-in-law of the person, who enticed her. When I asked him not to cite me as a witness, he said that he would see what he would do with me in a few days. On that account he concocted this case against me and accused me of this offence. This is all.

Heard, it is correct.

(Signed) Gowdhanassu Gopalasing.

Taken down in my presence and hearing. It contains accurately the whole of the statement made by the accused.

(Signed) G. T. MACKENZIE,
Sessions Judge.

F. M. M.

Translation of Exhibit B.

Accused.

Gowdhanassu Gopalasing, of Amalapuram, caste Bondili, Rajaput, age 28 years, calling, Taluk peon, son of Mohana Singu.

Q.—Did you kill anybody yesterday with a musket ?

A.—I don't remember. Nor did I kill any one.

Q.—Did you know Moturi Narisimham ?

A.—I know.

Q.—Was he dead ?

A.—I do not know.

Q.—When did the Police arrest you ?

A.—They arrested me yesterday at 2 O'clock.

Q.—Where were you when arrested by them ?

A.—They arrested me while I was in the yard within my compound.

Q.—What were you doing ?

A.—I was standing in my yard holding a knife for the protection of my life.

Q.—Why so ?

A.—All the kapus of that street are my enemies. They all raised an alarm and gathered as a crowd. I was in this posture lest they would do me any harm.

Q.—While you were in your yard yesterday, did you not state that you had killed Moturi Narisimham by the shot of a bullet ?

A.—I do not remember. I did not state so.

Q.—Do these things the gun, the small shot, the gunpowder &c, belong to you ?

A.—This gun, these small shot and this gunpowder belong to me. The bullet does not belong to me.

Q.—Is the knife yours ?

A.—Yes. It is mine.

Q.—To whom did you hand them over ?

A.—On being asked by the Police to bring, I produced them from the house and gave them.

F. M. M.

Q.—Are you saying all these words voluntarily or through fear ?

A.—There is no fear inasmuch as your honor is here for me. I have been saying with my free will only.

Q.—Have you got a license to possess a gun ?

A.—I have the license.

Q.—Is this jacket yours ?

A.—Yes. It is mine.

Q.—Can you say how the blood stain upon it, came upon it ?

A.—A small wound was caused on my little finger by the knife in my hand. This is it. I pressed that blood against my jacket at the chest. It was on account of this reason that that single stain of blood was caused on the jacket.

(I see no scratch on the ring finger, the skin is split). Voluntarily. It must be recorded that I have shown to the Magistrate the wound which is on my little finger.

Magistrate:—Yes I have recorded it in English.

[Signed] Gowdhanassu Gopalsing.

I believe that this confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it, and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) V. KAMARAZ,
Magistrate, 2nd Class.

16—1—1895.

Register Case No. 1 *of* 1895.

19—1—1895.

Statement of accused Gowdhanassu Gopal Singu.

Son of	...	...	...	Mohanasingu.
Caste	...	...	...	Bondili.
Age...	...	...	...	28 years.
Profession	...	...	...	Taluk peon.
Residence	...	...	...	Amalapuram.

Q.—Did you give up the gun to the Police ?

A.—On being questioned if there was any gun in my house, I said I had a gun for which I obtained a license and gave it over.

F. M. M.

Q.—Was it the gun alone or anything more that you had given over ?

A.—I have handed over the gun powder, the caps and the small shot which were contained in tins, but not the bullet.

Q.—Wha t did take place then ?

A.—I was asked if it was out of repairs or in use.

Q.—What did you say in reply ?

A.—I replied that I could not say in what state it was as I have not been going out for hunting for a long time

Q.—What did they say thereupon ?

A.—Thereupon some Constable put gun powder into it and fired it.

Q.—Did they ask you anything further ?

A.—They asked me how I got the drop of blood on my chest.

Q.—What did you say ?

A.—I said that in cleaning the knife for making exercise with it, my little finger had been slightly wounded and on my pressing it against my jacket, the stain was caused.

Q.—What have you done with the knife you had with you ?

A.—On being asked by the Inspector, I gave it over to him.

Q.—I had arrived there at that time (*i. e.*) I was present when you handed over the gun &c. to the Police. Is it when I was present that they fired the gun ?

A.—The Magistrate was not present at that time. (*i. e.*) yourself.

(Signed) Gowdhanassu Gopalasingu.

I hereby certify that it is taken by me and that it contains a full and true account of the statement made by the accused.

(Signed) V. KAMARAZU,

Magistrate, 2nd Class.

F. M. M.

Register Case No. 1 *of* 1895.

19—1—1895.

Statement of accused Gowdhanassu Gopalasingu.

Son of ... ... Mohanasingu.

Caste ... ... Bondili.

Age ... ... 28 years.

Profession ... ... Taluk peon.

Residence ... ... Amalapuram.

Q.—You have heard read over to you the charge framed against you that you on 15th January 1895 at Amalapuram fired a gun at Moturi Narisimham with the intention of killing him and caused his death and that you have thereby committed an offence under Section 302 I. P, C. Did you commit the offence ?

A.—No. The Police have confused me and brought this trouble.

Q.—What did they do ?

A.—They said " we feel suspicion that you yourself committed the murder" They came with swords and carbines. They asked me to come out from inside.

Q.—Haye you to cite any witnesses on your behalf ?

A.—I have witnesses. If you please allow me one hour's time I will consult my brother and give a list of witnesses.

Q.—I am afraid you cannot so consult your brother. If you want time, I will give it. Do. you want time ?

A.—Please let me consider over the matter for an hour. I have put in the list of witnesses.

(Signed) Gowdhanassu Gopalasingu.

I hereby certify that it is taken by me and that it contains a full and true account of the statement made by the accused.

(Signed) V. KAMARAZU,

Magistrate, 2nd Class.

F. M. M.

21—1—95.

Statement of Gowdhanassu Gogalasingu.

Q.—I have now read over to you the deposition given by me. Are you content with the witnesses you have already cited ? or do you wish to cite any more ?

A,—I am now under remand—you see that I am not allowed to speak to any Vakil or any respectable man. How can it be possible for me to cite any witnesses ?

Q.—Whom do you wish to speak to ?

A.—If I can have the permission, I wish to speak to my brother I will then cite witnesses, or else no one will speak on my behalf for fear of the Police. I will speak [to him] tomorrow.

[Signed] Gowdhanassu Gopalasingu.

I hereby certify that it is taken by me and that it contains a full and true account of the statement made by the accused.

[Signed] V. KAMARAZU,
2nd Class Magistrate.

21—1—95.

Exd. by F. M. M.

PRINTED BY G, C, AND CO., SCOTTISH PRESS, MADRAS.

HIGH COURT,

CRIMINAL APPEAL

No. 307 of 1895.

GODAVARI DIVISION.

Session Records

in

Session Case No. 4 of 1895.

To be heard on Thursday 15/8/95

CURRENT NO. 4027.

To

His Excellency the Governor in Council.

The humble petition of GOWDHANARSU GOPAL SING, *prisoner in Sessions Case 4 of 1895, Godaveri, now under sentence of death in the Rajahmundry Jail, and a Taluk Peon of about 7 years' service.*

MOST RESPECTFULLY SHEWETH—

Petitioner is accused of having committed murder by causing the death of Moturi Narsimulu by shooting him with a gun at Ammalapore on the 15th January 1895.

Petitioner was put on his trial before the Sessions Court of Godaveri and acquitted on the 9th day of February 1895, the Judge concurring with the 2nd assessor and differing from the 1st. On appeal put in under Section 417, C.P.C., by the Public Prosecutor, this acquittal has been reversed and the petitioner sentenced by their Lordships SHEPHARD and BEST, J.J., to death on the 16th August 1895.

The case for the prosecution was founded on the evidence of four eye-witnesses, of whom the 1st, 3rd and 4th swear that they saw the petitioner standing on the last step of his pyal, aim a gun from his shoulder at the deceased, and that, after firing the shot, petitioner went into his house and returned carrying a sword. The 5th witness is the mother of the deceased, and she swears that she, on hearing a shot from a gun, went down the steps and saw her son stagger and fall near a mango tree in the street. The 2nd witness says that he was in the street, heard a shot, turned and saw the deceased fall, and saw the accused go into his house with a gun and come out with a sword. From the evidence it appears that the 1st and 4th witnesses ran away as soon as petitioner came out with the sword; that the 2nd witness went up to the accused, who told him to go away, which he accordingly did, saying, "That man died and I marked my forehead with blood." The 3rd witness swears that, when the prisoner came out with the sword, he said, "there are still two people whom I have to cut off," and he was afraid and ran away; but the 4th witness, who was with the 3rd, does not speak to these words having been used, although he was present (see deposition of 3rd witness). The evidence of the 4th witness appears to be contradicted by the 10th witness for the prosecution, ~~and~~ Police Constable Bondili Balajee, who had come to Ammalapore on escort duty and lodged the previous night in the house of the petitioner, because it appears from his evidence that he, on hearing the gun-shot, came out

of the accused's house, saw the accused on the pyal with a gun and saw the deceased lying near the mango tree. He does not speak to any conversation with the petitioner, nor does he speak to the petitioner having said anything. It appears that he immediately went back in doors, put on his uniform, got his carbine, and ran away from the village for a distance of two furlongs, but that on leaving petitioner's house he saw nobody in the street except five or six women. It is noticeable that the 1st, 2nd, 3rd and 4th eye-witnesses, who say they were present, were all asked if they saw a constable in uniform come out of the petitioner's house with a gun, but that they all denied it, and that the 3rd witness denied it emphatically, adding, "if he had come I must have seen him," whereas it is perfectly clear from the evidence of the ~~8th~~ witness that he did come out of the house in uniform and run past down the street passing on his way the houses of the witnesses and hence that those witnesses cannot have been present at all. From the evidence of the first four witnesses it would appear that the petitioner, standing on the last step of his pyal, fired a gun from his shoulder at the deceased, who was a man of the same height as himself, *viz.*, 5 feet (see evidence of 8th witness—Hospital Assistant). No map giving the distance was filed, but probably they could not have been more than five yards apart. The medical evidence (8th witness) shows that the wound on the deceased was "a gun-shot wound through the body near the lumbar region of the spine. The entrance was on the man's back, half an inch long and four inches between the seventh and eighth ribs ~~near the costal region~~. A piece of liver had come out of the exit aperture and was lodged in the shirt of the deceased." He further says, "the man's back, or rather the back of his right side, must have been turned to the gun. I made a *post mortem* and traced the course of the bullet;" and further on he says "it had struck no bone. The track of the bullet was level." From this evidence it would appear that the gun cannot possibly have been fired from the shoulder of the petitioner, because otherwise the wound would have had a downward tendency and not a horizontal course.

Both the Committing Magistrate, who was the 6th witness for the prosecution, and the District Judge, a gentleman of large experience, came to the conclusion, on seeing witnesses 1 to 4 in the box, that these witnesses were unworthy of credit; but the High Court has adopted a somewhat unusual course of believing the testimony of the witnesses whose evidence both the Lower Courts thought to be unworthy of credit.

The case for the defence was that the fatal shot may have been fired accidentally by Bondili Balajee, the 8th witness for the prosecution, and that this circumstance would account for his hurriedly running away without instituting inquiries or ~~help~~ in the inquiry when it was instituted. It is noticeable that apparently suspicion did attach to Balajee, because a constable was sent for him and he was called back, though how they knew where he had gone to, since nobody saw him, is unexplained. It would seem from the medical evidence that the wound found on the deceased was most probably caused by the discharge of a gun fired not from the shoulder but when carried at the trail. Further, with regard to this point it is proved that Bondili Balajee had in his possession five cartridges undischarged, but there is no evidence to show how many were served out to him or how many he ought to have had.

The third ground of appeal was that the petitioner was at once named as the murderer; but if it is admitted that the eye-witnesses are not witnesses of truth, there is nothing extraordinary in such a thing having occurred, because it would appear that, owing to the deceased having enticed away some months before the wife of the petitioner, the petitioner and the deceased were probably on very hostile terms. It is further alleged in the grounds of appeal that the petitioner stated, in the presence of the Magistrate and the Inspector, that he had killed the deceased and accomplished his vow. With regard to the statement of the Inspector it must be noticed that the offence is alleged to have taken place between 7 and 8 A.M., and that the Inspector was at Machavaram, a distance of five miles away, and did not hear of it till between 10 and 11 A.M. at that place; that the Inspecter, on hearing the news, went to the house of the petitioner and heard the petitioner shout [that he had killed Moturi Narasimulu and that he had accomplished his vow. It would hardly appear probable that the petitioner would have made this statement, not in the excitement of the moment but after an interval of at least three hours, within which time, if guilty, he must have realized the gravity of his act. The same thing is spoken to by the Sub-Magistrate, the 6th witness, in these words: "Treading the place he exclaimed that here he shot Moturi Narasimulu"; and from the deposition of the Magistrate it would appear that he made that statement some considerable period before the Police Inspector came at all. With regard to the evidence of the Magistrate it must be noticed that when he first came to the scene the crowd told him that Gopal Sing had killed the man, and it is also noticeable that the Magistrate cannot give the names of the persons in the crowd who told him, but distinctly says that he did not get the information from any of the witnesses in this case, although, according to the evidence of the 2nd witness, he, at any rate, was one of the crowd.

With regard to the evidence of the Magistrate "treading the place he exclaimed he shot Moturi Narasimulu," it must be borne in mind that apparently the petitioner was at the time threatened by an angry crowed and that possibly the Magistrate in the confusion may have mistaken the exact words used, and that if the petitioner was exulting over the death of his enemy he might have said "here Moturi Narasimulu was shot" without implying that he himself did it.

With regard to the exclamation alleged to have been made by the prisoner in the evidence of the Inspector and the Magistrate, the Government Pleader represented to the Court that he did not wish the petitioner to be convicted solely on such exclamations; and that therefcre, if the other evidence adduced appeared to be untrustworthy, the petitioner must be given the benefit of doubt.

The fourth ground of appeal is that the barrel of accused's gun showed that it had been recently fired. With regard to this it must be noted that the petitioner's gun was a muzzle-loader, not easily cleaned, and was not examined until his arrest which happened some considerable time after it was fired, after the advent of the Magistrate; so that as the gun was cold and the smoke of course had disappeared there was nothing to show that it had been recently fired, except the fact that it was not clean and might easily have been fired on some previous occasion. Further, on this point there is no legal evidence that the gun of Bondili Balajee was

examined, and even if it was proved that Bondili Balajee's gun was clean at the time he was called back by the constable, considering that it is a breech-loader and that Bondili Balajee ran away for at least two furlongs, he could easily have cleaned it after firing the shot.

The fifth ground of appeal is "finally there is deceased's dying declaration naming the accused as his murderer." With regard to this it is spoken to by the Magistrate (6th witness) as very fragmentary and quite unreliable. The evidence is "I asked him how he had received the wound, he gave no answer, but once in his pain he said Gopal Sing. Some time afterwards he said Gopal Sing had fired a gun, but when asked if correct he did not answer." Considering the state of feeling existing between the deceased and the petitioner, it is extremely probable that, as he received his wound close to Gopal Sing's house, he may have thought that Gopal Sing fired it without really knowing that such was the case, and this theory would seem to be corroborated by the fact that, when asked if the statement was correct, he did not answer, though there is nothing to show that he could not.

With regard to the motive it would seem by no means probable that the stale complaint which had been compromised would be sufficient for such an act.

With regard to the sentence it was represented to the Court that the offence took place eight months ago, and as there appeared to be a doubt as to the guilt of the prisoner the Court might properly pass a sentence of transportation for life, but the Court intimated that a representation on this point might more properly be made to Government.

Petitioner therefore prays that His Excellency in Council will take all these circumstances into consideration and exercise the prerogative of mercy. Should your Excellency think fit to commute the sentence, intimation must be given to the Jail authorities, Godaveri District, on or before the 31st August.

John Smith.
Counsel for Petitioner
20/8/95.

PRINTED AT THE SCOTTISH PRESS, MOUNT ROAD.

[G/9]
2,000—2-4-95.

Current No. 4027

Judicial DEPARTMENT.

From John G. Smith Esqr.
Barrister-at-law.
High court, Madras.

No. -

Dated 20th } August 1895
Received 23d }

Enclosures 4 & 2 cc. of tel.

SUBJECT.

Submitting a petition for mercy on behalf of his client Gowdhanarsu Gopal Sing, prisoner in Godavari Sess: case No. 4 of 95, now under sentence of death in the Rajahmundry C. Jail.

23/8

Has the convict appealed to Govt. please?

This seems to be the first petition rec'd. 23/8

24/8

~~1456 d 11.7.95~~
~~1376 d 18.6.95~~
1259 d 24.8.94

G.

Refer order

Desp'd 24/8

The following telegram will be despd. to the Supdt. Central Jail, Rajahmundry:—

No. 513 × Has Gowdhanasarn Gopal Sing, prisoner in Sessions case four of 1895 appealed against sentence of death passed by High Court or is he going to appeal.

D
24-8-95

24/8/95.

Ry

D. 1329 / 20.6.95

When reply is recd, please put up also the G.O directing appeal against the acquittal in this case

24/8

In the Court of Session, Godavari at Rajahmundry.

CRIMINAL SESSIONS, FEBRUARY 1895.

SESSION CASE No. 4 OF 1895.

Present:—G. T. MACKENZIE, Esq., Ag. Sessions Judge.

Regina

Vs.

Gowdhanassu Gopalasing.

The prisoner is defended by Mr. E. C. C. Ward.

Offence:—Murder, under Section 302, I. P. C.

Opinion of Assessors:— { 1st Assessor—Guilty. 2nd Assessor—Not guilty.

1. Nalam Kamarazu (Komati).
2. Bondada Gangayya (Komati).

Finding of Judge:—Not guilty.

Order:—Acquitted and discharged.

Judgment.

SESSION CASE No. 4 OF 1895.

In this case a Taluq peon of Amalapur is charged with the murder of a young man named Moturi Narasimhulu.

2. The houses of accused and of deceased are upon the same side of the street with one house between them. Two months ago accused lodged a complaint against the deceased and three other men, saying that the deceased enticed away the wife of accused and that the three others abetted. This complaint was compromised and was dismissed.

3. On the morning of January 15th, Moturi Narasimhulu lay wounded in the street with a gunshot wound. The bullet had passed through his body. The Stationary Magistrate of Amalapur hearing this news hastened to the spot and found a mob beseiging the house of accused who was said to be in his yard with a sword to defend himself. The Magistrate got the wounded man removed to the Hospital and endeavoured to obtain a dying declaration from him. In the midst of his pain he said that Gopal Sing had fired a gun. Soon afterwards he died. 175

No

4. Meanwhile the Magistrate returned to the street and endeavoured to get Gopal Sing arrested, but no one would approach him. He is a Bondili by caste, and these men fancy themselves to be Rajputs and Khsatriyas. He handed over the fence his gun with a bullet, a tin of caps and a powder flask, but retained his sword in his hand, and he declared that he would not be arrested, but that he would give himself up. After some time the Police Inspector came and he spoke quietly to the accused, persuaded him to hand over his sword and then arrested him and took him to the station. 175

5. When an inquest was held four men came forward as eye-witnesses of the accused firing the shot, and the mother of deceased said that after her son had

fallen the accused came up to him and put his blood on his own forehead. These five witnesses had not told this story to the Magistrate in the morning.

6. When accused was produced before the Magistrate he denied that he had fired the shot which killed the accused, and said that when an angry mob beseiged his house he took his sword to defend himself against them. He was then committed for trial.

7. The four eye-witnesses and the mother have repeated their story before this Court. One of the men was one of the three persons against whom Gopal Sing complained that they had abetted deceased in enticing away his wife, so that man clearly belongs to the opposite party. The Magistrate in his judgment committing accused for trial says that he does not believe these five witnesses. The testimony of the four eye-witnesses, or at least of three of them, is contradicted by the medical evidence. These three witnesses say that when deceased was passing along the street the accused cried "Stop!" that deceased stood still looking at accused while accused put the gun to his shoulder and fired. Now the medical evidence is clear that the bullet entered the man's back and passed out in front. The gun that fired the shot must have been behind deceased and to his right. The Public Prosecutor attempts to get over this by contending that deceased may have looked at accused over his shoulder. I cannot follow this. The plan shows that if that were his position he would have been shot in the left side of his back and not in the right side. I must altogether discredit these five witnesses.

8. There remains the exclamations which accused made before his arrest. These exclamations are deposed to by the Magistrate and by the Inspector, and they go to show that Gopal Sing was exulting in his crime and boasting of it. Mr. Ward, who defends the accused, objects to evidence of these exclamations being received in this case, because they are confessional statements not recorded by a Magistrate, and he relies upon I. L. R., 9 Madras 224.

9. I cannot accept this contention put forward by Mr. Ward for the defence. I am of opinion that the strict rules regarding the recording of confessional statements do not exclude evidence of the exclamations of a murderer at the time of or immediately after the murder. Such exclamations form part of the *res gestæ* and are admissible at least to prove motive, as are the cries of a mob in riot cases. To say that a Magistrate ought to take pen, ink and paper and ought to record such exclamations on the spot is the height of pedantry. But I concur with Mr. Ward's argument that not much weight can be given to these exclamations. The man was in a state of intense excitement. Both Magistrate and Inspector had a preconceived idea that he had shot deceased, and they heard all his exclamations with that idea in their minds. I think that it would not be safe to convict accused solely upon these exclamations.

10. Also, the motive for the crime is not clear. The enticement case had been compromised. Moreover, the handing over the gun and its ammunition and the handing over his sword support the plea that accused was merely defending himself against the angry crowd.

11. The defence put forward at this trial is that the fatal shot was fired by accident by a constable named Balaji. This man also is a Bondili by caste. He came to Amalapur on treasure escort duty with a breach loading carbine and five cartridges. He slept in the house of accused that night. He says that he heard a shot, that he saw accused entering the house with his gun in hand, that he saw the wounded man lying in the street, that, being terrified, he put on his uniform and set off for his own station, that there were then five or six women near the wounded man when he passed, that he had gone two furlongs out of the village when he was recalled by another constable and that the head constable of Amalapur then inspected his carbine and counted his five cartridges. This brilliant member of the police force gave his evidence as if he were thoroughly ashamed of himself, and he has much cause. Mr. Ward contends that this man is not telling the truth and that it is he who fired a gun by accident and killed deceased.

12. Mr. Ward for the defence admits that the deceased died from a gunshot wound, and that the shot was fired from the house of accused, but he contends that this shot was accidentally fired by that constable Balaji and that there is no sufficient evidence that accused fired the shot. It is contended that the four eye-witnesses were not present, and that the dying declaration is valueless because the wounded man was at that time surrounded by his relatives and partizans. The crowd made up their minds that accused was guilty and the evidence is all coloured by this preconceived notion. The horizontal track of the bullet shows that it was not fired from the shoulder of accused.

13. The first Assessor is of opinion that the accused is guilty. The second Assessor thinks not. He says that the eye-witnesses came up afterwards.

14 I concur with the second Assessor. I am of opinion that there is nothing to show with certainty that this was more than an accident. I acquit and discharge the accused.

G. T. MACKENZIE,
Acting Session Judge.

9th February 1895.

True Copy
S. Narasimharamu
Supt

28. 2 95

One rupee deposited 1. 3. 95

1. 3 95

S. Narasimharamu

Queen Empress

v

Gopal Sing

Godavari

Fixed for 14 Aug/95

appearance entered

7/8/95

1895
Jud. Dept.
Bundle No. 1
To
C. No. 4027.

[G/9]
2,000—2-4-95.

Current No. 4063.

Judicial DEPARTMENT.

Telegram

TR: No. 513 d/ 24.8.95
G.O. d/ 22.6.95 No. 1329.
" d/ 22.7.95. No. 1583.
" d/ 24.8.94 No. 1257 &c.

From The Supt. Central Jail, Rajahmundry.

No. 18.

Dated 25th
Received 25th
Regd 26th
Enclosures

SUBJECT.

Stating that Gowdhanarou Gopal Sing prisoner in Sess: case 4 of 95 is appealing.

To await the receipt of the appeal

D
26.8.95

H.S.
26/8/95

Ref 26/8
6.10 P.M.

Ct. No. 4063/95
papers marked init

CURRENT No. 4113
Judl. Deptt.

V E

From

John G. Smith Esq;
Barrister-at-law,
High Court,
Madras.

Dated 27th } Aug: /95.
Recd. Regr. 29. }

Encls: 2.

To await the receipt of the appeal from the convict

No. 31[illegible]/95

Subject.

Forwg: a letter from the sessions judge, Godavari in connection with Godavari sessions case No. 4 of /95

CURRENT No. 413

CHIEF SECRETARY
29 AUG. 1895
GOVT. OF MADRAS

To

The Chief Secretary to Government of Madras

Ootacamand

In the matter of the petition to H.E. the Governor in Council against the conviction and sentence of the High Court reversing the acquittal of the Sessions Judge in Sessions Case No 4 of 1895 received on the 23d August 1895 by the accompanying acknowledgment.

Sir, I have this day received the enclosed demi-official letter from the Sessions Judge of Godavary in reference to the above case. In it he points out that the reason he discredited the four eye witnesses and the mother was because they had not mentioned the facts they knew to the Magistrate previous to the inquest.

On behalf of the prisoner I therefore submit the enclosed for the consideration of Government to be read with the petition above referred to.

High Court Buildings
Madras
27th August 1895

John Smith
Counsel for Petitioner

To

His Excellency the Governor in Council.

The humble petition of GOWDHANARSU GOPAL SING, *prisoner in Sessions Case 4 of 1895, Godaveri, now under sentence of death in the Rajahmundry Jail, and a Taluk Peon of about 7 years' service,*

MOST RESPECTFULLY SHEWETH—

Petitioner is accused of having committed murder by causing the death of Moturi Narsimulu by shooting him with a gun at Ammalapore on the 15th January 1895.

Petitioner was put on his trial before the Sessions Court of Godaveri and acquitted on the 9th day of February 1895, the Judge concurring with the 2nd assessor and differing from the 1st. On appeal put in under Section 417, C.P.C., by the Public Prosecutor, this acquittal has been reversed and the petitioner sentenced by their Lordships SHEPHARD and BEST, J.J., to death on the 16th August 1895.

The case for the prosecution was founded on the evidence of four eye-witnesses, of whom the 1st, 3rd and 4th swear that they saw the petitioner standing on the last step of his pyal, aim a gun from his shoulder at the deceased, and that, after firing the shot, petitioner went into his house and returned carrying a sword. The 5th witness is the mother of the deceased, and she swears that she, on hearing a shot from a gun, went down the steps and saw her son stagger and fall near a mango tree in the street. The 2nd witness says that he was in the street, heard a shot, turned and saw the deceased fall, and saw the accused go into his house with a gun and come out with a sword. From the evidence it appears that the 1st and 4th witnesses ran away as soon as petitioner came out with the sword; that the 2nd witness went up to the accused, who told him to go away, which he accordingly did, saying, "That man died and I marked my forehead with blood." The 3rd witness swears that, when the prisoner came out with the sword, he said, "there are still two people whom I have to cut off," and he was afraid and ran away; but the 4th witness, who was with the 3rd, does not speak to these words having been used, although he was present (see deposition of 3rd witness). The evidence of the 4th witness appears to be contradicted by the 10th witness for the prosecution, ~~and~~ Police Constable Bondili Balajee, who had come to Ammalapore on escort duty and lodged the previous night in the house of the petitioner, because it appears from his evidence that he, on hearing the gun-shot, came out

of the accused's house, saw the accused on the pyal with a gun and saw the deceased lying near the mango tree. He does not speak to any conversation with the petitioner, nor does he speak to the petitioner having said anything. It appears that he immediately went back in doors, put on his uniform, got his carbine, and ran away from the village for a distance of two furlongs, but that on leaving petitioner's house he saw nobody in the street except five or six women. It is noticeable that the 1st, 2nd, 3rd and 4th eye-witnesses, who say they were present, were all asked if they saw a constable in uniform come out of the petitioner's house with a gun, but that they all denied it, and that the 3rd witness denied it emphatically, adding, "if he had come I must have seen him," whereas it is perfectly clear from the evidence of the 8th witness that he did come out of the house in uniform and run past down the street passing on his way the houses of the witnesses and hence that those witnesses cannot have been present at all. From the evidence of the first four witnesses it would appear that the petitioner, standing on the last step of his pyal, fired a gun from his shoulder at the deceased, who was a man of the same height as himself, *viz.*, 5 feet (see evidence of 8th witness—Hospital Assistant). No map giving the distance was filed, but probably they could not have been more than five yards apart. The medical evidence (8th witness) shows that the wound on the deceased was "a gun-shot wound through the body near the lumbar region of the spine. The entrance was on the man's back, half an inch long and four inches between the seventh and eighth ribs ~~about the dorsal region~~. A piece of liver had come out of the exit aperture and was lodged in the shirt of the deceased." He further says, "the man's back, or rather the back of his right side, must have been turned to the gun. I made a *post mortem* and traced the course of the bullet;" and further on he says "it had struck no bone. The track of the bullet was level." From this evidence it would appear that the gun cannot possibly have been fired from the shoulder of the petitioner, because otherwise the wound would have had a downward tendency and not a horizontal course.

Both the Committing Magistrate, who was the 6th witness for the prosecution, and the District Judge, a gentleman of large experience, came to the conclusion, on seeing witnesses 1 to 4 in the box, that these witnesses were unworthy of credit; but the High Court has adopted a somewhat unusual course of believing the testimony of the witnesses whose evidence both the Lower Courts thought to be unworthy of credit.

The case for the defence was that the fatal shot may have been fired accidentally by Bondili Balajee, the 8th witness for the prosecution, and that this circumstance would account for his hurriedly running away without instituting inquiries or help in the inquiry when it was instituted. It is noticeable that apparently suspicion did attach to Balajee, because a constable was sent for him and he was called back, though how they knew where he had gone to, since nobody saw him, is unexplained. It would seem from the medical evidence that the wound found on the deceased was most probably caused by the discharge of a gun fired not from the shoulder but when carried at the trail. Further, with regard to this point it is proved that Bondili Balajee had in his possession five cartridges undischarged, but there is no evidence to show how many were served out to him or how many he ought to have had.

The third ground of appeal was that the petitioner was at once named as the murderer; but if it is admitted that the eye-witnesses are not witnesses of truth, there is nothing extraordinary in such a thing having occurred, because it would appear that, owing to the deceased having enticed away some months before the wife of the petitioner, the petitioner and the deceased were probably on very hostile terms. It is further alleged in the grounds of appeal that the petitioner stated, in the presence of the Magistrate and the Inspector, that he had killed the deceased and accomplished his vow. With regard to the statement of the Inspector it must be noticed that the offence is alleged to have taken place between 7 and 8 A.M., and that the Inspector was at Machavaram, a distance of five miles away, and did not hear of it till between 10 and 11 A.M. at that place; that the Inspecter, on hearing the news, went to the house of the petitioner and heard the petitioner shout [that he had killed Moturi Narasimulu and that he had accomplished his vow. It would hardly appear probable that the petitioner would have made this statement, not in the excitement of the moment but after an interval of at least three hours, within which time, if guilty, he must have realized the gravity of his act. The same thing is spoken to by the Sub-Magistrate, the 6th witness, in these words: "Treading the place he exclaimed that here he shot Moturi Narasimulu"; and from the deposition of the Magistrate it would appear that he made that statement some considerable period before the Police Inspector came at all. With regard to the evidence of the Magistrate it must be noticed that when he first came to the scene the crowd told him that Gopal Sing had killed the man, and it is also noticeable that the Magistrate cannot give the names of the persons in the crowd who told him, but distinctly says that he did not get the information from any of the witnesses in this case, although, according to the evidence of the 2nd witness, he, at any rate, was one of the crowd.

With regard to the evidence of the Magistrate "treading the place he exclaimed that here he shot Moturi Narasimulu," it must be borne in mind that apparently the petitioner was at the time threatened by an angry crowed and that possibly the Magistrate in the confusion may have mistaken the exact words used, and that if the petitioner was exulting over the death of his enemy he might have said "here Moturi Narasimulu was shot" without implying that he himself did it.

With regard to the exclamation alleged to have been made by the prisoner in the evidence of the Inspector and the Magistrate, the Government Pleader represented to the Court that he did not wish the petitioner to be convicted solely on such exclamations; and that therefore, if the other evidence adduced appeared to be untrustworthy, the petitioner must be given the benefit of doubt.

The fourth ground of appeal is that the barrel of accused's gun showed that it had been recently fired. With regard to this it must be noted that the petitioner's gun was a muzzle-loader, not easily cleaned, and was not examined until his arrest which happened some considerable time after it was fired, after the advent of the Magistrate; so that as the gun was cold and the smoke of course had disappeared there was nothing to show that it had been recently fired, except the fact that it was not clean and might easily have been fired on some previous occasion. Further, on this point there is no legal evidence that the gun of Bondili Balajee was

examined, and even if it was proved that Bondili Balajee's gun was clean at the time he was called back by the constable, considering that it is a breech-loader and that Bondili Balajee ran away for at least two furlongs, he could easily have cleaned it after firing the shot.

The fifth ground of appeal is "finally there is deceased's dying declaration naming the accused as his murderer." With regard to this it is spoken to by the Magistrate (6th witness) as very fragmentary and quite unreliable. The evidence is "I asked him how he had received the wound, he gave no answer, but once in his pain he said Gopal Sing. Some time afterwards he said Gopal Sing had fired a gun, but when asked if correct he did not answer." Considering the state of feeling existing between the deceased and the petitioner, it is extremely probable that, as he received his wound close to Gopal Sing's house, he may have thought that Gopal Sing fired it without really knowing that such was the case, and this theory would seem to be corroborated by the fact that, when asked if the statement was correct, he did not answer, though there is nothing to show that he could not.

With regard to the motive it would seem by no means probable that the stale complaint which had been compromised would be sufficient for such an act.

With regard to the sentence it was represented to the Court that the offence took place eight months ago, and as there appeared to be a doubt as to the guilt of the prisoner the Court might properly pass a sentence of transportation for life, but the Court intimated that a representation on this point might more properly be made to Government.

Petitioner therefore prays that His Excellency in Council will take all these circumstances into consideration and exercise the prerogative of mercy. Should your Excellency think fit to commute the sentence, intimation must be given to the Jail authorities, Godaveri District, on or before the 31st August.

John Smith.
Counsel for Petitioner

21/8/95.

Rajahmundry Central Jail
25. August 1895.

PRINTED AT THE SCOTTISH PRESS, MOUNT ROAD.

Tailor

Superintendent
Central Jail

"Petition for mercy"

"Urgent"

From Gowdhanarsu Gopalsing
Condemned prisoner No 4003
Central Jail.
Rajahmundry.

To
His Excellency the Governor
in Council
Madras.

Dated 20th }
Despatched 25th } August 1895
Received. }

No 344

Praying to take all the circumstances set forth in the petition into consideration and to exercise the prerogative of mercy.

1895
Judl Dept.
Enclos. No 1
C. N. 4118

Enc. No 2.

Duplicate

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Fri day, the sixteenth day of August,
One thousand eight hundred and ninety five.

PRESENT:—

The Honourable Mr. Justice Shephard,
and
The Honourable Mr. Justice Best.

Criminal Appeal No. 307 of 1895.

THE PUBLIC PROSECUTOR......................................Appellant.

Gowdhanassu Gopulasing. Prisoner.

Appeal under Section 417 of the Code of Criminal Procedure against the Judgment of acquittal passed on the accused in Calendar Case No. 4 of 1895 by the Sessions Judge of the Godavari Division

This Appeal coming on for hearing yesterday and today, ~~and Counsel not appearing on behalf of the Prisoner; Upon perusing the Petition of Appeal and the record of the evidence and proceedings before the Court of Session; and upon hearing the Appellant,~~ the Court delivered the following

Judgment:- The Sessions Judge discredits the evidence of the eye witnesses on two grounds. He considers that their evidence is contradicted by the medical evidence which goes to show that

the

the deceased Narasimhulu was shot
in the back. The witnesses say that
before the Prisoner fired he cried out
a "stop"; that then Narasimhulu
looked up and stopped and the Pri=
soner came down from the pial and
fired. They do not say that he turned
round to see the Prisoner, still less
that he continued facing him after
the warning and until the shot was
fired.

It is most improbable that the
deceased would have stood with his
face to the man who was threatening
to shoot him. We observe that the
witnesses are not asked particularly
about the position or attitude of
the deceased.

In our opinion the Judge was
wrong in holding that the witnesses

must

must be disbelieved on account of
any contradiction between their story
and the medical evidence.

Then the Sessions Judge refers
to the opinion of the Magistrate
and he refers to what is said to
have taken place before the Magis=
trate about the Prisoner's putting
blood on his forehead. The depositions
of the witnesses taken before the Magis=
trate were not put in evidence
and ought not to have been alluded
to by the Sessions Judge. We have how=
ever looked at those depositions and
do not find that they bear out the
observation of the Judge. Still less
ought the Sessions Judge to refer to the

opinion

opinion of the Magistrate as to the credibility of the witnesses and make it a ground for his own opinion on those witnesses.

We must say that we can see no reason for discrediting the eye witnesses.

Their evidence is strongly corroborated by the other evidence, especially that of the Sub-Magistrate. It is impossible that the Sub-Magistrate can have made any mistake as to the exclamations and conduct of the Prisoner. There is moreover the evidence of the Inspector on that point.

The Sessions Judge does not allude to the fowl stake of the gun belonging to the Prisoner. This is a strong

strong point against the prisoner and is in no way explained except by the statement of the accused that some constable put powder into it and fired it. No attempt is made to prove this. Nor does the Sessions Judge allude to the words spoken by the deceased when examined by the Magistrate. The point, although not carrying much weight, certainly deserves to be noted.

The Sessions Judge apparently adopts the suggestion that the shot was accidentally fired by the Constable Balaji. This suggestion appears to have been made for the first

first time in the Sessions Court. There is no evidence whatever in support of it.

We see no reason to doubt the guilt of the Prisoner. There is no ground for supposing that the Sub-Magistrate and the Inspector are deliberately perjuring themselves and otherwise their evidence is consistent with no other theory than that of the Prisoner's guilt.

We must set aside the acquittal, and convict the Prisoner of murder. Considering the nature of the attack we have no alternative but to pass the sentence of death.

By the Court

E. G. Todhunter

Deputy Registrar,

20.8. Appellate Side

Judl. Dept.
Enclo. 2
4118

19/8

KCN 20/8

Encl. No. 3

Nominal Roll of Condemned prisoner No. 4003 Govardhanarsu Gopal Sing

Crime	Murder. Section 302 I.P.C.
Sentence	Death
Date of Sentence	16th August 1895
Adjudicating Court	High Court of Judicature, Madras
Present Age	35
State of Health	Good
Conduct in Jail	Good
Result of the Appeal to Appellate Court	
Number of previous convictions if any and remarks	Previous Conviction Nil

Rajahmundry Central Jail
25th August 1895

Nil

Agnew

Superintendent Central Jail

Enclosure No.

Nominal roll of Condemned
prisoner No 4003 Gowdhanarsu
Gopal Sing, Cuttack Jail.
Rajahmundry.

1 Petition prepared by Counsel of Petitioner
1 Copy of Judgment in Criminal Appeal No 307 of 1895 on the file of the High Court Madras
1 Nominal Roll

Judge's Docket
3
4118

CURRENT No. 4118

No 1278 Rajahmundry Central Jail
25th August 1895

From J. E. Young Esqr.
Superintendent. Central Jail
Rajahmundry.

To
The Chief Secretary
to Government. Madras

Sir.

I have the honour to submit for the orders of Government a petition for mercy together with the marginally noted papers from Convict No 4003 Gowdhanarsu Gopalsing sentenced to Death by the High Court of Judicature at Madras, in Criminal Appeal No 307 of 1895.

2. I certify that the prisoner will not be executed until a definite reply is received from Government.

I have the honour to be,
Sir,
Your most Obedient Servant

Superintendent Central Jail

MJR

URGENT No. 4118 G.O. No. 4118/95

Petition for Mercy

Judl. Depts

V. E.

From

The Superintendent
Central Jail
Rajahmundry.

To

The Chief Secretary
to Government
Madras

Dated 25th
Despatched 25th } August 1895.
Received 30th

No. 1278

Enclosures. 3.

Subject

Forwarding a petition for mercy from Condemned prisoner No. 4003 Gowdhanarsu Gopal Sing.

Encl. No 1.

Petition for Mercy

To

His Excellency the Governor in Council
Fort St. George

The humble petition of Gowdanassu Gopalasing prisoner under sentence of death in Rajahmundry Jail

Respectfully Sheweth

Your petitioner was acquitted in Godaveri Sessions case 4 of 1895 and on appeal by the Public Prosecutor has been convicted of murder by the High Court and sentenced to death

2. The simple facts are as follows: On the night of January 14th a constable named Balaji slept in the house of petitioner. On the morning of January 15th this constable accidentally fired a gun and the bullet killed a man who was passing in the street. The constable at once fled but the villagers formed an opinion that petetioner had fired the fatal shot and they surrounded petitioner's house. Petitioner was in danger of his life from the angry mob. The Magisterate

came but had no power over the mob. When the Police Inspector came and had some influence to quiet the mob petitioner at once surrendered himself.

3. Four men then came forward to say that they had seen petitioner fire the fatal shot. These men belong to the opposite faction in the village and they were not near the place when the shot was fired. The mother of the deceased added an incredible story that petitioner came out into the street and put the blood of deceased on his own forehead. The only other evidence against petitioner was the exclamations he had used towards the aggressive mob. These exclamations were misunderstood and were supposed to refer to the death of deceased

4. Upon this meagre case petitioner who is a servant of Government, a Taluqdar of unblemished character, was committed for trial. The Sessions Judge rightly held that there was nothing to show with certainty that this was more than an accident and the Sessions Judge acquitted petitioner. The High Court has set aside that acquittal and has sentenced petitioner to death.

5. In the judgement which the High Court has passed petitioner will first comment upon the eye witnesses. They clearly said that deceased turned and faced petitioner, but the medical evidence says that accused was shot in the back. Upon this point the High Court has adopted the suggestion made by the Public Prosecutor that deceased may not have faced petitioner but may merely have looked over his shoulder, a suggestion which the Sessions Judge said he was unable to follow. The High Court remarks that "it is most improbable that the deceased would have stood with his face to the man who was threatening to shoot him" but the witnesses state that petitioner aimed and shot the deceased without warning or threat. The High Court further

remarks that "the witnesses are not asked particularly about the position or attitude of the deceased" The Hospital Assistant was examined as 8th witness for the prosecution after the examination of the so called eye witnesses had taken place His evidence before the committing Magistrate was unintelligible and his evidence before the Sessions Court was not anticipated either by the prosecution or defence. Petitioner submits that it was the duty of the prosecution Counsel to recall and re-examine his own witnesses on a vital point in the case. Petitioner was said to be on the right of the deceased when the gun was fired, but the track of the bullet was through the back, horizontal, inclining to the right, a circumstance physically irreconcilable with the relative position of the petitioner and deceased as deposed to by the witnesses. A circumstance which entirely discredits the evidence of the so called eye witnesses and which has not been noticed by the High Court is that 10th P/witness constable Balaji who rushed out of petitioner's house when the gun was fired, went into the house, put on his uniform and fled down the street carbine in hand, was was not seen by these witnesses who profess to have seen petitioner come out of his house sword in hand after he had shot deceased. The High Court considers that the evidence of these witnesses is strongly corroborated by that of the Sub. Magistrate. The Sub. Magistrate 6th P/W came upon the scene on the report of a constable and other persons unknown to him, that petitioner had killed the deceased and without further inquiry ordered petitioner's arrest. In the midst of a hostile and shouting crowd petitioner is said to have made an admission of guilt to the witness Petitioner is unable to perceive that there is any corroboration of the alleged eye witnesses in these statements. The evidence of the Police Inspector (7th P/W) which is referred to in this connection is that "the accused was shouting that he had killed Moturi Narsimulu" when

the Sub. Magistrate was present, a state-
-ment materially different from that made
by the latter. Then the Sessions Judge
in paragraph 5 of his judgement points out
that the four eye witnesses and the mother
who came forward at the inquest had not
previously that morning told their story
to the Magistrate. This is a most important
and a very relevant observation, but it has
been misunderstood by the High Court
in a way that is most injurious to peti-
-tioner. The observation of the Sessions
Judge was based upon the answer which
the Magistrate made in cross examination
as a witness at the Sessions and it is
relevant under section 157 of the Evidence
Act. The Sessions Judge meant to say
that when the Magistrate was in the street
that morning amidst the crowd he heard
nothing of the story of these five witnesses
The High Court has completely misunder-
-stood the point and thinks that the
Sessions Judge spoke of the depositions
which these witnesses afterwards made
before the Committing Magistrate. The
Committing Magistrate, the Sessions Judge
and one Assessor disbelieved these eye witnes

6. The High Court then says that there is
no evidence that Balaji fired a gun. What
evidence can petitioner produce? Balaji,
like a coward, ran away and will not
tell the truth about what happened -
Petitioner was not present when Balaji
fired the gun and was unable to unravel
the mystery of the fatal shot, but after
the close of the case before the Committing
Magistrate, the circumstances seemed to
indicate ~~that~~ the deceased, Narsimulee, met
with his death, and he instructed Counse
before the Sessions Court accordingly
The High Court attaches some importance
to the plea not having been raised before
the Committing Magistrate but the actua
fact was not within petitioners knowledge
as the High Court seems to surmise

7. There was no new quarrel between
petitioner and deceased. Is it likel

that petitioner would select a moment when there was a constable in the house and when four men were in the street, to fire at deceased

8. The High Court says that the foul state of the gun belonging to the petitioner is a strong point against him, but petitioner submits that, apart from a constable firing out of it, which it was impossible for petitioner to prove, the gun may have been in a foul state for want of cleaning after use, which petitioner does not distinctly remember.

The High Court notices the words ~~the words~~ spoken by the deceased to the Sub-Magistrate. The deceased then surrounded by his relatives and friends may have expressed an opinion as to the cause of his death. He received his death wound when opposite petitioner's house and may have believed that the wound was inflicted by petitioner This statement which was obtained after some pressure from the Sub-Magistrate deserves no attention whatever

9. The gun alleged to have been used by your petitioner was a small fowling piece, and it was important that the ball which passed through Narsimulu and which must have dropped near him, should have been found. The reply of the Inspector of Police (7 P./W) on this point is significant "No search was made for the bullet because no advantage was to be gained by discovering it"

10. Petitioner therefore prays that he may be released from Jail

For which act of Kindness petitioner as in duty bound will ever pray

Rajahmundry Central Jail
30th August 1895

Superintendent Central Jail

Enc. to 1.

Petition for mercy

Urgent

From

Gowdhanassu Gopal
Sing
Condemned prisoner No. 4003
Central Jail
Rajahmundry.

To

His Excellency the Right
Honourable the Governor-
-in-Council, Madras.

Dated 30th August 1895
Despatched 30th
Received

No. 344

Praying for mercy and to release him from Jail.

Jail
Enclosure No. 1
G. O. No. 4194

Enc. to 2.

In the Court of Session, Godavari at Rajahmundry.

CRIMINAL SESSIONS, FEBRUARY 1895.

SESSION CASE No. 4 OF 1895.

Present :—G. T. MACKENZIE, Esq., Ag. Sessions Judge.

Regina

Vs.

Gowdhanassu Gopalasing.

The prisoner is defended by Mr. E. C. C. Ward.

Offence :—Murder, under Section 302, I. P. C.

Opinion of Assessors :— { 1st Assessor—Guilty.
2nd Assessor—Not guilty.

1. Nalam Kamarazu (Komati).
2. Bondada Gangayya (Komati).

Finding of Judge :—Not guilty.

Order :—Acquitted and discharged.

Judgment.

SESSION CASE No. 4 OF 1895.

In this case a Taluq peon of Amalapur is charged with the murder of a young man named Moturi Narasimhulu.

2. The houses of accused and of deceased are upon the same side of the street with one house between them. Two months ago accused lodged a complaint against the deceased and three other men, saying that the deceased enticed away the wife of accused and that the three others abetted. This complaint was compromised and was dismissed.

3. On the morning of January 15th, Moturi Narasimhulu lay wounded in the street with a gunshot wound. The bullet had passed through his body. The Stationary Magistrate of Amalapur hearing this news hastened to the spot and found a mob beseiging the house of accused who was said to be in his yard with a sword to defend himself. The Magistrate got the wounded man removed to the Hospital and endeavoured to obtain a dying declaration from him. In the midst of his pain he said that Gopal Sing had fired a gun. Soon afterwards he died.

4. Meanwhile the Magistrate returned to the street and endeavoured to get Gopal Sing arrested, but no one would approach him. He is a Bondili by caste, and these men fancy themselves to be Rajputs and Khsatriyas. He handed over the fence his gun with a bullet, a tin of caps and a powder flask, but retained his sword in his hand, and he declared that he would not be arrested, but that he would give himself up. After some time the Police Inspector came and he spoke quietly to the accused, persuaded him to hand over his sword and then arrested him and took him to the station.

5. When an inquest was held four men came forward as eye-witnesses of the accused firing the shot, and the mother of deceased said that after her son had

fallen the accused came up to him and put his blood on his own forehead. These five witnesses had not told this story to the Magistrate in the morning.

6. When accused was produced before the Magistrate he denied that he had fired the shot which killed the accused, and said that when an angry mob beseiged his house he took his sword to defend himself against them. He was then committed for trial.

7. The four eye-witnesses and the mother have repeated their story before this Court. One of the men was one of the three persons against whom Gopal Sing complained that they had abetted deceased in enticing away his wife, so that man clearly belongs to the opposite party. The Magistrate in his judgment committing accused for trial says that he does not believe these five witnesses. The testimony of the four eye-witnesses, or at least of three of them, is contradicted by the medical evidence. These three witnesses say that when deceased was passing along the street the accused cried "Stop!" that deceased stood still looking at accused while accused put the gun to his shoulder and fired. Now the medical evidence is clear that the bullet entered the man's back and passed out in front. The gun that fired the shot must have been behind deceased and to his right. The Public Prosecutor attempts to get over this by contending that deceased may have looked at accused over his shoulder. I cannot follow this. The plan shows that if that were his position he would have been shot in the left side of his back and not in the right side. I must altogether discredit these five witnesses.

8. There remains the exclamations which accused made before his arrest. These exclamations are deposed to by the Magistrate and by the Inspector, and they go to show that Gopal Sing was exulting in his crime and boasting of it. Mr. Ward, who defends the accused, objects to evidence of these exclamations being received in this case, because they are confessional statements not recorded by a Magistrate, and he relies upon I. L. R., 9 Madras 224.

9. I cannot accept this contention put forward by Mr. Ward for the defence. I am of opinion that the strict rules regarding the recording of confessional statements do not exclude evidence of the exclamations of a murderer at the time of or immediately after the murder. Such exclamations form part of the *res gestæ* and are admissible at least to prove motive, as are the cries of a mob in riot cases. To say that a Magistrate ought to take pen, ink and paper and ought to record such exclamations on the spot is the height of pedantry. But I concur with Mr. Ward's argument that not much weight can be given to these exclamations. The man was in a state of intense excitement. Both Magistrate and Inspector had a preconceived idea that he had shot deceased, and they heard all his exclamations with that idea in their minds. I think that it would not be safe to convict accused solely upon these exclamations.

10. Also, the motive for the crime is not clear. The enticement case had been compromised. Moreover, the handing over the gun and its ammunition and the handing over his sword support the plea that accused was merely defending himself against the angry crowd.

11. The defence put forward at this trial is that the fatal shot was fired by accident by a constable named Balaji. This man also is a Bondili by caste. He came to Amalapur on treasure escort duty with a breach loading carbine and five cartridges. He slept in the house of accused that night. He says that he heard a shot, that he saw accused entering the house with his gun in hand, that he saw the wounded man lying in the street, that, being terrified, he put on his uniform and set off for his own station, that there were then five or six women near the wounded man when he passed, that he had gone two furlongs out of the village when he was recalled by another constable and that the head constable of Amalapur then inspected his carbine and counted his five cartridges. This brilliant member of the police force gave his evidence as if he were thoroughly ashamed of himself, and he has much cause. Mr. Ward contends that this man is not telling the truth and that it is he who fired a gun by accident and killed deceased.

12. Mr. Ward for the defence admits that the deceased died from a gunshot wound, and that the shot was fired from the house of accused, but he contends that this shot was accidentally fired by that constable Balaji and that there is no sufficient evidence that accused fired the shot. It is contended that the four eye-witnesses were not present, and that the dying declaration is valueless because the wounded man was at that time surrounded by his relatives and partizans. The crowd made up their minds that accused was guilty and the evidence is all coloured by this preconceived notion. The horizontal track of the bullet shows that it was not fired from the shoulder of accused.

13. The first Assessor is of opinion that the accused is guilty. The second Assessor thinks not. He says that the eye-witnesses came up afterwards.

14 I concur with the second Assessor. I am of opinion that there is nothing to show with certainty that this was more than an accident. I acquit and discharge the accused.

G. T. MACKENZIE,
Acting Session Judge.

9th February 1895.

True Copy

G. T. Mackenzie

Enc No 3.

Nominal roll of condemned convict No 4003 Gowdhanarsu Gopal Sing.

Crime	Sentence	Date of Sentence	Adjudicating Court	Present Age	State of Health	Conduct in Jail	Result of the Appeal to Appellate Court.	Number of previous convictions if any and remarks.
Murder. Section 302 I.P.C.	Death	16th August 1895	High Court of Judicature Madras	35	Good	Good	..	Previous convictions nil.

Rajahmundry Central Jail
30th August 1895

Superintendent Central Jail.

Enclosure No. 2.

Copy of Judgment in Session Case No 4 of 1895 on the file of the Sessions Court, Godavari.

5
Page
2
4194

Enclosure No. 3.

Nominal roll of Convict No. 4003
Gowdhamarsu Gopal Sing.

Jail
Dist. 3
No. 4194

"Petition for Mercy" "Urgent".

No 1325.

Rajahmundry Central Jail
30th August 1895.

CURRENT No. 4194

From

J. E. Young Esqre.
Superintendent, Central Jail,
Rajahmundry.

Enclosures. 3.

1 Petition for Mercy.
1 Copy of Judgment in Session Case No 4 of 95
on the file of the Sessions Court, Godavari.
1 Nominal roll.

To

The Chief Secretary
to Government, Madras.

Sir,

In continuation of my letter No 1278 dated 25th instant, I have the honour to forward for the orders of Government another petition for mercy together with the marginally noted papers from convict No 4003 Gowdhamarsu Gopal Sing sentenced to Death in Criminal Appeal No 307 of 1895 on the file of the High Court of Judicature at Madras.

I have the honour to be
Sir
Your most Obedient Servant

Superintendent, Central Jail

CURRENT No. 4194

Judl. Dept.

Ctl No 4118/95.

"Petition for Mercy"

"Varguese"

From

The Superintendent
Central Jail
Rajahmundry.

To

The Chief Secretary
to Government
Madras.

Dated 30th } August 1895.
Despatched 30th }
Received 31/8/95
Regd.

No. 1325

Enclosures 3

Forwarding another petition for Mercy from Convict No 4003 Govidha-
-narsu Gopal Sing.

C. No 4118 has been
Disposed of
H.
3/9/95

[G. 25. 500—21-5-95.]

Judl. DEPARTMENT.

C. No. 4194

FOR ORDERS.

I do not find anything in this supplemental petition to alter my opinion that the petr was properly convicted.

I see that the draft G.O. (para 3) does not explain to the H.C., as it should do, how Mr. Mackenzie's letter came into the possession of Govt.

KH
4/9/95

I am no reason to alter my conclusion.

JS
4/9

No - the evidence against him is too strong - and I suppose it must be believed. The only doubtful point is the behaviour of the Constable wh. was so peculiar as to make one almost think that there may be some truth in the petrs statement. It is most unsatisfactory that there is no evidence as to the bullet or the bore of the two guns - I must say that the more I think this over the less certain I feel. It ought to be clearly shown what sized bullet killed the deceased. The medical witness says it was an "ordinary sized bullet" wh. is as good as if he said it was as large as a bit of chalk. These are difficulties wh present themselves to my mind, and I must state them, as I think they are relevant. At the same time the direct evidence is very strong against the man - and it is very difficult - in fact impossible to get over it. I shall [illegible] with some hesitation. I think that the law must take its course.

Submitted that communication letter to Govt (C4113) in full to the High Court. which will explain how the letter came into the possession of Govt.

Balance of the draft G.O. - Mr J.S. Smith's

D
4-9-95.

JW
3/9/95

The foregoing current is a supplemental petn from convict No 4003 Govindharasan Gopal Sing under sentence of death in criminal appeal No 307 of 95 on the file of the High Court. orders on his said petn have not been issued yet.

D
3/9/95

The fact seems certain that, whoever fired, the deceased was killed by a shot out of Gopal Sing's (the convict's) gun for there is no hint of Constable Balaji's carbine having been fired or of any of his cartridges being short. This being so, the only question is Who fired? Gopal Sing was exam^d^ 4 times by the Mag^te^ — On not one occasion did he even suggest that Balaji fired — The Sess. Judge discredited the first five W.s, but I really cannot see any reason why he should have done so. Their evidence seems to me satisfactory enough — It is a very strong point against the convict that the H.C. (Shephard & Best, JJ.) felt so certain as to the evidence that they did not adopt the ordinary course of ordering a new trial, but convicted & sentenced the man to death on the very evidence on which the Sess. J. had acquitted him. The Sess. J. makes a great point of the evidence of the persons who say they saw the shot fired being contradicted by the Medl. evidence. That evidence shows that the man was hit in the back — The Sess. J. discredits the W.s because, he says, they (that is, three of them) say "that deceased stood still looking at accused" when the latter fired. Of course this looks like a fatal discrepancy. But the fact is that, so far as I can see, the Sess. J. has interpolated the words "looking at accused" into the evidence & so has himself created the discrepancy on which he relies — The 1st W. says "When Gopal Sing levelled the gun, deceased stood still" and no more as to his attitude; the 2nd W. says nothing as to the respective positions of the two men; the 3rd W. says "Then Narasimulu looked up & saw him" and "When accused aimed the gun ..... Narasimhulu stood still and said nothing", but nothing as to his looking at the accused; the 4th W. says "Then Narasimhulu looked up & saw him" and "Narasimhulu stood still when the gun was aimed. He said nothing" — again nothing about his looking at the accused; & the 5th W. did not see the shot fired at all. Take away the Sess. J's addition to the evidence he had himself recorded & where is the discrepancy and why should the W.s be discredited? I can see no reason at all —

The case seems to me quite a clear one & I don't think anyone would ever have felt a doubt about it, but for the Sess. J's extraordinary conduct of it —

B.S.
5/9/95

I have gone carefully through the papers again, & see no doubt of

Petition for mercy

FOR ORDERS.

HON'BLE MEMBER. I conc.

V. E.

Resubmit to the Hon Mr Bliss C.I.E. & the Hon Mr Grose with refce to H.E's remarks.

H.
4/9/95

the man's guilt. There is no evidence at all that Balaji fired

J.G.
5/9

3/9 C 4/9 C 4/9 Sep
R 2/9 R 4/9 5/9

J/43 200—21-5-95.

I considered this case before ordering that an appeal should be made & came to the conclusion that the petr. was guilty. I am of the same opinion still. The points taken on behalf of the petr. are that as the wound was level the shot cannot have been fired from the pial, i.e. from above the deceased; &c &c — Now the following W.s say that they saw the shot fired: —

1st W., who says — "As soon as he got down from the pial, he fired" — "He was standing on the last (query—last) step of his door way. That last step would be on about the level of the road".

3rd W., who says — "Then Gopal Sing standing on the last step fired..."

4th W., who says — "Then accused stepped down from his pial ... and fired..."

It is clear to me that the shot was fired from on a level with the deceased —

Then the point was taken that the witnesses 1—5 did not give info to the Mag^te^ before the inquest. The shot was fired about 7 A.M. The Mag^te^ went to the place at once & sent the wounded man to the hospital, where he was received at half past seven — The Mag^te^ followed him to the hospital & was there while the wounds were being dressed. The man died at 9 A.M. & the inquest was held by the H^d^ Constable at once — at least so 2nd W. says, i.e., "about 9 A.M.". I can see nothing extraordinary in the facts that, in the confusion which must have existed, the Mag^te^ did not see particular persons in the crowd between about 7½ & 9 A.M., during part of which time he was away at the hospital, or that he did not get his info. from these particular persons — nor can I see anything suspicious in the fact that the W.s did not see Constable Balaji making off — W.s 1, 2, 3 & 4 all say they ran (a word) away; & .x. This contains the W. 5 was no doubt sufficiently Sessions Judge x

JUDICIAL DEPARTMENT.

Current Number. ~~4118~~ 4027, 406[illegible] 4113 & 4118.

FOR ORDERS.

APPEAL for mercy from Convict No. 4003 Gorrithanasaru Gopal Sing under sentence of death in Criminal ~~Sessions Case~~ Appeal No. 307 of 1895, ~~which sentence has been confirmed by~~ on the file of the High Court.

2. The Superintendent of the Rajahmundry Central Jail certifies that the sentence will not be carried out until a definite reply from Government has been received.

3. In this case the accused was first acquitted by the Sessions Judge of Godavari (Mr Mackenzie) and, at the instance of the D^t^. Magistrate, the Gov^t^. directed an appeal to the High Court under Sec. 417, C.C.P., which resulted in the reversal of the lower court's judgment and conviction of the prisoner on a charge of murder.

4. C. Nos 4027 & 4113 are representat[ions]
P.T.O.

G.O. 1329
22-6-95

from Mr J. G. Smith, Barrister at law, on behalf of the petr. Attention is invited to Mr Mackenzie's D.O. in C. No 4113.

D
30.8.95

30/8/95

30/8/95

occupied in attending to her dying son.

I haven't the least doubt as to the petr's guilt & would let the law take its course.

I beg to draw the attention of my hon: Colleagues to the Session Judge's letter of Augt 24 to the Petr's Counsel. I don't know how far the Sess. J. was justified in making any protest against the finding of the H.C.; I should say it was very doubtful whether he was justified in doing so at all. But he seems to me, in any case, to be utterly out of order in writing, as he has done, a private (or D.O.) letter to the counsel of the condemned man. If he must have expressed his view that the H.C. was wrong, he should have done so by official letter to the H.C. itself or perhaps he might have been right if he had written direct to Govt. — I should send his letter to the H.C. for such notice as the Court thinks necessary, at the same time explaining how it came into the hands of Govt.

31/8/95

I agree that the law must be left to take its course. The proof of the murder by appellant seems to be complete. The S. Judge's reasons + for discrediting the evidence of the eye witnesses are not satisfactory, & it is abundantly confirmed. As for the level track of the bullet it is not at all certain that it might not have been level if fired by a man 5 yards away even if the muzzle of his gun was a little above the entrance wound. The Hosp. Assist says the bullet must have "diverged" to the right. It may have "diverged" upwards. But we do not know how the level of the spot where the murdered man happened to be standing contrasted with the level of the spot on wh. the firer of the gun was standing.

Mr Mackenzie seems to me to have been wrong in writing to Mr Smith especially as the matter referred to by him was of no very great importance. I wd send his letter D.O. to the High Court

JG 31/8

I agree with my hon. colleagues.

W
1 Sep

C 30/8
C 34/8
R 249
R 31/8

PETITION FOR MERCY.

VERY EMERGENT.

Hon'ble Member and Circulation.

(FOR ORDERS.)

[J./16.]
1,000—5-2-94.

Judicial Department.

C. Nos 4027, 4113, 4194, 4118 + 4063.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

C. Nos 4027 & 4063 — X
C. No 4113 — A

READ the following letter, dated 25th & 30th Augt. 95, No 1278 + 1325 respectively, from the Superintendent of the Central Jail at Rajahmundry, forwarding petition from Convict No 4003 Sonthanarasu Gopal Sing under sentence of death in Criminal ~~Session Case~~ appeal No. 309 of 1895, ~~confirmed by~~ on the file of the High Court of Judicature.

~~Read also letter, dated from the Registrar of the High Court, Appellate Side, forwarding the record of the case.~~

ORDER THEREON, dated 5th Septr 1895, No. 1864.

Having considered the circumstances of the case as set forth in the foregoing papers, the Right Hon'ble the Governor in Council sees no reason to interfere with the sentence of death passed on Convict No 4003 Sonthanarasu Gopal Sing

2. The law will take its course.

3. The D.O. from Mr Mackenzie recd with Mr Smith's petn. letter of the 27 ultimo will be forwarded to the Hon. the Judges of the High Court for such action as may be deemed necessary.

~~(True Extract.)~~

(Forwarded) ~~Chief Secretary.~~

D 2/9/95
3/9/95

2/9/95

To the Superintendent of the Central Jail, Rajahmundry } Paras 1 & 2 of the order & date of communication
for communication to the Prisoner.
" Inspector-General of ~~Jails,~~ Prisons
" Hon'ble the Judges of the High Court, with 1 enclos. ~~papers returned~~. ~~D.O. from Mr Mackenzie~~. D.O. fr. Mr. Mackenzie
" J. G. Smith Esq. Barrister at law (X & paras 1 & 2 of the order)

To

His Excellency the Governor in Council.

The humble petition of GOWDHANARSU GOPAL SING, *prisoner in Sessions Case 4 of 1895, Godaveri, now under sentence of death in the Rajahmundry Jail, and a Taluk Peon of about 7 years' service,*

MOST RESPECTFULLY SHEWETH—

Petitioner is accused of having committed murder by causing the death of Moturi Narsimulu by shooting him with a gun at Ammalapore on the 15th January 1895.

Petitioner was put on his trial before the Sessions Court of Godaveri and acquitted on the 9th day of February 1895, the Judge concurring with the 2nd assessor and differing from the 1st. On appeal put in under Section 417, C.P.C., by the Public Prosecutor, this acquittal has been reversed and the petitioner sentenced by their Lordships SHEPHARD and BEST, J.J., to death on the 16th August 1895.

The case for the prosecution was founded on the evidence of four eye-witnesses, of whom the 1st, 3rd and 4th swear that they saw the petitioner standing on the last step of his pyal, aim a gun from his shoulder at the deceased, and that, after firing the shot, petitioner went into his house and returned carrying a sword. The 5th witness is the mother of the deceased, and she swears that she, on hearing a shot from a gun, went down the steps and saw her son stagger and fall near a mango tree in the street. The 2nd witness says that he was in the street, heard a shot, turned and saw the deceased fall, and saw the accused go into his house with a gun and come out with a sword. From the evidence it appears that the 1st and 4th witnesses ran away as soon as petitioner came out with the sword; that the 2nd witness went up to the accused, who told him to go away, which he accordingly did, saying, "That man died and I marked my forehead with blood." The 3rd witness swears that, when the prisoner came out with the sword, he said, "there are still two people whom I have to cut off," and he was afraid and ran away; but the 4th witness, who was with the 3rd, does not speak to these words having been used, although he was present (see deposition of 3rd witness). The evidence of the 4th witness appears to be contradicted by the 10th witness for the prosecution, ~~and~~ Police Constable Bondili Balajee, who had come to Ammalapore on escort duty and lodged the previous night in the house of the petitioner, because it appears from his evidence that he, on hearing the gun-shot, came out

of the accused's house, saw the accused on the pyal with a gun and saw the deceased lying near the mango tree. He does not speak to any conversation with the petitioner, nor does he speak to the petitioner having said anything. It appears that he immediately went back in doors, put on his uniform, got his carbine, and ran away from the village for a distance of two furlongs, but that on leaving petitioner's house he saw nobody in the street except five or six women. It is noticeable that the 1st, 2nd, 3rd and 4th eye-witnesses, who say they were present, were all asked if they saw a constable in uniform come out of the petitioner's house with a gun, but that they all denied it, and that the 3rd witness denied it emphatically, adding, "if he had come I must have seen him," whereas it is perfectly clear from the evidence of the ~~8th~~ 10th witness that he did come out of the house in uniform and run past down the street passing on his way the houses of the witnesses and hence that those witnesses cannot have been present at all. From the evidence of the first four witnesses it would appear that the petitioner, standing on the last step of his pyal, fired a gun from his shoulder at the deceased, who was a man of the same height as himself, *viz.*, 5 feet (see evidence of 8th witness—Hospital Assistant). No map giving the distance was filed, but probably they could not have been more than five yards apart. The medical evidence (8th witness) shows that the wound on the deceased was "a gun-shot wound through the body near the lumbar region of the spine. The entrance was on the man's back, half an inch long and four inches between the seventh and eighth ribs ~~near the costal region~~. A piece of liver had come out of the exit aperture and was lodged in the shirt of the deceased." He further says, "the man's back, or rather the back of his right side, must have been turned to the gun. I made a *post mortem* and traced the course of the bullet;" and further on he says "it had struck no bone. The track of the bullet was level." From this evidence it would appear that the gun cannot possibly have been fired from the shoulder of the petitioner, because otherwise the wound would have had a downward tendency and not a horizontal course.

The exit wound was in front between the seventh & eighth ribs near the costal region.

Both the Committing Magistrate, who was the 6th witness for the prosecution, and the District Judge, a gentleman of large experience, came to the conclusion, on seeing witnesses 1 to 4 in the box, that these witnesses were unworthy of credit; but the High Court has adopted a somewhat unusual course of believing the testimony of the witnesses whose evidence both the Lower Courts thought to be unworthy of credit.

The case for the defence was that the fatal shot may have been fired accidentally by Bondili Balajee, the 8th witness for the prosecution, and that this circumstance would account for his hurriedly running away without instituting inquiries or ~~help~~ helping in the inquiry when it was instituted. It is noticeable that apparently suspicion did attach to Balajee, because a constable was sent for him and he was called back, though how they knew where he had gone to, since nobody saw him, is unexplained. It would seem from the medical evidence that the wound found on the deceased was most probably caused by the discharge of a gun fired not from the shoulder but when carried at the trail. Further, with regard to this point it is proved that Bondili Balajee had in his possession five cartridges undischarged, but there is no evidence to show how many were served out to him or how many he ought to have had.

The third ground of appeal was that the petitioner was at once named as the murderer; but if it is admitted that the eye-witnesses are not witnesses of truth, there is nothing extraordinary in such a thing having occurred, because it would appear that, owing to the deceased having enticed away some months before the wife of the petitioner, the petitioner and the deceased were probably on very hostile terms. It is further alleged in the grounds of appeal that the petitioner stated, in the presence of the Magistrate and the Inspector, that he had killed the deceased and accomplished his vow. With regard to the statement of the Inspector it must be noticed that the offence is alleged to have taken place between 7 and 8 A.M., and that the Inspector was at Machavaram, a distance of five miles away, and did not hear of it till between 10 and 11 A.M. at that place; that the Inspecter, on hearing the news, went to the house of the petitioner and heard the petitioner shout [that he had killed Moturi Narasimulu and that he had accomplished his vow. It would hardly appear probable that the petitioner would have made this statement, not in the excitement of the moment but after an interval of at least three hours, within which time, if guilty, he must have realized the gravity of his act. The same thing is spoken to by the Sub-Magistrate, the 6th witness, in these words: "Treading the place he exclaimed that here he shot Moturi Narasimulu"; and from the deposition of the Magistrate it would appear that he made that statement some considerable period before the Police Inspector came at all. With regard to the evidence of the Magistrate it must be noticed that when he first came to the scene the crowd told him that Gopal Sing had killed the man, and it is also noticeable that the Magistrate cannot give the names of the persons in the crowd who told him, but distinctly says that he did not get the information from any of the witnesses in this case, although, according to the evidence of the 2nd witness, he, at any rate, was one of the crowd.

that here

With regard to the evidence of the Magistrate "treading the place he exclaimed he shot Moturi Narasimulu," it must be borne in mind that apparently the petitioner was at the time threatened by an angry crowed and that possibly the Magistrate in the confusion may have mistaken the exact words used, and that if the petitioner was exulting over the death of his enemy he might have said "here Moturi Narasimulu was shot" without implying that he himself did it.

With regard to the exclamation alleged to have been made by the prisoner in the evidence of the Inspector and the Magistrate, the Government Pleader represented to the Court that he did not wish the petitioner to be convicted solely on such exclamations; and that therefore, if the other evidence adduced appeared to be untrustworthy, the petitioner must be given the benefit of doubt.

The fourth ground of appeal is that the barrel of accused's gun showed that it had been recently fired. With regard to this it must be noted that the petitioner's gun was a muzzle-loader, not easily cleaned, and was not examined until his arrest which happened some considerable time after it was fired, after the advent of the Magistrate; so that as the gun was cold and the smoke of course had disappeared there was nothing to show that it had been recently fired, except the fact that it was not clean and might easily have been fired on some previous occasion. Further, on this point there is no legal evidence that the gun of Bondili Balajee was

examined, and even if it was proved that Bondili Balajee's gun was clean at the time he was called back by the constable, considering that it is a breech-loader and that Bondili Balajee ran away for at least two furlongs, he could easily have cleaned it after firing the shot.

The fifth ground of appeal is "finally there is deceased's dying declaration naming the accused as his murderer." With regard to this it is spoken to by the Magistrate (6th witness) is very fragmentary and quite unreliable. The evidence is "I asked him how he had received the wound, he gave no answer, but once in his pain he said Gopal Sing. Some time afterwards he said Gopal Sing had fired a gun, but when asked if correct he did not answer." Considering the state of feeling existing between the deceased and the petitioner, it is extremely probable that, as he received his wound close to Gopal Sing's house, he may have thought that Gopal Sing fired it without really knowing that such was the case, and this theory would seem to be corroborated by the fact that, when asked if the statement was correct, he did not answer, though there is nothing to show that he could not.

With regard to the motive it would seem by no means probable that the stale complaint which had been compromised would be sufficient for such an act.

With regard to the sentence it was represented to the Court that the offence took place eight months ago, and as there appeared to be a doubt as to the guilt of the prisoner the Court might properly pass a sentence of transportation for life, but the Court intimated that a representation on this point might more properly be made to Government.

Petitioner therefore prays that His Excellency in Council will take all these circumstances into consideration and exercise the prerogative of mercy. Should your Excellency think fit to commute the sentence, intimation must be given to the Jail authorities, Godaveri District, on or before the 31st August.

Counsel for Petitioner

20/8/95.

PRINTED AT THE SCOTTISH PRESS, MOUNT ROAD.

To

His Excellency the Governor in Council.

The humble petition of GOWDHANARSU GOPAL SING, *prisoner in Sessions Case 4 of 1895, Godaveri, now under sentence of death in the Rajahmundry Jail, and a Taluk Peon of about 7 years' service.*

MOST RESPECTFULLY SHEWETH—

Petitioner is accused of having committed murder by causing the death of Moturi Narsimulu by shooting him with a gun at Ammalapore on the 15th January 1895.

Petitioner was put on his trial before the Sessions Court of Godaveri and acquitted on the 9th day of February 1895, the Judge concurring with the 2nd assessor and differing from the 1st. On appeal put in under Section 417, C.P.C., by the Public Prosecutor, this acquittal has been reversed and the petitioner sentenced by their Lordships SHEPHARD and BEST, J.J., to death on the 16th August 1895.

The case for the prosecution was founded on the evidence of four eye-witnesses, of whom the 1st, 3rd and 4th swear that they saw the petitioner standing on the last step of his pyal, aim a gun from his shoulder at the deceased, and that, after firing the shot, petitioner went into his house and returned carrying a sword. The 5th witness is the mother of the deceased, and she swears that she, on hearing a shot from a gun, went down the steps and saw her son stagger and fall near a mango tree in the street. The 2nd witness says that he was in the street, heard a shot, turned and saw the deceased fall, and saw the accused go into his house with a gun and come out with a sword. From the evidence it appears that the 1st and 4th witnesses ran away as soon as petitioner came out with the sword; that the 2nd witness went up to the accused, who told him to go away, which he accordingly did, saying, "That man died and I marked my forehead with blood." The 3rd witness swears that, when the prisoner came out with the sword, he said, "there are still two people whom I have to cut off," and he was afraid and ran away; but the 4th witness, who was with the 3rd, does not speak to these words having been used, although he was present (see deposition of 3rd witness). The evidence of the 4th witness appears to be contradicted by the 10th witness for the prosecution, ~~and~~ Police Constable Bondili Balajee, who had come to Ammalapore on escort duty and lodged the previous night in the house of the petitioner, because it appears from his evidence that he, on hearing the gun-shot, came out

of the accused's house, saw the accused on the pyal with a gun and saw the deceased lying near the mango tree. He does not speak to any conversation with the petitioner, nor does he speak to the petitioner having said anything. It appears that he immediately went back in doors, put on his uniform, got his carbine, and ran away from the village for a distance of two furlongs, but that on leaving petitioner's house he saw nobody in the street except five or six women. It is noticeable that the 1st, 2nd, 3rd and 4th eye-witnesses, who say they were present, were all asked if they saw a constable in uniform come out of the petitioner's house with a gun, but that they all denied it, and that the 3rd witness denied it emphatically, adding, "if he had come I must have seen him," whereas it is perfectly clear from the evidence of the 6th witness that he did come out of the house in uniform and run past down the street passing on his way the houses of the witnesses and hence that those witnesses cannot have been present at all. From the evidence of the first four witnesses it would appear that the petitioner, standing on the last step of his pyal, fired a gun from his shoulder at the deceased, who was a man of the same height as himself, *viz.*, 5 feet (see evidence of 8th witness—Hospital Assistant). No map giving the distance was filed, but probably they could not have been more than five yards apart. The medical evidence (8th witness) shows that the wound on the deceased was "a gun-shot wound through the body near the lumbar region of the spine. The entrance was on the man's back, half an inch long and four inches between the seventh and eighth ribs ~~near the costal region~~. A piece of liver had come out of the exit aperture and was lodged in the shirt of the deceased." He further says, "the man's back, or rather the back of his right side, must have been turned to the gun. I made a *post mortem* and traced the course of the bullet;" and further on he says "it had struck no bone. The track of the bullet was level." From this evidence it would appear that the gun cannot possibly have been fired from the shoulder of the petitioner, because otherwise the wound would have had a downward tendency and not a horizontal course.

Both the Committing Magistrate, who was the 6th witness for the prosecution, and the District Judge, a gentleman of large experience, came to the conclusion, on seeing witnesses 1 to 4 in the box, that these witnesses were unworthy of credit; but the High Court has adopted a somewhat unusual course of believing the testimony of the witnesses whose evidence both the Lower Courts thought to be unworthy of credit.

The case for the defence was that the fatal shot may have been fired accidentally by Bondili Balajee, the 8th witness for the prosecution, and that this circumstance would account for his hurriedly running away without instituting inquiries or help in the inquiry when it was instituted. It is noticeable that apparently suspicion did attach to Balajee, because a constable was sent for him and he was called back, though how they knew where he had gone to, since nobody saw him, is unexplained. It would seem from the medical evidence that the wound found on the deceased was most probably caused by the discharge of a gun fired not from the shoulder but when carried at the trail. Further, with regard to this point it is proved that Bondili Balajee had in his possession five cartridges undischarged, but there is no evidence to show how many were served out to him or how many he ought to have had.

The third ground of appeal was that the petitioner was at once named as the murderer; but if it is admitted that the eye-witnesses are not witnesses of truth, there is nothing extraordinary in such a thing having occurred, because it would appear that, owing to the deceased having enticed away some months before the wife of the petitioner, the petitioner and the deceased were probably on very hostile terms. It is further alleged in the grounds of appeal that the petitioner stated, in the presence of the Magistrate and the Inspector, that he had killed the deceased and accomplished his vow. With regard to the statement of the Inspector it must be noticed that the offence is alleged to have taken place between 7 and 8 A.M., and that the Inspector was at Machavaram, a distance of five miles away, and did not hear of it till between 10 and 11 A.M. at that place; that the Inspecter, on hearing the news, went to the house of the petitioner and heard the petitioner shout [that he had killed Moturi Narasimulu and that he had accomplished his vow. It would hardly appear probable that the petitioner would have made this statement, not in the excitement of the moment but after an interval of at least three hours, within which time, if guilty, he must have realized the gravity of his act. The same thing is spoken to by the Sub-Magistrate, the 6th witness, in these words: "Treading the place he exclaimed that here he shot Moturi Narasimulu"; and from the deposition of the Magistrate it would appear that he made that statement some considerable period before the Police Inspector came at all. With regard to the evidence of the Magistrate it must be noticed that when he first came to the scene the crowd told him that Gopal Sing had killed the man, and it is also noticeable that the Magistrate cannot give the names of the persons in the crowd who told him, but distinctly says that he did not get the information from any of the witnesses in this case, although, according to the evidence of the 2nd witness, he, at any rate, was one of the crowd.

With regard to the evidence of the Magistrate "treading the place he exclaimed he shot Moturi Narasimulu," it must be borne in mind that apparently the petitioner was at the time threatened by an angry crowed and that possibly the Magistrate in the confusion may have mistaken the exact words used, and that if the petitioner was exulting over the death of his enemy he might have said "here Moturi Narasimulu was shot" without implying that he himself did it.

With regard to the exclamation alleged to have been made by the prisoner in the evidence of the Inspector and the Magistrate, the Government Pleader represented to the Court that he did not wish the petitioner to be convicted solely on such exclamations; and that therefore, if the other evidence adduced appeared to be untrustworthy, the petitioner must be given the benefit of doubt.

The fourth ground of appeal is that the barrel of accused's gun showed that it had been recently fired. With regard to this it must be noted that the petitioner's gun was a muzzle-loader, not easily cleaned, and was not examined until his arrest which happened some considerable time after it was fired, after the advent of the Magistrate; so that as the gun was cold and the smoke of course had disappeared there was nothing to show that it had been recently fired, except the fact that it was not clean and might easily have been fired on some previous occasion. Further, on this point there is no legal evidence that the gun of Bondili Balajee was

Ind. G.o 1864 Mis
5-9-95

examined, and even if it was proved that Bondili Balajee's gun was clean at the time he was called back by the constable, considering that it is a breech-loader and that Bondili Balajee ran away for at least two furlongs, he could easily have cleaned it after firing the shot.

The fifth ground of appeal is "finally there is deceased's dying declaration naming the accused as his murderer." With regard to this it is spoken to by the Magistrate (6th witness) is very fragmentary and quite unreliable. The evidence is "I asked him how he had received the wound, he gave no answer, but once in his pain he said Gopal Sing. Some time afterwards he said Gopal Sing had fired a gun, but when asked if correct he did not answer." Considering the state of feeling existing between the deceased and the petitioner, it is extremely probable that, as he received his wound close to Gopal Sing's house, he may have thought that Gopal Sing fired it without really knowing that such was the case, and this theory would seem to be corroborated by the fact that, when asked if the statement was correct, he did not answer, though there is nothing to show that he could not.

With regard to the motive it would seem by no means probable that the stale complaint which had been compromised would be sufficient for such an act.

With regard to the sentence it was represented to the Court that the offence took place eight months ago, and as there appeared to be a doubt as to the guilt of the prisoner the Court might properly pass a sentence of transportation for life, but the Court intimated that a representation on this point might more properly be made to Government.

Petitioner therefore prays that His Excellency in Council will take all these circumstances into consideration and exercise the prerogative of mercy. Should your Excellency think fit to commute the sentence, intimation must be given to the Jail authorities, Godaveri District, on or before the 31st August.

Two a.c. Jud. cro. 4027/9/95

John G. Smith.
Counsel for Petitioner.

20/8/95.

PRINTED AT THE SCOTTISH PRESS, MOUNT ROAD,