

24.8.11 ✓
25.9.07 ✓
18-8-11 BT ✓
22-5-11 RT ✓

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1887

Dated 9th Sept. 1895

INDEXED.

[Despatch Abstract.]

APPEAL AGAINST ACQUITTALS.

Requesting the Government Pleader to present an appeal the-
to the High Court against the acquittals of the first accused in
calendar case No. 21 of 1895 on the file of the Head Assistant
Magistrate, Kistna, and of the appellants in Criminal Appeal No. 22
of 1895 on the file of the Sessions Court, Kistna Division.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	4582		1895				
	4596		1895				

Report No 787 of 1895.
Magl

Office of the Magistrate of
Kistna District Dated Bangalore
18th August 1895.

From

J. A. Atkinson Esquire,
District Magistrate,
Kistna.

To

The Chief Secretary to Government,
Judicial Department,
Madras.

Sir,

I have the honor under Section 417
C. Br. P. to submit for the orders of Government
the records in Calandar Case No 21 on the file
1895
of the Head Assistant Magistrate and a copy
of the judgment in Appeal Case No 22 on
1895
the file of the Sessions Court, Kistna.

2. The facts of the case are these:—

A gang of dacoits from His Highness
the Nizam's dominions committed a series of
dacoities (shown in number) in this District
on the 13th, 15th and 20th of August 1894. Acting
promptly the Police traced six of them on the
17th and 27th idem to a place within the limits
of Suriapatt Taluk, Hyderabad Territory,
recovering from them stolen property worth

As 657. u. o. His Highness the Mysore Government
surrendered them for trial and on their arrival here,
they were detained in custody in the Sub Jail at
Nandigama.

On 6th March 1905 a police guard of 5
men constituted as shown
in the margin was detailed
to escort these six decoits and
another prisoner concerned
in a case of cattle theft to
take their trial before the
Sub Magistrate, Jaggarayapete. In transit
the six decoits escaped and have not been recovered
yet.

1 1st Sep - 753 Sheikadani. ^{Officer}
Constable { in charge of
the escort.

22 1st Sep Constables.

2 No 1053 Khassim Sabet
3 1082 Nagabhusanani
4 24 Kencin Sing
5 158 Fakir Muhammad.

The Police who formed the guard were
proceeded before the Head Assistant Magistrate
under Section 223 H. C. "for negligently suffering
the prisoners to escape from custody". The Head
Assistant Magistrate acquitted the officers
in charge of the guard and convicted the rest -
sentencing each of them to six months' simple
imprisonment and a fine of Rs 200. The latter
appealed to the Sessions Court and the Sessions
Judge quashed their convictions.

3. I consider that there has been a very serious
miscarriage of justice in this case as will be
seen from the following facts.

4. The prisoners were concerned in several grave
charges of dacoity. The evidence against them
was conclusive, and their successful prosecution
was likely to deter offenders against property on
the frontiers of the District. Their safe custody
was thus a matter of utmost importance from a
Police point of view. The accused were aware
of it and were also repeatedly warned of it when
they started from Nandigama. Further the Station
House officer of Nandigama provided them with
special precautions to guard against the escape
of prisoners during transit. He got the prisoners
hand-cuffed in two sets, and tied them all together
with a strong rope. He provided the escort with
^{Carbines} ~~Carbines~~ and Cartridges, with instructions to shoot
if the prisoners attempted to escape. He also directed
that the hand-cuffs should not be removed
and that the prisoners should not be fed until
they reached their destination Jaggarayapete.

5. The constables however systematically
disregarded these instructions. In the first place
when they had scarcely proceeded four miles,
they separated themselves into batches at
Narobpett and went about asking the
Villagers to feed the prisoners. It is in wide

long before
latter.

that they removed the hand-cuffs while the prisoners ate. As to the alleged removal of the hand-cuffs the Head Assistant Magistrate has given the benefit of the doubt to the accused, but as seems to me on insufficient grounds. The preponderance of evidence is much against the accused.

6. The distance from Vandijamma to Jaggayyapatt is 16 miles along a rutted and frequented road. The party left Vandijamma at 7 A.M. and should have reached Jaggayyapatt by 1 or 2 P.M. at the latest. Their failure to do so has not been explained by accused and was obviously due to intentional dawdling on the way. Not only did they stay a long time at Kavabpatt getting food; but they stayed at a well some few miles further on, nominally to drink water but also as appears from the prosecution evidence to let the accused Constables converse with two women, who there appeared on the scene.

7. The escape is said to have been effected thus:- at about dusk the party got to a place a mile from Jaggayyapatt. Two of the dacoits broke the hand-cuff that connected them and escaped. Second accused says that they broke the hand-cuffs "when they jumped". It is said

by 7th prosecution witness, the only prisoner who did not escape, that they went away walking. Two constables ran after them immediately. The remaining four dacoits still hand-cuffed, are said to have thrown sand in the eyes of the guard from a distance of 15 yards and ran away. These were not pursued! The officer in charge of escort stayed with the prisoner concerned in the case of cattle theft, and the other two Constables went in pursuit - not of the hand-cuffed men, but of the first two who had got free. The Constables assert that they fired eleven shots at the runaways but missed them each time. The Head Assistant Magistrate disbelieved this plea.

8. Passing by the direct disobedience of orders involved in the halt at Kavabpatt, in removing the rope and hand-cuffs, in giving food to the prisoners, in halting at the well and holding conversation with two females, passing over also the accused's complete failure to offer any explanation for spending eleven hours over a journey that might with ease have been accomplished in six hours; I submit that the description of the occurrences at the actual time of escape if true lead to an almost

irresistible conviction that the escape was
connived at. The first pair of prisoners are said
to have broken their hand-cuffs by jumping.
Could not the guard have prevented the jumping?
Should not the constables have been so close to
the prisoners that even if the hand-cuffs were
broken or came unfastened, they could at once
seize them and secure them? There was no struggle.
The prisoners apparently broke their hand-cuffs
unmolested and trotted quietly away. Then how
could the other four hand-cuffed men throw
sand in the eyes of the police from a distance of
15 yards? What were the constables doing at
such a distance from their charge? The story
about throwing sand is incredible. Is it
possible that any man could be inconvenienced
for a moment by sand thrown by hand-cuffed
men from 15 yards? Then is it possible that all
four constables if really anxious to recapture
the prisoners should have run after the two
who had broken their hand-cuffs, when four
others still secured together were stumbling
away over the broken jungle covered ground?
It is unnecessary to particularise further.
What I submit that the only possible explanation
of the escape is that it was prearranged
between the constables and the prisoners.

Irresistible
I should
like to see
the done
one hand
free?

9. The Head Assistant Magistrate acquitted the
1st accused on the grounds -

(1) "that his responsibility for actual failure
to recapture was less" and

(2) "that he was not responsible to hold the
other four hand-cuffed prisoners"

I contend that the 1st accused as the officer
in charge, was primarily responsible for the proper
conduct of the escort. He acted in deliberate
contravention of the orders he received at
Kandigama and collusively allowed dawdling
on the way. The Head Assistant Magistrate appears
to have fixed the responsibility for the offence more
with reference to the unsuccessful attempts alleged to
have been made for the recapture of the prisoners
than with reference to the original offence of suffering
them to escape. The question at issue was "escape"
and not "recapture". The Sessions Judge also
appears to have overlooked this point.

10. The accused did not dispute the legal
consignment of the prisoners to their custody.
They did not deny their joint and individual
responsibility. They did not plead that they were
unequal to the task of escorting these prisoners

If therefore they had been on the alert, marching steadily "at the slope" and ready to pounce upon the prisoners at the slightest indication of any attempt at escape, it is impossible that the offence could have occurred.

11. In cases of escapes from Police Custody, either through corruption or negligence, actual connivance is generally difficult to prove. The escape itself is strong presumptive evidence of negligence. Nothing short of being actually overpowered can justify the omission of the Police in this case to prevent escape. There is no suggestion that they were so overpowered.

12. I have the honor to request that you will be good enough to move the Government to appeal against the acquittal of all the accused in the case. Escapes from custody are of constant recurrence in this District and there is good ground for believing that Police escorts confidently count on immunity from other than departmental punishment, when they allow an escape to occur.

13. There was a serious irregularity in the procedure of the Sessions Judge, in that the records in the case were not before him when

Section
423 Recd

3
the appeal was disposed of. He reversed the Head Assistant Magistrate's judgment, on a mere formal thereof and without hearing the Public Prosecutor in support thereof. The appeal was fixed for hearing on 22nd July 1895. The earliest intimation I had of it, was contained in an endorsement of the Head Assistant Magistrate, giving cover to a letter from the Public Prosecutor dated 17th July 1895 which reached me on 20th July 1895, in camp at Berwada 48 miles away from my Head Quarters. I despatched the records on 21st July 1895 instructing the Public Prosecutor to oppose the appeal, but before my letter was put into his hands on 22nd July 1895, the appeal had been disposed of.

14. Together with the original records, I am forwarding a transcript of the Head Assistant Magistrate's notes of the evidence, that officer's handwriting being very illegible.

I have the honor to be,

Sir,

Your most obedient servant,

J. H. Atkinson

District Magistrate

Judicial
Magisterial Department

From
J. N. Atkinson Esq
District Magistrate
Kistna
To
The Chief Secretary to
Government
Judicial Department
Madras

Dated 18
Sept 25 } August 1895
Ref: on: C. No 787
Magt 795

Subject

Forwarding records in Cal. case
No 21
95 on the file of the Head
Assistant Magistrate and a copy of
the judgment in appeal case 22
95
the file of the Sessions Judge Kistna
the request that steps may be
taken to appeal against the acquittal of

H. M.

For notes
as to whether an appeal
may be preferred in this case.

C.S.
This is on the question of the
evidence of the amount of proof
required in order to establish a
charge of negligence. Submitter that
the Police Magistrate should be consulted
as to the probable result of an
appeal
The Sessions Judge should be
seen as to the result.

H. N. has been guilty of a gross
negligence vide Section 423
C.C.P.
I do not think that there can be
the slightest doubt that there
has been a grave failure of
justice in this case both on the
part of the Police Magistrate in letting the
prisoner go and the Sessions Judge in not
sending him back to the Police Magistrate who took
him equally with the other prisoners
who were in his custody. That
he remained with the man who
did not run away but was
left with the charge: it is
a point which could be
considered only in mitigation
of punishment.
The whole story is of the most
coarse and bare description
and I do not believe a word
of it. Commence alone can

3/9/95

[G]
25
800-23-7-95

DEPARTMENT.

C. No.

FOR ORDERS.

I do not certainly appeal against both
acquittals
The question
of the Police Magistrate
is not in issue - But I think
they were clearly justified in doing
so, vide S. 46 C.P.C. paras 2 &
3 - The man having created the
Police had to arrest - Society is
harmless by transference of
the
4/9/95

The J. seems to have forgotten that
in a case of this kind, where
the escape was admitted, the burden of proof
lay on the Police to prove that
they could not prevent the
escape -

accounts of the so called escapes.
It is strange that no notice has been
taken of the way in which of the
others are to be believed they find
at the well. I know of nothing in
the law which would protect them
against attempting to commit culpable
homicide not amounting to murder.
I submit that an appeal against
the decisions of both the Magistrate
(as regards 1st accused) & the
Sessions Judge (as regards the other)
is not possible.
3/9/95

Appeal against Acquittal
4295

FOR ORDERS.

Cd
order 89th September 1895, No 1887.
Min

The *Sent Pleader* will accordingly
be requested to present an appeal
to the High Court under Sec 417,
C.C.P. against the acquittals
of the 1 accused in C.C. No 21 of 95
on the file of the *Hd. Asst. Magistrate*,
Kisumu, and of the appellants
in *Ordnal Appeal No 22 of*
95 on the *file of the* *Coram Court. Kisumu*
Bureau.

(from order)

10
7/9/95 *8*
6-5-95

7/9/95 *Cd*
12/9 *21* *13/9*
To the Sent Pleader (Hd) and
" - N. Magistrate, Kisumu (Hd)
Despatch
5/10/9

579

When given for copying _____
When copied _____
When examined _____
When signed _____ } 189.

READ AGAIN G.O., No. _____
189 DATED _____

CURRENT No. _____

ENCLOSURES TO C. No. _____

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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

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