

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1913

Dated 10th Sept. 1895

INDEXED

[Despatch Abstract.]

APPEAL AGAINST ACQUITTAL.

Requesting the Government Pleader, Madras, to present an appeal to the High Court against the judgment of acquittal in calendar case No. 48 of 1895 on the file of the second-class Magistrate of Virudupatti, Tinnevely district.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	5363		1895				
	5336		1895				

Trincomalee District Magistrate's Office

No 1223 of 95

Dated Courtallum, 13 August 1895

From

Chas. Higgins Esquire,

District Magistrate of

Trincomalee,

To

The Chief Secretary to

Government,

Judicial Department,

Fort Saint George.

Sir,

I have the honor to request that Government will be pleased to instruct the Government Pleader to prefer an appeal to the High Court under section 4, Criminal Procedure Code, against the judgement of the 2^d-class Magistrate of Vrudupatti in Calendar case no. 48 of 1895 on his file.

2. The facts of the case are as follows: -

One Syed Kassim Lebbai of Vrudupatti, complainant, was sleeping in his house in the night of the 25th February 1895 with his wife, mother-in-law and two boys. At about 3 A.M., the mother-in-law raised an alarm. The complainant at once got up

and

found the door open and a person running out.
He at once pursued him. By this time one Kathadu
cham Sahib (2^d Prosecution witness) a neighbour
and ^{friend} ~~him~~ Sahib (3^d Prosecution witness) who was
sleeping in the opposite house awoke at the alarm
raised and joined the 1st witness. All three caught
hold of the ~~three~~ accused at a Kali Pidan about
10 yards off from the 1st witness's house. Meanwhile
the 4th Prosecution witness, who is the mother-in-law
of the 1st, found the silver girdle worn by one of
the boys missing, and, with the aid of a lamp
brought by her, the girdle was found in the
possession of the accused. Prosecution witnesses 1,
2 and 3 then led him to the Police Station in the
same village arriving at about 4 P.M. There were
2 or 3 Police Constables there. One of them went and
fetches the Head Constable and a complaint was
at once lodged. All these points are clearly testified
to by the 4 Prosecution witnesses.

3 The Police Station House Officer sent his first

report to the Magistrate the next day, 26th Feb
and it appears to have reached him at 3½ P.M.
The charge was also laid before him the same day.
The Magistrate examined all the four witnesses
and had them cross examined by the accused. He
framed a charge against him on the same day.
4 The accused pleaded not guilty and said that
one Police Constable took him to the Station at
10 A.M. on the 26th February, and that the Head Constable
brought the girdle with him. He cited 5 witnesses
of whom 2 belong to a village in Srivilliputtur taluk
about 10 miles from the place of offence.

* The two witnesses last mentioned were exam-
ined on the 6th March 1895. One of them said that
the accused used to come to his village every Monday
and Thursday to sell betel leaves; that he came
there accordingly on Monday 25th February, stayed
there till 6 or 7 nalgais (Indian hours) after sunset
(8.30 or 9 P.M.). This would not prevent the accused
from being at a place 10 miles off by 3 A.M. the
same night. The witness said further that he
was told the next morning by one of his villagers a

5 or 6 nalgais, i.e. at about 8 A.M., that the accused
had been arrested. This statement clearly contradicts
the accused's plea that he was arrested and the case
was concocted against him at about 10 A.M. According
to this statement the arrest must have taken place
sufficient time before 8 A.M. to allow the news
to travel 10 miles. The witness further admits that
the accused did not usually stop in his village after
selling his betel leaves. The other witness who is a
Kudikavalgar of the village says that he saw the
accused in his village until 10 nalgais after sunset,
10 P.M., on Monday. This may or may not be true.
Even if true, it does not disprove the arrest at
8 A.M. that night. With the consent of the accused,
the Magistrate dispensed with the rest of the witnesses
cited by the accused.

5. At this stage, an application was put in on
behalf of the accused, under section 257, Criminal
Procedure Code, to summon the prosecution witnesses
for further cross-examination. The application
was granted and the Prosecution witnesses were
cross examined on the 11th March 1895. The chief
grounds

- grounds that were dealt with in the cross examination
were
- (1) the alleged existence of money dealings between
1st witness and the accused,
 - (2) the alleged intimacy of the accused with the Com-
plainant's wife,
 - (3) the manner of seizure, and the lanes through which
he was led to the station, and
 - (4) the alleged occurrence of another theft in the complainant's
house a few days before the present occurrence.
- b. (a). As to the 1st point, the 1st witness denied any
such dealings. The 4th witness said that the accused
told her that he owed her son-in-law Rs. 1-4-0
and that her son-in-law told her that he
received Rs. 5 from the accused and returned Rs. 6-0-0.
This is all the evidence on record.

(b). Regarding point 2, nothing is proved and the
Magistrate himself disallowed the question.

(c). About the 3rd point, all the first 3 prosecution
witnesses agree in saying that all of them caught
hold of the accused. The discrepancies in the manner
of seizure are unimportant. As regards the pathways
through which the accused was led to the station,
the statements show no great divergence.

(d) Non

(1) None of the witnesses know anything about the occurrence of another theft.

The Magistrate then examined ^{on the} 16th March 1895, the wife of the 1st ^{Prosecution} witness and 3 neighbours, as Court witnesses. The former spoke to the Commission of the offence and the apprehension of the accused by the first three prosecution witnesses. The 2nd Court witness said that he heard the alarm at about 3 A.M., the and that he heard also a talk of the disappearance of the girdle and its subsequent discovery. The witness came out of his house, but could not go to the place of arrest owing to ear-ache. The 3rd and 4th Court witnesses say that they heard the alarm, came out and found the first three prosecution witnesses holding the accused, that they learned from the 2nd Prosecution witness that the accused stole the girdle. These witnesses were cross examined about the exact person who was holding the lamp and the manner in which the accused was seized. The discrepancies were unimportant. The last two Court witnesses stated that the first prosecution witness conducts the service in the mosque. With the above evidence before him, the Magistrate acquitted the accused. His reasons are

(1) that

(1) that the complainant and accused have money dealings and that the latter frequents the former's house occasionally,

(2) that there are discrepancies in the statements about the manner of arrest and the different pathways through which the accused was taken to the Police Station,

(3) that the 2nd Court witness knows nothing to connect the accused with the offence and the 3rd and 4th Court witnesses are the complainant's disciples, (4) that the Police report was received late, i.e. at 3 1/2 P.M. the next day.

9. As regards the first reason, I have already stated that the complainant denied any money dealing and the statement of the 4th Prosecution witness does not go to show that there was any such dealing as would induce the complainant to trump up a false charge against the accused. The fact that the accused was occasionally visiting the complainant's house was not proved. Even if ^{it} was, that does not render it ^{improbable} ~~improbable~~ that he would commit the offence.

The 2nd ground is not a sufficient ground for disbelieving the prosecution evidence. It is very

atural that in a case like this the statements given by different persons as to the mode of seizure and as to the particular parts of the body seized should not be exact in all respects. Regarding the lanes, it is natural that in a dark night such as the one in question, the witnesses should describe them somewhat differently. The main roads referred to appear to correspond.

10. As regards ground 3, the Sub Magistrate has entirely ignored the fact that the 2nd Court witness said that he could not come out owing to ear-ache and that the other two Court witnesses were summoned by him and not cited by the complainant. Regarding the late receipt of the Police first report, it is said that the report was taken by a constable at 8 A.M. in the morning to the Sub Magistrate's house and that the Sub Magistrate asked him to bring it to the office, to which the Sub Magistrate came only at 3 P.M.

11. I think that the case has been fully proved against the accused and that there has been a miscarriage of justice

12. The

12. The material part of the record and translation of important statements are herewith submitted.

I have the honor to be,

Sir,

Your most obedient servant,

C. S. / 1899

District Magistrate.

15/5

S.B.

URGENT
CURRENT NO. 3939
Ministry of Justice
Ministry of Justice

The St. George
Ministry of Justice
Chief Secretary
to Government
Judicial Dept
Fort St. George

Dated 13th August 1895
Rev. 19th do.
No 1223 of 95
Enc. 3 files

Submitting that the Government
will be pleased to instruct
the Government Pleader to prefer
an appeal to the High Court
against the judgment of the
2nd class Magistrate of Vindhyapatti
in C.C. No 48 of 95 on his file

E
6
Enrollment No. 1955
Referred to the Govt. Pleader
for opinion as to
the desirability of appealing and
the probable result of an appeal.

(By order)
18/8/95.
J. A. Warden
Under Secretary.
Cottamund
21st August 1895

To the Govt. Pleader
with papers in support of
his return.

TO BE RETURNED
WITH REPLY.

CURRENT No. 4122

Government
High Court
In No. 31st August 1895

No. A
From,

L. B. Powell Esq.
Govt. Pleader

To,
The Chief Secretary to Government
Cottamund.

Sir,
With reference to your
endorsement No. 1955 of 95, dated
the 21st instant, I have the honor
to submit the following
opinion:-

1. I have read through the evidence
of the witnesses and the prosecution story
seems to me consistent. No reason is
assigned by the accused why the
1st prosecution witness should have
concocted a false story against him
and

...the other witnesses should have
supported it. The reasons given by the
class magistrate for discrediting the
prosecution witnesses do not appear to
me entitled to any weight. The fact
of there being some trifling money
dealing between the accused and the
1st prosecution witness does not make
it impossible that the accused committed
the offence. All that can be said is that
it is prima facie unlikely. But in
the face of the positive evidence little
or no weight can be given to that
argument.

Then as to the holding of the
hands of the prisoners by the witnesses
no doubt there is a discrepancy, but it
is easily explainable. One may have
held a hand at one time and one
another as they took him to the
station.

Station. It is more difficult
to stand how they could be mistaken
about the route along which the prisoner
was led, but with people of this class
deposing sometime after the events to
which they speak such mistakes are
not unusual, especially as the man was
taken to the station on a dark night.

3. The submagistrate says the 2nd
witness was ^{allowed} by the prosecution
witnesses to have been present at the
Kalianmampidam and that he denies
it and knows nothing to connect the
accused with the offence. This statement
is altogether inaccurate and misleading.
The only witness who speaks to Abdul
Rahman's presence is the 1st witness, who
says "There were 10 or 20 persons when
the accused was arrested. Abdul Rahman
and Pakiri, and others were among the crowd."

The

URGENT
The statement, is a general one, that
he was thereabouts. Now Abdul Rahiman
in his evidence does not deny his presence.
He says he was on the porch of his house.
He heard the noise, "they" "thief" at about
3 o'clock. There was a crowd. They were
saying there is the silver girdle. This,
is far from contradicting the Complainant's
story, is strong corroboration of it. The
point in the case is whether the man was
arrested at about 3 A.M. as stated by
the prosecution witnesses, or by a Constable
at 10 o'clock in the morning. The evidence
of the 2nd, 3rd and 4th Court witnesses,
as supporting the prosecution story in
this respect, was most important.

4. It is certainly curious that none
of the Constables have been called
either by the prosecution or the Court.
It might be said the prosecution did
not

not know till after the accused
his statement that he would deny
being taken to the Police Station, but the
Magistrate examined the Court witnesses
after that statement, and it seems to
me extraordinary that he did not summon
the Constable if he had any doubts about
the hour at which the Complaint was
made. I observe that the District Magi-
strate says the Complaint was taken
to the Sub Magistrate at 8 A.M. by the
Constable, but the latter was told to
bring it to the Office to which the Sub-
Magistrate only came at 3 P.M. I
can find nothing about this on the
record sent to me, but if it is a fact
it makes the reasoning of the Magistrate
still more incomprehensible.

5. I think it is a proper case for
appeal and that in all probability
a

trial before another magistrate will
be ordered.

The enclosures to your endorsement
and reply are herewith returned.

I have the honor to be,
Sir,
Your most obedient servant,
W. Town

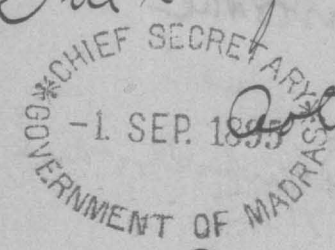
Govt Pleader.

From,

The Government Pleader
Madras.

To,

The Chief Secretary to Govt.
Madras.



Dated 31st August 1895
Received 4/9
Recd 2/9
No. A.

Enclosures. 3 files.

Submitting this opinion
as to the desirability of appeal-
ing against the judgment
of acquittal in C.C. No 48
of 1895 on the file of the
2nd class Magistrate of
Vindrapatti.

24/9

1895

C No 3939 & 4182.

For order

The following order may perhaps be
made 10th Sept 1895. X-1913

This in the circumstances states
The Govt Pleader will be
requested to prefer an appeal
to the High Court under Sec.
417, C.C.P., against the judgment
of acquittal in C.C. No 48 of
95 on the file of the 2nd class
Magistrate of Vindrapatti.
Trinamally L.

7-9-95

7/9/95.

DESPATCH

To the Govt Pleader (C No 3939 &
with record & C No 4182-8)
L. Trinamally, Trinamally (D. No.)

Note

The appeal time will expire
about the 18th of Sept.

4/9/95. It as seems probable
the acquittal is retained
are not to be called for to
the fitness of the Magistrate
Mr. J. Roberts

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

189 .

READ AGAIN G.O., No.
 189

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT A A A A A A A

LETTERS OF GOVERNMENT.

STATEMENT WITH DITTO.

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

N.B.--

- A = Copy in full.
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- P = Copy abstract only.
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1955/95