

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1934

Dated 14th Sept. 1895

INDEXED.

[Despatch Abstract.]

CASE OF A CONVICT SENTENCED TO TRANSPORTATION
FOR LIFE.

Requesting the Hon. the Chief Justice to state whether any reduction of the sentence of transportation for life inflicted on Hussain Ahmed in Kistna Sessions Case No. 19 of 1890, and upheld on appeal by the High Court in Criminal Appeal No. 333 of 1890, is advisable

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	4713		1895				

IN THE SESSIONS COURT OF KISTNA DIVISION.

CALENDAR CASE No. 19 OF 1890.

Prisoners' Names :—

- (1) Hassan Ahmed.
- (2) Divakaruni Sunderaramayya.

Offence :—

Murder under section 302 I. P. C.

Opinion of the assessors :—

Not Guilty.

Finding of the Court :—

1st prisoner guilty, 2nd prisoner not guilty.

Sentence :—

1st Prisoner transported for life and 2nd prisoner acquitted and discharged.

Prosecution Witnesses :—

1. Barla Veerabhadrayya.
2. Komaragiri Venkatachalam
3. Yakasiri Adi.
4. Vemula Guravareddi.
5. Pillalamarri Venkayya.
6. Malireddi Veerayya.
7. Bandi Kotireddi
8. Bandi Kotireddi.
9. Makkena Elisha.
10. Job.
11. Vemula Narsireddi.
12. Vemula Veerayya.
13. Navuloori Gangayya.
14. Vemula Vengalareddi.
15. Sheikh Adam.

Assessors :—

1. Burra Nrasimhacharyulu.
2. T. Kasirtam

Defence Witnesses.

1. Vemula Chidrareddi.
2. Taya Adenna.
3. Matta Kasayya.
4. Vemula Buchayya.
5. Utta Hanumantu.
6. Amaravati Fareed Sahib.
7. Varagani Ameerali.
8. Vakkapalla Kotayya.
9. Mahomed Galab.
10. Chidella Subrahmanyam.
11. Pattela Venkatanarasu.

Pondugal is a village in the Palnad Taluq. Second accused is the Carnam of that village and first accused is a Muhamedan cultivator.

2. On March 21st in the morning the accused and others, including the station officer of Pondugal, went to Ramapuram village to search some Yanadi huts because of thefts that had taken place in the house of second accused at Pondugal.

3. The huts were surrounded and one of the Yanadis, Komaragiri Venkatachalam, was being questioned by second accused before the Ramapuram Village Munsiff was on the spot. Another Yanadi Yekasiri Yadagirigadu, son-in-law of Venkatachellam, was discovered in the huts. This Yedagirigadu received a stab in the side from a spear and lay outside the huts wounded. The Ramapuram Munsiff arrived on the spot to find the wounded man lying there surrounded by his relatives. The search party except second accused, seem to have quitted the place being afraid at what had happened. The relatives of the wounded man told the Munsiff that the wound was inflicted by first accused and the Munsiff sent the wounded man to the Dacheipalli Hospital with a report addressed to the Tahsildar to that effect. But the Pondugal Station Officer sent a report to the Tahsildar saying that Yadagirigadu while leaping over the enclosure wall had fallen upon his own spear. On the evening of the following day the Tahsildar took a statement from the wounded man who said that first accused had stabbed him at the instigation of second accused. Shortly after making this statement the wounded man died. The accused have been committed on the charge of murder.

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 4. The first witness is the Station Officer of Dachepalli who proves the dying declaration. The Apothecary's evidence before the committing Magistrate is filed. Death was caused by a punctured wound in the right side for or five inches deep inward and downward in direction which injured the liver and bowels. It might have been caused by the spear produced. The direction of the wound shows that it was a stab inflicted by another person. If deceased had fallen on the spear the direction would be different and the wound would be deeper. There were other superficial wounds on the body which might have been caused by blows but which could not all of them have been caused by a fall.

5. The second witness is the father-in-law of deceased. He says that his house was surrounded by about fifty men and that a constable took witness out of the house. There was an outcry in the house and witness ran back. Some twenty persons had surrounded Yadagiri. He was bent down and they were holding his hands. The second accused and the Ramapuram Carnam called out "stab! stab!" (Poduvu). The first accused stabbed him with the spear in the side and the by-standers continued to beat him. A constable hit him on the jaw. He fell. They dragged him outside the wall of the enclosure.

6. The third witness is the wife of deceased. She says that when the house was surrounded by men and her father was called out of the house they seized her husband and beat him. Then second accused and the Ramapuram Carnam and another man called out "stab!" in his right side. He fell and they dragged him to the eastward over the wall. The first accused party went away and the Ramapuram Munsiff arrived on the spot. The wounded man was sent to the Hospital where he died next day.

7. The fourth witness is a ryot of the village and is the uncle of the Ramapuram Munsiff. He says that he went to the Pariah hamlet for a cloth and that he saw the occurrence. Second witness was brought out before the second accused and the Ramapuram Carnam. There were cries from the hut of "he is here!" Then the second accused and the Ramapuram Carnam cried out "stab!" (poduvu). Then the first accused had a spear in his hand. Witness did not go near and being afraid went away.

8. The fifth witness is a weaver of Ramapuram. He happened to be at the Yanadi huts that morning. About a hundred persons had assembled. The men cried out that Yadagiri was there. Then second accused called out "stab!" The first accused stabbed him in the side with a spear. Then he was dragged over the wall and beaten. There was much confusion.

9. The sixth witness is a ryot of Ramapuram. He was going to the fields and saw the crowd at the Yanadi houses. He went there. A man had hold of Yadagiri by the hair and shouted out that he was there. Then second accused and the Ramapuram Carnam called out "If he is there, stab him!" (unté poduvu). The first accused then stabbed him with a spear in the side. About twenty or thirty persons were round him. Witness is the brother-in-law of the village Munsiff.

10. The seventh witness is a ryot of Ramapuram. He saw the crowd and saw the second accused and the Ramapuram Carnam call out "stab!"

11. The eighth witness is a resident of Ramapuram. He saw the crowd and heard the second witness brought out but he went away and he heard no cry of "stab!"

12. The ninth witness is a Christian catechist of the Lutheran Mission. His house is near the Yanadi huts. Some thirty persons surrounded the huts. Then a cry was raised that he was there. Then the second accused and the Ramapuram Carnam said "stab!" Then the first accused stabbed Yadagiri with a spear in his side, Yadagiri fell and they continued to beat him after he fell. The men went away and the Ramapuram Munsiff arrived.

13. The tenth witness is a Christian weaver of Ramapuram. He was standing within the wall which encloses the Yanadi huts. Some of the Pondugal men went inside the hut and cried out that Yadagiri was there. Then the second accused and the Ramapuram Carnam called out "stab!" Beat, seize and bring him out!" It was said that he was dead and they said "If he is dead bring him out!" The first accused stabbed Yadagiri with a spear in the side. After he was stabbed the others beat him and dragged him through a gap in the wall towards the east.

14. The eleventh witness is a ryot of Ramapuram, a brother-in-law of the Ramapuram Munsiff. He saw the tumult. A cry was raised in the house of Yadagiri that he was there and the second accused and the Ramapuram Carnam said "do not let him go, stab him!"

15. The twelfth witness is a ryot of Ramapuram. His wife's sister is the wife of the Munsiff's brother. He says that twenty or thirty persons surrounded the house of Yadagiri and an outcry was raised. Two men seized Yadagiri. The second accused and the Ramapuram Carnam came running to the hut saying "whore's son! stab him!" Then first accused stabbed him in the side with a spear. He fell down and all ran away.

16. The thirteenth witness is a ryot of Ramapuram. He was present and states that when a cry was raised that Yadagiri was there the second accused cried out to stab him.

17. The fourteenth witness is the Munsiff of Ramapuram. In the morning the mohataf told him that the police required his presence. He went and on the way met constable Narsing Bandu who asked for fifty men as assistance. The Munsiff went on to the Yanadi huts and there saw second accused and the Ramapuram Carnam sitting under a tree. He asked the second accused what this meant and the second accused struck his forehead and said that it was his misfortune. Yadagiri was lying wounded outside the enclosure wall. In addition to the wound in his side there was a wound on his chin, abrasions on his body and some swelling of the testicles. The relatives said that the Pondugal men had done this. The Pondugal men had all gone. A pariah told the Munsiff that the spear was in the house of the Ramapuram Carnam, so the Munsiff went there and found in a heap of straw a spear which he had never seen before. The wounded man was sent to the Hospital and the spear was sent with a report to the Tahsildar. As the spear was brought back it was sent a second time to the Tahsildar on the 23rd. The report was written at once.

18. The fifteenth witness is a Head Constable who has prepared a plan of the locality. The wall is a yard and a half in height. It is a dry stone wall. The distance from where second accused stood to where Yadagiri is said to have been stabbed is 47 yards.

19. The first witness for the defence is a ryot of Ramapuram. He says that when the hut was surrounded Yadagiri came out with this spear in his hand. He placed the shaft of the spear outside the wall and leaped over the wall. The stones slipped. He fell forward and the spear pierced his side. I recorded a remark that the demeanour of this witness was not good.

20. The second witness is a ryot of Dachepalli who went to Ramapuram that day to sell brinjals. He saw the crowd and went to the spot and saw Yadagiri leap the wall and fell upon his spear. I recorded a remark that the demeanour of this witness was not good.

21. The third witness is a ryot of Ramapuram. He says that first accused came that day to Ramapuram to ask for some money that witness owed him. Be that as it may, both witness and first accused were present at the Yanadi huts and witness says that Yadagiri leaped the wall and fell on his own spear. In cross examination witness admits that the Ramapuram Carnam had given evidence on his behalf.

22. The fourth witness is a ryot of Ramapuram. He was at the spot and saw the Yanadi leap the wall and fall on his own spear. The shaft of the spear lay towards the man's head.

23. The fifth witness is a ryot of Ramapuram. He says that on the day on which Yadagiri was hurt he saw the village mohata and the son of second prosecution witness come along the street with a spear and enter the yard of the Carnam of Ramapuram. They returned without the spear.

24. The sixth and seventh witnesses give evidence as to the quarrels between first accused and Vemula Viranna of Ramapuram regarding the Muhamedan "Pirs."

25. The eighth witness is a ryot of Dachepalli who says that he was present on March 22nd when the father-in-law and wife of the wounded man advised him to tell the Tahsildar that first accused had stabbed him saying that the village wished him to say so and that he consented.

26. The ninth witness is a pensioned Head Constable. He says that he went into Dachepalli to draw his pension and that passing along the street he overheard a conference in the Forest office. The Forester, a native pastor of the Lutheran Mission, the Ramapuram Munsiff and Elisha were present. The Forester was advising them to give strong evidence in this case against the accused.

27. The tenth witness is an Inamdar of Dachepalli who happened to go to Ramapuram on the morning of March 21st to buy ghee. He was present on the spot and spoke to second accused. He heard a cry that Yadagiri was running away and then he heard that Yadagiri had received a wound leaping over the wall.

28. The eleventh witness is a ryot of Gurjala who happened to be passing through Ramapuram that morning. He saw the search party and heard the uproar in the Yanadi huts and then he heard that Yadagiri leaping a wall fell on his spear.

29. The assessors expressed an opinion that deceased met his death leaping over the wall. They say that if first accused had stabbed him with so slender and sharp a weapon the wound would have been much deeper than it was.

30. With regard to second accused, the Carnam of Pondugal, I am of opinion that the charge of abetment of murder cannot be sustained. I find as a fact that he did cry "stab!" and that deceased was then stabbed but it would require some special circumstances in the case to involve second accused in the legal guilt of murder. There is evidence that first accused does farm work for second accused but that does not place him under the orders of second accused on an occasion such as this is. The words spoken were not an order given by an officer in command of a party and they may not have been seriously intended. The contrite demeanour of second accused when the Ramapuram Munsiff arrived on the scene goes to show this. I therefore acquit and discharge the second accused.

31. With regard to the first accused I regret that I am unable to concur in the opinion expressed by the Assessors. It is directly contrary to the medical evidence and if the Apothecary had given evidence at the trial instead of his evidence being read, it is probable that the assessors would have given a different opinion. The wound was in the side penetrating downwards and inwards to the liver and intestines. The spear is 7 feet 3 inches in length. How could this wound possibly have been inflicted by his falling upon the spear? The defence witnesses say that he grasped the iron spike with his right hand and placed the haft on the ground using the spear as a leaping pole. Unless he turned a somersault in the air the spear

could not inflict a wound in his waist downwards. Moreover the wound pointed inwards, so the spear must have extended out from his side. Also, as the Apothecary clearly says, the weight of a fall would have driven the spear very much deeper.

32. This spear is a light thin bamboo shaft 4 feet 9 inches long with a very slender iron spike like an elongated bayonet 2 feet 6 inches long, making a total length of 7 feet 3 inches. It is a formidable weapon and a slight thrust would penetrate, but it is a weapon which no sane person would use as a leaping pole and I am altogether unable to believe the story put forward for the defence that when the huts were surrounded by men Yadagiri emerged with his spear and leaped the wall.

33. The other wounds on his body are not such as would be caused by one fall from a wall and they corroborate the testimony of the prosecution witnesses who say that the Pondugal men beat Yadagiri and dragged him.

34. If the spear wound had been accidental the search party would have remained to complete their search for the stolen property. The fact that they went away in alarm at what they had done goes to show that the prosecution story is the true one.

35. The demeanour of the prosecution witnesses impressed me favourably. They appeared to me to be witnesses of truth. On the other hand the witnesses for the defence gave me the impression that they were not truthful. No doubt there are factions in the village and the Munsiff and Carnam are opposed to each other but I do not think that is sufficient ground to discredit the prosecution evidence.

36. I am unable to bring this act under any exception which would reduce the offence. There was no need whatever to use a spear. The numbers of the search party were overwhelming and there was no danger that Yadagiri would escape. The slightest thrust with so very formidable a weapon would be likely to cause death. Admitting that first accused was assisting a police officer and that he had a right to use force in arresting Yadagiri, he cannot be said to have acted in good faith when he gave this thrust with a spear.

37. In these circumstances I am compelled to find that Kallodri Hassan Ahmed is guilty of murder and I pass sentence of transportation for life. As the thrust may have been given on the impulse of the moment I do not pass sentence of death.

18th July 1890.

G. T. MACKENZIE,
Sessions Judge.

Compd.
K. V.
Translator.

True copy

G. T. Mackenzie

Sessions Judge

De H.C. Tho: 646/90

Confirmed by H.C. in
Cr. Appeal 333 of 1890. by
Collins C.J. and Weir J. 24.10.90.

D.O. No 352

Pray's Hotel. Coonoor.
The 8th of June 1895.

My dear Mr. Price,

Usually when I give a decision it
passes entirely out of my mind, but an
exception is Kistna Sessions Case 19 of 1890, for
I have never been at ease about that case
and the recollection of it troubles me.

I enclose a copy of the judgment. It was
confirmed by the High Court on appeal so the
responsibility for the decision was shifted from
me, but, nevertheless, I am not happy about it.

I have no doubt that deceased was killed by the
 spear of accused, but it was all done very quickly
and the accused may have been bewildered by
the Curummi's shout of "stab him!" The wound
may have been given in a sudden impulse
without premeditation. In these circumstances
perhaps Government may be disposed to take
a merciful view of this case and to reduce

the sentence to five years. as the offence was
murder the Courts had no power to pass a
sentence less than transportation for life.

as I am no longer judge of Kistna I write
this letter in semi-official form.

Yours sincerely

J. T. Mackenzie

The Hon. Wm. J. F. Price. Sec. C.S. I.

Sp. 414 3 May 1891. Mis (abs.)

D.O. No 352
Semi-Official
from G. J. Mackenzie Esq.
Secy
to the Chief Secretary.

Dated June 8th 1895
Enclosure. one judgment.
Subject.
Suggests that Krishna
Kesson Case 19 of 1890
is a fit case for the
clement consideration
of Government.

CHIEF SECRETARY
8 JUN. 1895
GOVERNMENT OF MADRAS

To advise & receive
3. March 91, no 414. from
Mackenzie.

10/1/95
The man must have been
sent to the Andamans long ago. Please
put up papers showing the procedure
to be adopted in such cases. Are
there any precedents for this
case? The Government
must be satisfied with the
fact that the man is
sent to the Andamans
and that the Government
is satisfied with the
fact that the man is
sent to the Andamans.

[G. 25.]
1900-8-3-95.

10

Genl. DEPARTMENT.

D.O. C. No. 352

FOR ORDERS.

I see no reason to suppose
that the convict was not pro-
perly convicted. On the other hand
there is nothing to make me think
that the injury caused to the deceased
was premeditated. There seems
to have been a scrimmage, in the
course of which the convict used
the weapon with which (how it
does not appear) he was provided.
Under these circumstances, though I think
that 5 years would be an unduly leni-
ent punishment, I consider
that transference to life is an unduly
heavy sentence; and I should see
no objection to the reduction
thereof, if the convict is still alive,
which we do not know, to (say)
ten years &c. - I do not, however,
quite see how we can move
on Mr. Mackenzie's d.o. letter.
Is there any precedent for any such
action?

29/6/95
Please see G.O. 1820 in which Mr. Justice Best
in a similar d.o.; this is hardly a precedent;
however, as a convict for life from the convict
has received simultaneously, action was
taken on that rather than on the d.o. Should
Mr. Mackenzie be asked to address the
officially through the H.C.

The convict repd to appealed
to Court in 1891 for remission
of sentence but his petition was
rejected (vide G.O. 3. March 91,
no 414).

25.6.95
27/6/95.

Please see this
15/7/95
The C.J. heard the appeal. I think
I would write to him that the attention
of the Government having been drawn to the case (we
need not say by whom) we should be obliged
if he would be so good as to advise
whether any reduction of the life sentence
is advisable. But first, given, find
out if the convict is still alive & if so
where he is & what he can be traced
in the office
24/6/95
17/7/95
PTC
for Mr. J.

The case of a convict
sentenced to transportation
for life

FOR ORDERS.

Form No. 1-A-1,000-25-10-93.

CURRENT NO. 3798

No. 4744

Office of Inspector-General of Jails, Pusa

Dated 10th August 1895.

From

A. G. CARDEW, Esq., M.A.,

Inspector-General of Jails, Pusa.

To

THE CHIEF SECRETARY TO GOVERNMENT.

Sir,

In reply to Memorandum dated 22nd

Enclosures.

July 1895, No. 1700 Judicial, I have the honour to state that the Superintendent of Pusa, Madras reports that Convict Kollari Hassan Ahmed therein referred to was received into Her Majesty's Penitentiary from the Gundoor District Jail on 30th December 1890, and that the prisoner was deported to Port Blair on 16th February 1891.

2. The Superintendent, Port Blair, has been requested to state whether the convict is still alive and his reply will be submitted as soon as it is received.

I have the honor to be,

Sir,

Your most obedient Servant,

A. G. Cardew
Inspector-General of Jails, Pusa.

DESPATCH

Ref^{ce} only No. 1700

The G. S. of Prisons is requested to report whether the marginally noted convict is still alive & if so where he is

H. M.

T. L. ...
Can any precedent be found?

note for the L.S.
Please see G.O. of 6. Sept. '93
No. 1820. on a D.O. from the
Justice Dept. the same refers
a convict's return to the peni-
tentiary for opinion. Has the
precedent is traceable.
9/7/95.

Re-submitted to the L.S. with reference
to the L.S.'s reply to the L.S.'s
query within L.D.
10/7/95

* Kollari Hassan Ahmed
sentenced to transportation for
life. in Sessions Judge's Court
Case No 19 of 1890, - confirmed
the High Ct. C.A. No. 333 of 1890

The G. S. of Prisons.

P. V. to copy + P. to examine
10/7
12/7

copy 10/7 11/7
12/7

CURRENT NO. 3798
JUDICIAL. Deptt

JAIL (1895) DEPARTMENT.

From

THE INSPECTOR-GENERAL OF JAILS,

To

THE CHIEF SECRETARY TO GOVERNMENT.

Dated 10
Despatched } august 1895.
Received 10th
Recd 12th
Enc. "

No. 4744.



Subject.

Stating that Convict Kollari Hussain Ahmed was deported to Blair on 16. February 1891 and that the Supt. Port Blair has been asked to state whether the Convict is still alive.

To await the receipt of further report. 8/8/95

Refer No 1700/95 papers

No. 5262-14

OFFICE OF INSPECTOR-GENERAL OF JAILS, Prisons

Dated 30th August 1895.

From

A. G. CARDEW, Esq., M.A.,

INSPECTOR-GENERAL OF JAILS, Prisons.

To

THE CHIEF SECRETARY TO GOVERNMENT.

SIR,

Enclosures.

In continuation of this office letter, No. 4744 dated 10th August 1895, I have the honour to state that the Superintendent Port Blair, writing under date, the 16th idem, reports that Convict Kollari Hussain Ahmed is present in the Settlement.

I have the honor to be,

Sir,

Your most obedient Servant,

M.A.

A. G. Cardew
Inspector-General of Jails, Prisons

4176

JUDICIAL.

JAIL (1895) DEPARTMENT.

From

THE INSPECTOR-GENERAL OF JAILS, *Prisons*

To

THE CHIEF SECRETARY TO GOVERNMENT.



Dated 30.

Despatched

Received 31st

Regd 2/9

August 1895

No. 5262

C No 3798 has been logged. I think if not it must be acknowledged this letter

ENCLOSURES.

per 10/5/95

Subject.

Stating that the Superintendent, Port Blair reports that convict Kollari Hussain Ahmed is present in the Settlement.

[G]
[25]

600-23-7-95

16

Just DEPARTMENT.

C. No. 3798 + 4176

FOR ORDERS.

Attention is invited to the notes & orders under cover of reference of 22nd July 95, No 1700. The S. Secy. of Prisons reports that the convict is still alive in the Andamans. See his note of the 17 July ^{the Hon Secy. Prisons} ~~that~~ (stated) that a reference should be made to the Chief Justice inviting his opinion as to whether a reduction of sentence was advisable in this case. Sec. 401 of the C.C.P. seems to allow such ~~proposals~~ references only on an application to the Local Govt for the suspension or remission of a sentence. No such Application has now been received & it is rather doubtful

P.T.O

whether a reference to the Chief Justice is permissible in this case. Perhaps the committee petition in S.O. of 3. March 91, No 414. can be treated as an 'application' for the purposes of this section. But that petition has now been rejected & it is not clear whether it can be acted upon now.

It seems doubtful whether we can require the C.J. to give his opinion, but I cannot see any objection to asking him for it. - He may refuse to give it, in which case Govt. has a little power to commute the sentence. Orders are solicited as to whether the reference may issue without taking further orders from H.M. If so, the reply when received will have to be circulated to all Hon. Members as P.O. of 3 March 1891 No. 414. Declining to interfere in the case of the convict as passed by the Hon. Members.

I think we can ask the C.J. There is much doubt about that. He will probably refuse. And trouble I consider.

Re The case of a convict sentenced to transportation for life.

FOR ORDERS.

~~H. M. Member~~
C.J.

[G.]
[24.]
600-8395.

18 Judicial
Papers to be read in proceedings:—

DEPARTMENT.

Again G.O., dated

189 , No.

Again G.O., dated

189 , No.

Current No.

of 189 , dated

from

Current No.

of 189 , dated

from

ORDER. of 14th September 1895, No 1934.

The attention of Govt. having recently been drawn to the sentence of transportation for life passed upon ~~Hussain~~ ^{Hassan} Ahmed in Kistna Sessions Case No. 19 of 1890 and upheld on appeal by the High Court in Criminal Appeal No. 333 of 1890, the Hon: the Chief Justice, will be requested to be so good as to favour Govt. with his opinion as to whether any reduction of the sentence inflicted is advisable.

forwarded

12/9/95

20

The Hon: the Chief Justice }
with C. L.

done 20/9/95

copy 16/9

Re: the case of a convict
sentenced to transportation
for life.

C.S.
min

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

189 .

AD AGAIN G.O., No.
189 ,

DATED

PERMIT No.

ENCLOSURES TO O. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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

N.B.—

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