

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1969

Dated 20th Sept. 1895

INDEXED.

[Despatch Abstract.]

APPEAL AGAINST ACQUITTAL.

Requesting the Government Pleader to prefer an appeal to the High Court against the Judgment of acquittal in calendar case No. 70 of 1895 on the file of the Stationary Sub-Magistrate of Tinnevely, and pointing out to the District Magistrate that an important house-breaking case such as this should have been taken up by the Sub-divisional Magistrate.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	4897		1895				

No. 1320 of 95
 Enclosure: 3 ^{Files} Books.

CURRENT No. 4232
 Trinnevelly District Magistrate's Office
 2nd September
 Dated Kuttalam, August 1895.

From

A.W.B. Higgins Esquire,
 District Magistrate of
 Trinnevelly,

To

The Chief Secretary to Government,
 Judicial Department,
 Fort St. George.

Sir,

I have the honor to request that the Government will be pleased to instruct the Government Reader to prefer an appeal to the High Court under section 417, Criminal Procedure Code, against the judgment of the Stationary Sub Magistrate of Trinnevelly in Calendar Case No. 70 of 1895.

* dated 31st March 1895

2. The main facts of the case are as follow: -

On the night of the 29th December 1894, there was a house breaking in the Bagavathiswaras temple at Suttanalli village in Trinnevelly taluq and property to the value of Rs. 1142-11-6 as per the trustee's (Prosecution 1st witness) list was lost. The next day, the trustee, after having inspected the temple, lodged a complaint in the Police Station. For a few days, no information was

obtained about the actual perpetrators of the burglary. On the 8th January 1895, the village munsiff of Narasinga-nallur (Prosecution 6th witness), an adjoining village, having been informed by his talayari (Prosecution 5th witness) that a certain individual was to visit a goldsmith's (Prosecution 4th witness) house for the purpose of melting certain jewels, came with the talayari and two others at 7.30 P.M. to the Smith's house and found there Ariyatturai Pillai and two others (accused 1 to 3) with the jewels. The accused tried to escape but were arrested by the village munsiff and his party. It is stated that, on the following day, on information given by Ariyatturai Pillai, some other property was found buried in the bed of the river about a mile off, and it was taken out by the said Ariyatturai Pillai and delivered in the presence of several others including the Police Inspector of the division, the village munsiff of Karungadu (Prosecution 7th witness), and other adjoining villages, &c. The accused were charged by the Police before the Stationary Sub Magistrate of Tirumvelly on the 18th January. On the 2nd February 1895, the Magistrate framed a charge against the accused, but afterward, finding that the case was not proved against them,

acquitted all of them.

3. First - as to the commission of the burglary itself, there is no question. On the morning of the 30th December, the temple trustee, Prosecution 18th witness, hearing from Prosecution 3rd witness, who is a temple servant, that the safe room had been broken into, went to the temple. He found that a ladder was left leaning against the southern outer wall of the temple, that the thieves scaled over the wall, got into the temple, broke the doors and locks of the safe-room, and removed the iron-safe, in which the jewels had been kept. He found also certain brass and bell-metal vessels scattered about. The top of the iron-safe was also found. The boxes that were kept inside the iron safe were broken and thrown down on the ground. By this time, news were received that the other portion of the iron safe was lying in the river. When Prosecution 18th witness and his men went there, they saw the iron safe, but there was nothing in it. These facts are also testified to by the Prosecution 2nd and 3rd witnesses, the temple archakar and servant. The Police 18th report to the Magistrate also gives these details.

4. Next, as to the particulars of the property lost and the place where it was secured, the trustee (Prosecution 1st witness) said that he had prepared a list of the property (Ex. B), that he kept them in the strong room some days before, that he was examining the locks every day including the day of occurrence and found them correct, that he had kept the jewels in the drawer of the iron safe and in two other boxes kept inside, and that these boxes were found broken. These facts are also corroborated by Prosecution 2nd and 3rd witnesses. They all identified the jewels that were produced before the Court as belonging to the temple. The defence appears to have tried to make out that these jewels were not stolen from the temple but were in the custody of the trustee, but it is not proved that, except the tandik money, (which the trustee said he was keeping with him for the purpose of defraying the expenses of the temple), any temple property was with the trustee (Prosecution 1st witness).

5. Coming now to the circumstances connecting the accused 3 persons with the discovered property, the first document on record is the yadast of the

Narasiganallur village munsiff (Prosecution 6th witness) to the Police Station house officer of Pettai (Ex. C). This shows that talayari Sankarapandiya Ieran (Prosecution 5th witness) ^{came} to him at 7 1/2 P.M. on 8th January and informed him that the 1st accused Ariyatturai Pillai was to come to the house of one Vaittilinga asari to melt certain jewels, that the village munsiff went there with this talayari and 3 others, and finding the accused Ariyatturai Pillai and two maravars in the house, ^{went} ~~went~~ in, that they tried to escape but were seized, that some jewels were laid out in front of them and that, on the accused being questioned, Ariyatturai Pillai said that he came at the request of the other two, and that the other two said they came with Ariyatturai Pillai. This yadast reached the Police at 11 P.M. The Station house officer of Pettai came at about 1 A.M. and made enquires. Ariyatturai Pillai said that he and the two other accused as well as certain other maravars committed the theft having planned it some days ago before the theft, and that the ^{rest} ~~theft~~ of the property that fell to their share was buried in the river bed. Next morning at 7^o clock, an attachi was drawn up to that effect (Ex. D).

This attacki was attested by several individuals including the 1st accused Ariyathurai Pillai alias Sambulingam Pillai and the smith. They all then went to the river with the village munsiff of Karungadu. This village munsiff had learnt from Ariyathurai Pillai, 1st accused, that he had hidden the jewels in the river sand within the limits of Karungadu and therefore accompanied them. From a certain place in the river, which was found to be actually within the limits of Suttamalli, certain jewels were taken out by Ariyathurai Pillai and delivered to them. Another attacki was drawn up here to that effect. (Exh. E). Several persons including the accused Ariyathurai Pillai attested this. The Police then took the accused ^{and} the property to the station. The accused were placed under remand and the charge sheet was put in on the 18th January.

6. Four witnesses were examined by the Magistrate on the 2nd February 1895 to prove the facts contained in the foregoing para, viz. the smith, the two village munsiffs of Narasinganallur and Karungadu and the talayari Sankarapandia Tevan. The smith, the village munsiff of Narasinganallur and the talayari all clearly testified to the three accused having

come to melt the jewels and having been seized with the property. They corroborated one another in all respects. The village munsiffs of Narasinganallur and Karungadu spoke to the accused Ariyathurai Pillai's having taken the other jewels from the riverbed in the presence of several others.

7. Charges were framed against the accused on the same day. All of them pleaded not guilty. The 1st accused said that while he was standing in the Petai road on the evening of the 8th January on his way from Timenilly to Suttamalli, the Police Head Constable of Petai and two other constables brought the two other accused with them, that the Head Constable wanted him to follow, that it was about 4.0 clock then, that on reaching the Police Station, the Head Constable asked the other two accused whether he (Ariyathurai Pillai) did not also commit the theft, that on their refusal to say so, they were all confined in the Police Station, that next morning, they were taken to Athi edu, that he was compelled to sign a paper there at 12.0 clock, that he were then taken to the river, and he was made to dig in a place where nothing was found, that

another place was dug by the Head Constable and some jewels were taken out and given to him, and that something was written there, which also he signed through fear. The 2nd accused said that, while he was in his house at Suttamalli, the talayari came and took him to the village munniff's house, that he, 3^d accused, Head Constable of Petai, and two Constables, all came to Petai, that Sriyathurai Pillai who was standing by their path came also to Petai at the request of the Head Constable, that they were all confined, that at about 7^o clock in the night, they got his signature after beating, and that they were kept in one Nagur Rostan's house in Karungadu till 20 nalgais, i.e. 2^o clock, that then they were taken to the Government tope, that he and the other accused Kasamuttu Teran were asked to speak against the 1st accused, which they refused to do; that at 3 A.M. in the morning they were taken to Narasinganallur and kept in a mosque in Athimedu, that they were then taken to a house where Sriyathurai Pillai was made to sign a paper and that their houses were searched, but nothing was found. The 2^d accused Kasamuttu Teran had nothing to say,

except what was stated by the 2nd.

It will be seen that the statements of the accused regarding the particulars of the alleged concoction of the case against them differ from each other in material particulars.

8. The 1st and 2nd accused cited each, certain witnesses, and the 3^d accused said that the witnesses cited by the 2nd would be sufficient for him. 3 witnesses were examined for the 1st accused and none for the others.

9. The 1st witness was examined on 12th February 1895. He is a mittadar paying 500 Rs. being. He said that on a certain Tuesday 6 weeks ago at 5¹/₂ P.M.; the 1st accused was going to Suttamalli from Timmerly; that he stopped there and was talking to him; that, a short time after, the Head Constable came from the west with two marawars looking like accused 2 and 3, and two Constables, that 1st accused followed the Head Constable and that he afterwards heard at 7 P.M. that the 1st accused had been confined in the Police Station. This witness was examined five weeks after the seizure of the accused, but he said he met the accused

Six weeks before, and the hour of the alleged meeting does not correspond with that given by the accused. In his cross examination, he said he could not remember any other person whom he met that day. He admitted that he attested a certain document executed by the 1st accused and that his (witness's) brother-in-law was charged once before by the Petai Police. This witness is not therefore quite a disinterested witness. His testimony about the other two accused is very vague.

10. The 2nd witness is a native of Gopala-samudram², village in Ambasamedram taluq, where the mother of the 1st accused lives. He said that on 26th Margali (8th January) at about lamp-lighting time, he saw the 1st accused in the Petai Police Station where there was a crowd and that he heard that the Suttamalli thieves had been arrested. This witness repeated in cross examination several other dates when he went to Tinnivelly. He had got them evidently by heart. He could not remember any other person who was present there. The 3rd witness is another resident of the 1st accused's mother's village. He also said that

the 1st accused at 2 nalgais after lamp light

time (i.e. at 7 P.M.) in the Petai Police Station. He did not see the other witness in the crowd. He knew him and said that he was a kavalgab of his village, which fact the other witness denied. This is the whole evidence for the defence, the other witnesses having been dispensed with.

11. After the close of the examination of the defence witnesses, the prosecution witnesses were called for cross examination. The Smith said that he had come to Narasinganallur from another village & that he had known 1st accused for the last 8 months. He stated that he came to know about the Suttamalli theft only that evening from the Talayari, who, however, denied having told the Smith anything about the Suttamalli affair. The Smith further said that the attachi about the discovery of the accused with the jewels in his house was drawn up at 2 P. clock in the night, whereas the village muniff and Talayari clearly said that it was at 7 A.M. the next morning. He also said that he had not sufficient instruments for melting large jewels. The Village muniff of Narasinganallur who was also in charge of Suttamalli at the time said that he wrote the yadast to the Police at the asari's house at 9 P. clock in the night, that he

did not send a report at the same time to the Magistrate as he thought that the Sub Magistrate's office would have been closed by the time and that he sent the report next day at 12 noon or 1 P.m. after returning from Karungadu, as he went away to Karungadu before he completed the report. He said also that the attachi was drawn up about the arrest of the accused only after the arrival of the Police because it was no part of his duty to prepare it. The village munsiff of Karungadu said that he asked the 1st accused before going to the river, about the concealment of the jewels in the river and that he (1st accused) consented to take the things from there, that there were several persons present when the accused took the jewels from the sand and that the accused placed his hands straight on that place when he went there. Thus ended the Prosecution evidence.

12. The Magistrate without making any further enquiry acquitted all the three accused, four weeks after the close of the examination. I beg to show briefly hereunder how the several arguments adduced by the Magistrate in favor of acquittal can be

disposed of —
as the

(1) The Magistrate remarks on the status of the smith and rejects his evidence as untrue. The witness spoke straight forwardly about the discovery of the accused with the property in his house, but, in cross examination, he carefully avoided self-criminating answers. His admitted previous acquaintance with the 1st accused would show that he was not ready to give out fully what he knew. He would have been a culprit himself, had it not been for the fact that the talayari found out the matter.

(2). The Sub Magistrate says that the talayari's action was not straightforward and that he contradicted himself regarding the light in that night. To this, I have to say that the talayari acted in the best way he could, and that the contradictions referred to are quite unworthy of notice.

(3) The next reason is that the village munsiff of Narasimaganallur did not send his report simultaneously with the yadast and that the attachi was not drawn up till 7 A.m. the next day. These points have been sufficiently explained by the village munsiff in his cross examination, and

I think, the Magistrate should have been satisfied with the same.

(4). Another reason given by the Magistrate is that the statement of Karungadu village Munsiff in regard to taking out ^{the} jewels from the river cannot be accepted when considered with the plea of the accused. The details of concoction as given by the two accused differ materially in several respects. Besides, the Magistrate did not choose to send for one single signatory of the attachi and satisfy himself as to its genuineness. He did not take into consideration the improbability of such a daring concoction being got up in broad day light in the presence of so many people.

(5) The Magistrate doubts whether the jewels produced before the Court were kept in the iron safe in the temple and says that except the iron safe no other box was touched. For the first, there is no evidence on record justifying the doubts of the Magistrate, and for the second, the answer is plain, i.e. when the thieves got more valuable property, they could not have cared about the rest.

(6) The Magistrate next says that the station house officer's reports were received late and the attachi prepared at different places were of the same ink and on the same paper. The station officer ought to have been examined if the Magistrate wanted to have a satisfactory explanation, but the Magistrate did not examine him on this point.

(7) The Magistrate characterises the defence witnesses as disinterested. Their statements would clearly show that they are not so. The evidence of two of these witnesses, who belong to the 1st accused's mother's village, is not worth anything.

(8) The Magistrate lastly remarks that though he made local enquiries and went from door to door, no one knew anything about the arrest of the accused in the smith's house. The Magistrate's action here is quite extrajudicial. He did not record evidence from a single individual and did not give the prosecution any opportunity to rebut his surmises.

13. It is clear that there was a well-planned burglary committed leisurely and successfully.

a gang of thieves and that the property lost must have been considerable. It is on record that the value of property found is worth Rs. 150 against Rs. 1142-11-6 said to have been stolen. It is not unreasonable to suppose that this was the share of the accused. The attacks relating to the arrest of the accused in the Asari's house and the discovery of the property in the river are both attested by several witnesses, not one of whom was examined by the Magistrate. The 1st accused himself has signed them, and his excuses for signing them are useless. He or some of his men or relatives might have forthwith given information to the Magistrate, if any pressure was being put upon him. The witnesses for the prosecution had no motive whatever for getting up such a serious charge against the accused. There was no evidence at all in favor of the two other accused to discredit the prosecution evidence against them. The Magistrate has acted on surmises and probabilities quite inconsistent with the evidence recorded by him. I therefore think that there has been a miscarriage of justice in this case.

14. The Sub Magistrate's procedure was not satisfactory. The accused were under remand from 10th January. Several adjournments were granted, some of which were unnecessary. The examination of witnesses was closed by the 4th March, after which no proceedings were taken for four weeks and after a local inspection on the 30th March, judgment was pronounced on the 31st March, ^{a Sunday}. The High Court, in its circular no. 1240 A, 26.4.1887, has directed that no judicial proceedings can be had on Sundays. Though it is not illegal on that score, it is clear that there was no necessity for the Magistrate who delayed the case so long to adopt such a singular procedure. Probably he did not wish to keep the case pending beyond the end of the quarter.

15. The material records connected with the case as well as the Sub Magistrate's explanation and translations of important papers are herewith submitted.

I have the honor to be,

Sir,

Your most obedient servant,

C. S. / 1887

12/1/87

Trincomelly Dt Magistrate's Office

From

The Dt Magistrate
Trincomelly

CHIEF SECRETARY
GOVERNMENT OF MADRAS
5. SEP. 1895

The Chief Secretary
to Government
Judicial Dept
Fort St George

Dated 2nd September 95

Reedy 3579. No 1320 of 95

Not recd. Circ. 3 files sent
separately

Submitting that the Govt
will be pleased to instruct
the Govt Pleader to prefer
an appeal to the High Court
against the judgment of
the Sdy Sub Magistrate of Trincomelly

Ref. How much it costs to have
get place? If not, the way
be kept till to morning
5/9/95

Endorsement No 2089

Referred to the Govt. Pleader
for favor of his opinion as
to the probable result of
an appeal to the High Court
in this case. A reply to this
reference should be subd.
sufficiently early to admit
of the issue of the order before
the expiry of appeal time

12/9/95 (By order)

Lionel Davidson
7-5-95

M. Under Secretary
Cottacamund
7 Sept 1895
To the Govt Pleader

With regard to the reply

TO BE RETURNED
WITH REPLY.

Government Pleader's Office,

HIGH COURT,

Madras, 12th September 1895

No. 884

From

E. B. POWELL, Esq.,
GOVERNMENT PLEADER,
Madras,

To

The Chief Secretary to Govt.,
Fort St. George.

SIR,

x 3 files + just
Cw. No 4230 subd.

With reference to your Office Endorsement dated
the 7th September 1895, No 2089 I, I have the honor to
submit the following:-

Opinion.

In addition to the evidence of the witnesses called to
speak to the fact of the Prisoner having pointed out the place
in the river bed where the jewels were buried, there are the
reports and attractions which fully bear out the statements of the
witnesses. These are only consistent either with the guilt of the
prisoner or a carefully concocted case against him in which not
only the two Village Munsiffs of two different villages, the Station
House Officer, the Valliari and the Goldsmith must have
been parties to, but also the persons whose names appear on
D and E.

2. It is difficult to understand what reasons the two Village Munsiffs could possibly have in participating in the concoction of a false case against any of the accused. It is not even suggested that any illfeeling exists between them. Even assuming that the Station House Officer has a motive in endeavouring to secure a conviction, no reasonable explanation, I may say no explanation at all is offered, why the Munsiffs should assist him and run the risk of losing all they hold dear. Moreover the theory of concoction seems physically impossible because there was not sufficient time to mature the details of the case made against the accused.

3. In the first report of the Village Munsiff of Narasinganallur, Exhibit C, to the Station House Officer, there appear the names of a number of village servants, who accompanied him to the ^{house of the} ~~the~~ witness when he received information from the Talari. If the Sub Magistrate had entertained any doubt as to the truth of that part of the story, he might have called any of those persons.

4. D. contains the names of a number of persons of whom are ~~are~~ ~~also~~ ~~bears~~ ~~the~~ ~~signature~~ ~~of~~ ~~the~~ ~~Inspector~~ ~~of~~ ~~the~~ ~~Division~~. Pillais and Thevars who were present when the accused pointed out the place where the jewels were buried and signed the attackshi

5. E also contains the names of a number of other persons some of whom are Brahmins and also bears the signature of the Inspector of the Division.

6. Instead of wasting his time in a ~~rooming~~ house to house enquiry which could be productive of no practical use in-as-much-as no evidence was recorded in the course of it the Magistrate would have been more likely to elicit the truth by examining some of the persons whose names are appended to the attackshi.

7. The ~~reasons~~ given by the Magistrate for disbelieving the prosecution story do not seem to me entitled to any weight. As regards the evidence for the defence, it is neither disinterested nor is it probable. It is evidence that could easily be obtained. Either the case for the prosecution is a concoction or that for the defence. Now which is most probable. Which would be the easier to concoct of the two stories. I think there can be but one answer. The accused had ample time to arrange their story and make it dovetail into that for prosecution when it was found necessary.

8. The doubt expressed by the Magistrate as to whether the jewels produced before him were taken from the safe are based on mere conjecture. As are also his doubts regarding the possibility of identifying silver plate

on certain of the articles mentioned in the report. No question appears to have been asked of the three chief Temple witnesses as to the possibility of this identification, but the Magistrate has propounded an idea of his own which the witnesses might have easily explained away.

9. I think there are sufficient grounds for appealing and for asking the High Court to order a retrial before another magistrate.

I have the honor to be,

Sir,

Your most Obedt. Servant,

M. W. M.

Government Pleader.

From,

The Govt Pleader
Madras

Dated 12th Sept 1895
Recd 14

Regd - 16. C.W. 4230 + 4231



Enclosures 3 pls

and J.W. C.W. 4230 J. etd.

stating that there are sufficient grounds for preferring an appeal against acquittal in CC No 70 of 95 on the file of the Stationary Sub Magistrate of Tenkasi.

Ref. No 1009/95
C.W. 4230 + 4231

To the

Perhaps the following order may be issued?
D 20th September 1895, No 1969.

1895/95

In the circumstances stated

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 70 of 1895 on the file of the Sub Magistrate of Tenkasi.

17/9/95.

18/9/95
To the Govt Pleader (C.W. 4230 in my file)
with record who referred to the Sub Magistrate of Tenkasi.

Despatch 23/9.

Also point out to the S.M. that a housebreaking case like this should have been taken up by the Sub Magistrate.

X. 2. An important housebreaking case such as this should have been taken up by the Sub Magistrate.
19/9/95 (S. M. orders)
19-95

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

189 .

READ AGAIN G.O., No.
189

DATED

CURRENT 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, 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.