Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1983

Dated 24 Sept: 1895

INDEXED.

[Despatch Abstract.]

SENTENCE OF DEATH.

Declining to interfere with the---passed on convict No. 8982, Sellappan, in Salem Sessions Case No. 27 of 1895.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
fo	2056		4-10-95				

No. 67

Appeal for mercy

Enclosure I

மகாகனம் பொருந்திய மதராஸ் கவர்னர் துரையவர்கள் சமூகத்துக்கு.

சேலம் சென்டரல் ஜெயிலிலிருக்கும் 4982 நம்பர் செல்லப்பன் வணக்கமாய் எழுதிக் கொண்ட அப்பீல் விண்ணப்பம்.

என்னை சேலம் செஷன் ஜட்ஜி யவர்கள் தண்டனை விதித்தார். நான் மதராஸ் ஹைகோர்ட்டுக்கு அப்பீல் செய்ததில் அது வே தள்ளப்பட்டு காயம் செய்தியே யதாக உத்தரவாகியிருக்கிறது.

நான் ஒரு நாள் மத்தியானம் சுமார் 12 மணிக்கு ஆடு மேய்த்துக் கொண்டிருக்கும் போது போலீசார் என்னை வந்து பிடித்தார்கள். என்னைப் பிடிக்கிறீர்கள் என்று கேட்டேன். நீ அய்யன் கோவிலில் ஆறுபடிச் செத்துக் கிடக்கின் அது விஷயமாய் உன்னை வெகுத்து வாங்க வேண்டியிருக்கிறது என்று சொன்னார்கள். நான் அய்யன் கோவிலுக்குப் போனதே காரமும் தெரியும் இந்த கேசில் சம்பந்தப்பட்டதுண்டா வென்று கேட்டார்கள். எனக்கு யாதொரு சங்கதியும் தெரியாது என்று சொன்னேன். நீ ஆண்டையிருக்கிறாய் பொன் காப்பாணம் பண்ணிக் கொண்டதாய் உன் மேல் சந்தேகமிருக்கிறது என்று சொன்னார்கள். அப்படியில் செத்துப் போனவன் தெப்பன் தாயாரிடத்தில் உன்னைக் காட்ட வேணுமென்று என்னைக் கூட்டிப் போனார்கள். போகும் போது வழியில் போலீஸ் இன்ஸ்பெக்டரும் மாஜிஸ்திரேட்டும் வந்தார்கள். மறுபடி என்னை அய்யன் கோவிலுக்கு கூட்டி வந்தார்கள். அவர்கள் என்னை கேட்டு

"Appeal for mercy"

Enclosure No. I

From,

Sellappan, Convict No. 8982
Central Jail, Salem.

To,

His Excellency, The Right Honorable,
The Governor of Madras.

Dated 2d September 1895.

No. 67.

Subject.

"Appeal for mercy" Stating that a false case was brought against him.

1895
Ind'l
1
4214

No. 67.

Translation to "Appeal for mer

Enclosure No. II

To,

His Excellency, The Right Honorable,
The Governor of Madras.

The humble petition of Sellappan Convict No. 8982 Confined in the Central Jail at Salem.

I was sentenced to death by the Sessions Judge of Salem. On my appeal to the High Court of Madras an order has been received confirming the sentence.

While I was grazing cattle at about 12 noon one day, the Police asked me to go with them. I asked them why they wanted me. They Said that they were in need of my signature in Connection with the Case of Andy who was cut up and found dead in the Amman temple. Then I proceeded to the Amman temple. The Police and the Village Magistrate asked me whether I had any Concern in the Case. I replied them that I was ignorant of the affair. They told me that I was suspected because I had married a girl in the village of Andy. They took me to Edapady Saying that they should shew me to the

It was proved that he was one of the men last seen with the dead man before the murder father and mother of the deceased. On our way we met the Inspector of Police and the Magistrate. Then I was taken back to the Amman temple. They were inspecting the Scene of offence. The Police promised to take me as a witness if I would depose to the Magistrate that I was seeing four or five persons cutting Andy. I declined to say so. They beat me to say so. Then I totally refused. They further told me that they would let me free if I would give them Rs.60. I replied them that I had no money with me. The Village magistrate was not in good terms with me as I did not give him anything for the last one year. Rangan, the Pujari of the temple, Committed a theft in my house about 7 or 8 years ago; then a complaint was made by my father against him and he was imprisoned for 3 years. So he gave evidence against me. The Village magistrate and the Police Concocted a case against me. There was no enmity between myself and the deceased. The Police brought there my elder brother's Son at about 10 p.m. The Magistrate asked him whether I killed Andy.

No

He only found the wounded man. He did not see the wound inflicted

?

?

He replied that he did not see any such thing. The Police took me to a distance of about 100 yards. After a while a Police constable came and told me that he was ordered to take me to the Magistrate. Then I was taken to the Magistrate. The boy was then sitting near the Magistrate. The Magistrate asked the boy, "Did this man also kill Andy?"; the boy replied, "Yes." My brother is dead. My brother's wife gave evidence against me because I did not give her any share of my property. The boy deposed against me at the instigation of my brother's wife and the Police. The Police have cited all my enemies as witnesses in the case against me. My age is 19. I know nothing. Bringing a false case against me, they have got me convicted unjustly. I swear that I did not kill Andy. Why should I kill him in the absence of any enmity between ourselves?

She prevaricated deposing against her son in important respects

I therefore humbly beg that Your Excellency may be pleased to send for the records in my case and render justice to me.

(marked) - Sellappan.

(Translation)

Salem Central Jail
2d September 1895

W. M. Standen
Ag. Superintendent of Jail

"Translation to "Appeal for mercy"

Enclosure No II

From,

Sellappan, Convict No. 8982
Central Jail, Salem

To,

His Excellency, The Right Honorable,
The Governor of Madras.

Dated 2d September 1895

No. 67.

Subject

"Appeal for mercy" stating that a false case was brought against him.

Judl.
2
4216

NOMINAL ROLL OF CONVICT No. 8982 NAME Sellappan.

Enclosure No. III

Salem Central Jail
2d September 1895

Crime	Section 302 Indian Penal Code.
Sentence	Sentenced to death.
Date of Sentence	30th April 1895
Adjudicating Court	Sessions Judge, Salem.
Age	20.
State of Health	Good.
Conduct in Jail	Good
Result of the appeal to High Court	Confirmed.
Number of previous Convictions, if any, and Remarks	"

Enclosure No. III

Salem Central Jail

Nominal Roll of Convict No. 8982 Sellappan.

Superintendent Central Jail

Judl.
3
4214

Enclosure No. IV

IN THE COURT OF SESSION OF THE SALEM DIVISION.

The 30th day of April,
One thousand eight hundred and ninety-five.

PRESENT:—W. J. TATE, ESQUIRE, J.

JUDGMENT IN SESSIONS CASE No.27 OF 1895.

P. R. C. No. 1 of 1895,

Committed by the 2nd Class Magistrate of Sankari.

The Queen-Empress of India. *v.*	1. Sellappan. 2. Sengodan. 3. Thappayyan *alias* Venkatachalam. 4. Selli. All defended by a first grade pleader.
Offence	Murder, section 302, I. P. C.
Opinion of Assessors	*1st accused*—Guilty of murder. *2nd, 3rd and 4th accused*—Not guilty.
Finding of Judge	1st and 2nd accused—Guilty of murder. 3rd accused—Guilty of Voluntarily causing hurt, secs. 323 & 114, I.P.C. 4th accused—Not guilty.
Sentence and Order	1st and 2nd accused—to be hanged by the neck until they are dead subject to the confirmation of the High Court. 3rd accused—9 (nine) months' Rigorous Imprisonment. 4th accused — to be acquitted and discharged.

This case concerns the murder of one Papayya Pandaram, otherwise called "Andi".

2. Andi was found, on the morning of Saturday, the 2nd February, lying grievously wounded in the outer mantapam of the Settimankurichi Amman Temple. His throat had been cut, and there was a stab wound in his stomach, from which his bowels protruded.

3. He was discovered by Kali Pandaram, the $\frac{\text{10th witness}}{\text{P.}}$, who is Pujari of the Temple, and went there that morning to perform the daily worship. It is set up that the wounds were caused the preceeding evening after sunset, and it may be argued that, if this was so, the wounded man should have been discovered before. But Kali Pandaram says he does not go to the temple in the evenings, and that there was a special reason for his not doing so on the previous (Friday) evening, that being a Shandy day. And he adds that people do not *usually* frequent it after sunset.

4. The temple enclosure is surrounded by a fairly high wall, which has an opening in it through which passers by could look. It appears to be near the road, but, otherwise, in a lonely situation. The nearest houses to it are a collection of huts 60 or 70 yards off, where the Village Magistrate lives, and which, again, are nearly ½ a mile from the nearest village.

5. Kali Pandaram went at once and told 11th Prosecution witness, the Village Magistrate, of what he had seen. The Village Magistrate went to the temple. It was not known who the wounded man was till two ryots who happened to pass recognised him and gave his father's name. Kali Pandaram, accordingly, went to fetch the father, and returned bringing him and the mother (Prosecution witnesses 5 and 6). Water was given to the wounded man and it is said that he then made a statement incriminating the 1st accused (by name) and four other persons.

6. Meanwhile the Village Magistrate had sent report B to the Police, who arrived that night. A mahazar was drawn up, and Andi sent before daybreak to the Sankari Hospital in charge of his father and a constable. On the way, the party heard that the Sankari 2nd Class Magistrate had, with the Hospital Assistant, arrived at the Yedappadi Station. Andi was therefore placed before him, and his wounds dressed. The Magistrate took from him a dying declaration, which the wounded man signed, and which repeats the statement previously made orally. He was then taken on to Sankari but died on the way. Postmortem was held the same day, with the result that death was said to be due to hæmorrhage, owing to the cut in the throat and wound in the stomach.

7. The 2nd Class Magistrate went on to the temple, arrived there in the evening, and then noticed certain bloody foot prints made by what looked like a boy's foot. He accordingly questioned the Village Magistrate, and learnt that there was a boy living in the house of the 1st accused. This boy, who now appears as $\frac{\text{2nd witness}}{\text{P.}}$ Ramaswami, was sent for, his feet placed on the foot prints, and then a statement taken from him. In this statement he names all the five accused, and describes how they came together to the temple, and how, having seen them pass a tank when he was grazing sheep, and having noticed that his uncle (the 1st accused, Sellappan) had plantains with him, he followed him in order to get some and just entered the temple when Andi was being wounded. He also says he trod in the blood, and went to his field afterwards to wash it off his feet.

8. Ramaswami was next examined on the 25th February at the preliminary enquiry. He then retracted his statement. Before this Court he has, however, repeated it.

9. One of the conspirators, Karuman, was only arrested on the 6th, though the Inspector $\left(\frac{\text{1st witness}}{\text{Def.}}\right)$ says he sent men for him on

the previous day. On that day, he made a statement to the Inspector which led to his being eventually taken as an approver in the case, and examined as $\frac{\text{1st witness}}{\text{P.}}$

10. The chief evidence in the case consists therefore of the dying declaration, Ramaswami's statement, and that of the approver. But, before dealing with it, it is advisable to dispose of the other evidence.

11. Andi's father and mother (the 5th and 6th witnesses) say they last saw him unwounded in the Jalakantapuram Friday Shandy (4 or 5 miles from the temple) at about 4 P. M. He was then accompanied by the 1st accused (only). His mother gave him six pies to buy snuff with, and he said that 1st accused wanted him to go and see a cow. He did not return home that night.

12. There is no reason for distrusting this evidence. It was given to the Village Magistrate next day—see his evidence—and is corroborated by other evidence, and by the finding of a bag of snuff lying near Andi in the temple.

Workshop

13. The $\frac{\text{7th witness}}{\text{P.}}$, Kanda Kuppa Chetty, says that, at midday the same day, the 1st accused called away Andi, who was then at an Asari's "patarai", in order to get a cow. He then says that he saw the pair again that afternoon in the shandy and that they left it together—in the direction of Sellappan's village, which would also be the direction of the temple—in company with accused 2, 3 and 4. In this Court, he however omitted the approver until asked a leading question on the point by one of the Assessors. And he told the Magistrate that 1st accused and Andi went behind the others and not *with* them. But there is no reason alleged why this man should be a false witness.

Merely a native way of speaking

14. The next evidence to consider is that regarding motive. It must be admitted that no personal motive is made out, or even alleged, against accused 2, 3 and 4. But it is said that 1st accused planned and carried out the murder because he suspected Andi of criminal intimacy with his wife Sellakkal, who, it is further alleged, Andi "kept" prior to her marriage, less than a year ago, with this accused.

15. It can hardly be said that the Prosecution evidence (apart from that of the approver) supports this contention very fully. The $\frac{\text{3rd witness}}{\text{P.}}$, Kamakshi, who lives near Sellappan, says Sellakkal, used to frequent her mother's house (close to that of Andi and his parents) after marriage. Andi's father says his son was actually "keeping" Sellakkal, but his only reason for saying so is that he used to frequent her house. He adds, however, that he asked his son to give the woman up after her marriage; while Andi's mother says her son once asked her for money in order that he might give Sellakkal a ring. The 7th and 8th Prosecution witnesses, who are neighbours, can say only that Andi used to frequent the house by day and that even in Sellakkal's absence. The $\frac{\text{9th witness}}{\text{P.}}$, Kuppayi, (Ramasawmi's mother, and an inmate

of the 1st accused's house), says Sellakkal lived after marriage more in her mother's house than in her husband's, and deposes to an important incident viz: that, on the Tuesday prior to the occurrence, 1st accused brought his wife home, and threatened her on the ground that she was always speaking to Andi. It appears however that this witness at first told the Magistrate that Sellappan and his wife merely quarrelled about butter-milk, and that this took place on the *Friday*, not the Tuesday, night. She now says both quarrels took place, but the statement seems not very reliable.

16. Beyond Kuppayi's statement and that of the approver there is nothing to show that the 1st accused suspected his wife, which is the important point. But the other evidence lends a corroboration to the approver's statement which, to my mind, renders it credible. And that statement is that Sellappan took Andi to the temple in order to extract from him a vow not to interfere with his wife any longer, and also instructed the other men to beat Andi there on account of his illicit dealings with his wife.

17. It is fairly admitted that 1st accused and Andi were, outwardly at all events, on the best of terms. Were it not, therefore, for the evidence abovementioned, the motive for the crime would be nil. But that evidence must, I am of opinion, be on the whole believed.

18. I come to the dying declaration. It is pointed out for the accused that the Village Magistrate's second report, which alone mentions the statement made to him by Andi, was obviously despatched after the arrival of the Police. This is clear from the internal evidence of the report itself, from the fact that the report to the Magistrate was only received by him, some 5 miles off, at 2 p. m. next day, and from the fact that the Head Constable (Prosecution 13th witness) only received his copy at "8 or 9 A. M." next day in the temple, although he had been there all night. And the suggestion is that, learning from Andi's parents that their son had been last seen by them with Sellappan, a violent presumption was set up against the 1st accused, and Andi tutored to support it. But this theory does not seem to account for the persistent mention, by words and signs, of four other persons.

19. Then it is said that Andi must have known the 4th accused, at any rate, by name, as he lives in a neighbouring village, and had, so Andi's father says, occasionally come to see him, Andi's mother adding that they were "friends." There certainly seems on the evidence some ground for thinking that Andi must have known this accused's name, though that is not conclusively proved. And it seems strange that he should mention as "unknown", even to their descriptions, men who had walked 5 miles with him on the previous afternoon.

20. It is further pointed out that the dying declaration seriously conflicts with the statement of $\frac{\text{7th witness}}{\text{P.}}$, Ramaswami, and the approver, in as much as it says the other four men joined Sellappan *at the temple*

The Magistrate who recorded the statement (who was summoned and examined by me as a Court witness) says the dying man was fully conscious at the time and that he was surprised at the ease with which he signed the statement. It seems therefore impossible to say that he spoke as he did from lack of memory.

21. Next as to the approver. There are undoubtedly inconsistencies in his statements. The chief is that he now, and before the Magistrate, exculpates the 4th accused Selli (who is included by the $\frac{\text{2nd witness}}{\text{P.}}$) from any share in the crime, while he told the Police Inspector on the 6th February that this man helped to hold Andi's body at the temple when the attack commenced. There are also variations between his present statement and that made to the Police Inspector in respect to the persons who drank at the toddy shop in the shandy (before the Inspector the approver says all went there, but himself!), and as to what happened after the attack *i. e.* as to whether the assailants and Ramaswami all went home together, or whether (as now stated) 1st and 2nd accused were left behind by the others in the temple. The approver's statement to the effect that 1st accused tried to get Andi to buy a cow for him differs also markedly from that of Andi's father who says Andi had been hunting for a cow for *himself*, that Sellappan had spoken of one on the previous day, and that Andi, in leaving the shandy, said "Sellappan says there is a cow which will give milk for the child", also from that of Andi's mother, and of Prosecution 7th witness, Kanda Kuppa Chetty, in the same respect.

22. Then, as to the evidence of the boy, Ramaswami. It is objected that this witness' first statement to the Sankari Magistrate, which was put in under the second part of section 157 of the Evidence Act, cannot be used as evidence on the ground that it was, improperly, recorded on solemn affirmation. It is argued that section 164 Criminal Procedure Code, under which section it was recorded, does not permit the use of solemn affirmation, that the chapter on recording evidence alluded to therein (Chapter XXV of the Criminal Procedure Code) contains no provisions as to oath or solemn affirmation, that these provisions must therefore be sought for in the Oaths Act, and that sections 4 and 5 of that act refer only to "Evidence", the definition of which, in the Evidence Act, only includes statements made by witnesses before a *Court*. Reliance is also placed on I. L. R. XI Bombay 702, where it was held that a statement taken under section 164 was not evidence in a stage of a judicial proceeding, and on I. L. R. IV Calcutta 696 to show by analogy that the circumstance that the 2nd Class Magistrate had, in this case, power to commit makes no difference to the argument. Per contra, the Public Prosecutor relies on I. L. R. II Bombay 643, (where however the point is not specifically raised,) and argues that, seeing that under section 161 a person examined by a Police officer is legally bound to answer truly all questions put to him, it would be absurd to suppose that the Legislature

intended to deprive an investigating Magistrate of, at least, the same authority. I do not, myself, agree in the accused's Vakil's contention. The word "Evidence" in the Evidence Act includes all statements made by witnesses to a Court, and a Court, under the same Act, includes all persons legally authorized to take evidence *i.e.* to take the statements of witnesses. Under section 4 of the Oaths Act such a "person" is authorized to administer an oath or solemn affirmation, and under section 5 such affirmation shall be made by any person who may lawfully be examined by any such "person". Section 164 Criminal Procedure Code certainly authorizes a Magistrate to take statements from witnesses, and I hold, and so informed the Assessors, that he may legally record them on solemn affirmation. Accordingly, I find Ramaswami's first statement admissible.

23. The next question is whether that statement, which is the foundation of his evidence, should be regarded as a tutored statement. Ramaswami was fetched by a Toty, who, he says, did not talk to him. But he also says the Head Constable was at Kamakshi's $\left(\frac{\text{3rd witness'}}{\text{P.}}\right)$ house, when he stopped on the way. This I doubt; inasmuch as it is opposed to Kamakshi's statement, and, what is more important, to the Sankari Magistrate's evidence to the effect that the Head Constable was at the time in the temple compound watching accused 1 and 2, who had that day been arrested. However, the Magistrate cannot say positively what Police officer went after the Toty. Judging by the distance from the temple to Ramaswami's village (and field) he could hardly have been brought in ½ an hour as the Magistrate says. But it is clear he arrived in a fairly short time. And I fail to see how, even if a constable or Head Constable spoke to him on his way, he could have been tutored as to the complicity of accused 3 and 4 and the approver, Karuman, against which three men nothing, according to the Inspector, was then known. Nor is it likely that he would have been told to mention five persons to whom he had already given his story, if those persons were not known and had already promised to support him. The Magistrate was, also, working apart from the Police. I have come to the conclusion, that the boy, who, be it remembered, is the 1st accused's own nephew, was terrified by being made to stand on the bloody foot prints, and at once came out with a true story.

24. He is supported in his story by the $\frac{\text{3rd and 4th witnesses}}{\text{P.}}$ though not by the other persons he mentions as those to whom he told it. These witnesses were cross-examined to show enmity with the 1st accused, but denied the allegation. The fact that Ramaswami's purpose in coming to Kamakshi's (to get leaves for his grand-mother, as on previous occasions) was not told by her to the Police (Exhibits III and IV) does not seem to detract much from Kamakshi's evidence. She (like the $\frac{\text{4th witness}}{\text{P.}}$, Raman) was examined by the Police in the next day (4th February) though, unfortunately, not by the Magistrate on the same night.

25. It is necessary to note that, in this statement, the boy does not say he saw Andi in company with the other five going along the Tank bund. This contradicts the approver. But Ramaswami did not then know Andi, so may not have noticed a mere stranger. He also says the knife used belonged to Sengodan. This may, I think, be accounted for on the evidence, Sengodan being the man, according both to the approver and to Ramaswami's present statement, who suddenly drew it and used it.

26. The boy is, it must be admitted, contradicted by his mother, Kuppayi, who says she returned from the shandy at sunset, and found him at home. But it must be remembered that this witness was living in the 1st accused's house, and that her memory is, on other points—see paragraph 16 above,–evidently treacherous. In her deposition to the Magistrate, Exhibit VIII, which is dated two days after Ramaswami's retractation, she was evidently inclined to follow her son and favour the defence. She is not in my opinion a good witness, either for the Prosecution or for the Defence.

27. As to the footprints, two of which have been brought to Court, the stones on which they were imprinted having been removed from the temple. They are not quite the length of Ramaswami's feet, and also considerably narrower. They may have been made by him, or by a younger child. If they were really made by him they furnish striking corroboration of his statement. But it is contended, owing to the absence of any allusion to them in the Police Mahazar taken on the night of the 2nd, that they must have been made by some boy who went to the spot after the wounded man had been removed. I do not think this. The Mahazar was taken at night, and probably with poor lights. It was recorded by an extremely stupid Head Constable, who tries now to cover his neglect by saying he really saw the footprints, and found out next morning that they were not entered in the Mahazar, whereupon he informed the Magistrate that day of the same–a statement the Magistrate does not repeat and which is, probably, untrue. It seems to me not probable that, after the great loss of blood that must have taken place at first, much more blood could have flowed from the wounded man on the temple floor, especially as the evidence is that he kept a cloth to his throat. Taylor (Medical Jurisprudence pages 64 and 465 of Edition 2 Volume I) states that blood drawn from the living body coagulates rapidly. I do not rely much on the assertion of the Village Magistrate that he saw the footprints when he went to the spot, on the morning of the 2nd, for if that were so he would probably have shown or mentioned them to the Head Constable, but I suspect they existed very shortly after the original wounding. Of course, as the Village Magistrate says, people, including boys, crowded to the temple that morning. But the wounded man was on a raised platform (mantapam) and it is

* *Note.*—Two pieces of paper cut to the exact size of the boy's feet have been placed on the record.

doubtful whether they would go quite close to him. On the other hand, it must be noted that the boy says that *both* his feet became blood-stained, and that he trod in Court on the footprints produced with *both* his feet, whereas the footpoints are all prints of the *left* foot. It is possible, perhaps even probable, that they are the boy's footprints, but by no means, I think, absolutely certain.

28. Ramaswami's explanation for having retracted his first statement is that a Brahman came to him and got him to do so as he was in the cutcherry compound. This seems not wholly improbable. The Brahman may have been some one employed by the friends of the accused. His reason for making it—that is, that he was daily beaten by the 1st accused, (and so spoke in revenge), is not brought out by any evidence and is not, per se, very probable. On the other hand, it has to be remembered that he has been, ever since the 3rd February in charge of a Sankari Jail Warder,* while the approver has also been kept at Sankari—obviously, to avoid communication with the accused in the Central Jail,—and, according to Ramasami, has talked with him over the details of the case, each helping the other "to remember things".

**Note.*—Here, however, see his mother, Kuppayi's, statement to the Magistrate dated 8th February 1895. In this she asks the Magistrate to take care of him till the case is over.

29. According to the Village Magistrate the houses of all four accused were searched. In the house of the 1st accused was found a cloth, which is produced. It contains a few yellow looking spots, but there is nothing to show that they are blood marks. In that of 3rd accused was found a knife which is said by the approver to have been the one used by Sellappan and Sengodan. I doubt this. The knife is an ordinary knife, such as any ryot might possess. It is not stated what was done after the occurrence with the knife used, and it is wholly unexplained why this 3rd accused should have it in his possession when it belonged, on the evidence, to Sellappan.

30. The remaining piece of evidence concerns only the 4th accused. The $\frac{\text{7th witness}}{\text{P.}}$ says he saw him in Salem the next day (Saturday) and the accused's father ($\frac{\text{12th witness}}{\text{P.}}$ Appavu Goundan) says he went there that day early. There is, however, very little in the suggestion that he absconded. He had, it is true, allowed his partner to take off his cart on the Friday evening, so had to walk to Salem on the Saturday morning. He returned on Monday and, after that, remained in his field till arrested. Capital is made for the Prosecution out of the witness' statement that his son told him on the *Sunday* afternoon that he was suspected in this case, and it is said that this must have been the result of a guilty conscience as, till Ramaswami was examined that night, no one suspected him at all. But the statement conflicts with the witness' other statement that his son returned from Salem with his cart on the Monday, and it may well be that the witness, an old man, has mistaken the day. In cross-examination the witness' evidence tends (for what it is worth) to show that this accused could not have been with the others on the Friday in question at all.

31. The Assessors believed the evidence of Ramasawmi, that of the approver where corroborated, and the dying declaration. They found the 1st accused guilty, but gave the others the benefit of the doubt.

32. It would seem to follow logically that if Ramaswami's evidence be believed, all the accused must be convicted. But that is not necessarily so in the case of accused 3 and 4. It seems to me clear that these two men, in holding down Andi, as Ramaswami says they did, only expected him to be beaten. There is nothing to show that they went to the temple with any idea other than that Andi would be forced to take an oath, and perhaps beaten as well. The knife was previously invisible, and the first stab, delivered, it is said, by Sengodan, was perfectly unexpected. This is clear from what is said by the approver, who had the same knowledge as these men. And this also explains their having gone to the place without any motive for desiring the death of Andi. It may be that they are liable under section 202 I. P. C, but they are not now tried for this offence. Under the present charge they can with reference to the proviso in section 111 I.P.C. be held liable for hurt only.

33. As regards the 2nd accused, Sengodan, the case is quite different. He, too, had no visible or proved motive. He is a mere casteman of Sellappan (evidence of the $\frac{\text{12th witness}}{\text{P.}}$). But he is said by both Ramaswami and the approver to have begun the stabbing. Were this fact not in Ramaswami's first statement, I should be inclined to say that it may have been invented by the approver from motives of enmity, and then borrowed by Ramaswami. But, as it is, it is impossible to discredit it, unless that statement is wholly false. Moreover as to the non-mention of this man's name and description in the dying declaration, it must be noted that Prosecution 5th witness says he had never seen his son and Sengodan together, while Prosecution 6th witness says she had never before this case seen him or 3rd accused. This, if true, explains Andi's non-mention of Sengodan's name, at any rate.

34. There is, no doubt, a conflict of evidence in this case, which makes it one of peculiar difficulty. But there is, I think, no doubt that 1st accused and Andi were seen at the shandy, and also seen to leave it with the other accused. It is probable that these men went in the direction of the temple for that was their way home, except in the case of Selli, (who, however, may have been going to his father's brother-in-law's house, which is in 1st accused's village—here see the evidence of $\frac{\text{12th witness}}{\text{P.}}$); the finding of the camphor and plantains in the temple tallies with the evidence of the approver and Ramaswami; there is evidence supporting the approver's statements as to Sellappan's motive; the first statement of the boy Ramaswami was procured under circum-

stances which make it improbable that it was taught him, nor does it, on internal evidence, appear a tutored story; the dying declaration appears genuine and corroborates the chief part of the story as regards the 1st accused, at all events; the fact that it differs in other respects from the statements of Ramaswami and the approver shows, at any rate, that their evidence has not been twisted so as to tally with it; it was necessary, in order to the commission of the offence, that Andi should be inveigled to the temple by some one in whom, like Sellappan, he had confidence, and who could give him a plausible pretext; there was no apparent reason why he should go there that evening, unless inveigled as stated; Andi being a young active man, it is probable that the assistance of other men was required by Sellappan to enable him successfully to attack him; these men, having no motive, had to be given as a pretext the suggestion of the vow and the beating; and the time and place selected were not unsuited for carrying out the plot. The circumstances of the case seem thus to render the prosecution story so probable as to outweigh the conflict in the evidence. The accused have set up alibis, but made no attempt to prove them. I find the 1st and 2nd accused guilty of murder.

35. I can find no adequate reason*, why the extreme sentence of the law should not be passed upon them. They are accordingly sentenced to death, subject to the confirmation of the High Court.

*Note.—Their age is given as 22 and 25 respectively. To me they look some what younger, but are not mere boys.

36. For the reason mentioned in paragraph 32 above, the 3rd accused Tappayyan is found guilty of hurt under sections 323 and 114. He is sentenced to suffer 9 months' Rigorous Imprionment.

37. The conviction of Selli (4th accused) would rest on the evidence of the boy Ramaswami only. It may be that the approver is trying to shield him, but there is no evidence, which can be legally used, to prove this. This accused should, if really *present*, have been described, if not named, in the dying declaration. There is the possibility of a mistake on the part of the boy witness as to this man's being *inside* the temple. And I think, therefore, that he should have the benefit of the doubt. He is acquitted.

Note.—Accused 1 and 2 have been informed that they may appeal within 7 days to the High Court.

(Signed) W. J. TATE,
Sessions Judge.

(True Copy)

Exd.,
P. S.,
Hd. C.

Sessions Judge

PATRIOT PRESS—SALEM.

Enclosure No. IV

Salem Central Jail.

Copy of Judgment of the Court of Sessions, Salem, in case No. 27 of 1895.

5
June 4
4
O. No. 4214

Duplicate. Enclosure No. V

and 21/8

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the twenty-eighth day of August,
One thousand eight hundred and ninety-five.

PRESENT:—

The Honourable Sir Arthur J. H. Collins, Kt, Chief Justice
and
The Honourable Mr. Justice Parker.

Referred Trial No. 41 of 1895.

1. Sellappan and
2. Sengodan

} — 1st and 2nd Prisoners

Trial referred by the Court of Session of the Salem — Division for confirmation of the sentence of death passed upon the said Prisoners in Case No. 27 of the Calendar for 1895.

CRIMINAL APPEAL No. 269 OF 1895.

Appeal by the 1st and 2nd Prisoners against the said Sentence.

This case coming on for rehearing, upon hearing the Petition of Appeal, the record of the evidence and proceedings of the said Court of Session and the further evidence submitted in accordance with the order of this Court, dated

12th

12th July 1895; and upon hearing the arguments of Mr. M. Venkataramiah Chetti, for the 1st Prisoner and of Mr. P. R. Sundara Aiyar for the 2nd Prisoner Vakils engaged for the defence under G. O. dated 17th December 1884, No. 3273 Judicial; and of the Public Prosecutor in support of the Conviction; it is ordered that the sentence of death passed upon the said 1st Prisoner Sellappan be and the same hereby is, Confirmed and his Appeal dismissed; and that the Conviction of, and the sentence of death passed upon, the 2nd Prisoner Sengodan be and

the

the same hereby are reversed; and that the said 2nd Prisoner Sengodan be convicted of hurt under Sections 323 and 114 Indian Penal Code; and that he be sentenced to nine months' rigorous imprisonment.

By the Court.

(Sd) Arthur Collins
Chief Justice.

(Sd) G. A. Parker
Judge.

G. Todhunter
Deputy Registrar
29.8. Appellate Side

V.C.S.
29-8-95

KM 29/8

Rdy. No. 1116.
1/9/95.

No. 642

Forwarded to the Superintendent of the Central Jail, Salem, with two fresh warrants and two spare copies, and a copy of the original judgment. ~~[illegible]~~

Sessions Court,
Salem,
31st. August 1895.

Sessions Judge.

Communicated

Salem Central
Jail 1 Septr. 1895

Wm Standen
Ag. Supdt: of Jail.

Enclosure No. V

Salem Central Jail

Copy of Judgment of the High Court of Judicature at Madras in Criminal Appeal No. 269 of 1895.

Judl.

5

4214

Salem Central Jail office
Dated 2d September 1895.

No. 814.

CURRENT No. 4214

From,

W. M. Standen Esquire,
Acting Superintendent of
Central Jail, Salem.

To,

The Chief Secretary to Government
Madras.

Sir,

I have the honor to forward herewith "Petition for Mercy" of Convict No. 8982 Sellappan sentenced to death by the Sessions Judge, Salem, in Case No. 27 of 1895.

2. Nominal Roll, Copy of Judgment of the Sessions Judge, Salem, Copy of Judgment of the High Court of Madras, and a translation of the petition are also forwarded.

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

I have the honor to be,
Sir,
Your most obdt. Servant.

W. M. Standen

Ag. Superintendent, Central Jail, S.

"Appeal for Mercy"

CURRENT No. 4214

Jud. Dept.

From,

The Superintendent,
Central Jail,
Salem.

To,

The Chief Secretary
to Government
Madras.

UNDER SECRETARY PUBLIC
4 SEP 95

Dated. 2d
Despd. 3d
Recvd & Regd 4 } September 1895.

No. 814.

Enclosures (5) Five.

Subject

Forwarding "Appeal for Mercy" of Convict No. 8982 Sellappan.

CURRENT No. 4334

Ct No 4214/95
+ paprs.

Judicial {189} **Department.**

No.

FROM

THE REGISTRAR OF THE HIGH COURT
OF JUDICATURE AT MADRAS,
APPELLATE SIDE.

Dated 10th September
Received Regd 12 } 1895.

CHIEF SECRETARY
12 SEP 1895
GOVERNMENT OF MADRAS

No. 1762 Judl.
Enc Two

Forwarding a printed copy of the Further Evidence in R. T. 41/95 (Cr. app. 269/95) together with a copy of the High Court's order calling for such evidence.

Ref [illegible]

INDEX.

IN THE COURT OF SESSION OF SALEM DIVISION.

Referred Trial No. 41 *of* 1895.

Serial No.	Description of Paper.	Page.
1	Order of the High Court in R. T. 41 of 1895 dated 12th July 1895	1
2	Deposition of Court witness P. Venkata Row, 2nd Class Magistrate	2

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Friday, the twelfth day of July,
One thousand eight hundred and ninety-five.

PRESENT :—

THE HONORABLE SIR ARTHUR J. H. COLLINS,
Knight, Chief Justice.

and

THE HONORABLE MR. JUSTICE PARKER.

Referred Trial No. 41 *of* 1895.

1. Sellappan and
2. Seng[illegible]n.

} *Prisoners* (1 *and* 2).

Trial referred by the Court of Session of the Salem Division for confirmation of the sentence of death passed upon the said prisoners in Case No. 27 of the Calendar for 1895.

Criminal Appeal No. 269 *of* 1895.

Appeal by the 1st and 2nd prisoners against the said sentence.

This case coming on for hearing, upon perusing the petition of appeal, and the record of the evidence and proceedings of the said Court of Session, and upon hearing the arguments of Mr. M. Venkataramiah Chetty for the 1st prisoner and of Mr. P. R. Sundara Aiyar for the 2nd prisoner, Vakils engaged for the defence under G. O. dated 17th December 1884, No. 3273, Judicial, and of the Public Prosecutor in support of the conviction, the Court made the following

ORDER;—

Apparently by an oversight the dying declaration taken by the Magistrate from the deceased man on February 3rd was not proved and put in at the Sessions. The Magistrate was examined as a witness and deposed to the circumstances under which he took the declaration, but the statement itself was not identified by him and made part of the record at the trial.

This is a most material omisssion and we must ask the Sessions

Continued 9—8—95.

Court witness P. Venkata Rao: recalled.

States on solemn affirmation:

Cross-examined by the Vakil for the accused —The Police Head Constable, *i. e.*, the Pulampatti Station House Officer – may, or may not have been present when I took the dying declaration. I am not sure. I don't remember seeing him there. I saw there a Constable from Pulampatti. I did not then hear that the 1st accused had been arrested by the Police.

I tried to ascertain from Papiah Pandaram the description of the other people whom he did not name in the dying declaration. He could not give them to me. At that time, I knew nothing of Sellappan (1st accused) whose name was mentioned in the dying declaration, nor had I heard who he was. I had no idea who he could be. I asked Papiah Pandaram more about Sellappan and he said he belonged to a village the name whereof I have now forgotten. I want to refresh my memory with the dying declaration. I see from it that the name of the Village is Kottapalliyur. I have no idea how many Sellappans there are in that village. I got no other information from the dying man about Sellappan except the above and what is given in the dying declaration.

Allowed to do so.

I asked Papiah Pandaram to what village the other persons he mentioned belonged. He was unable to tell me. He said he knew Sellappan very well but did not know the others before the occurrence. I asked him what he thought the motive of the person who attacked him was. He said that he was suspected of criminal intimacy with Sellappan's wife; and that Sellappan had found him and his (Sellappan's) wife together in a room. I asked the deceased what motive the others had. He said they came to help Sellappan, out of friendship for him. He mentioned no other motive. I did not ask the dying man how long they had been friends. It did not strike me to ask the dying man this question, although he had before said he did not know them. I did not ascertain from the Police there who Sellappan was. I remember asking deceased's father who Sellappan was and he gave me some description of him. He said he lived in Kollapalaiyam. I did not enquire whether that man had been found. I put other questions to deceased's father. He told me Sellappan and his son were thick friends. He said the same as his son had already told me, and which I have recorded in the dying declaration. I did not reduce that to writing. That was because the dying man's parents had to accompany him straight off to Sankari to the Hospital. I heard at Yedappadi that the man died after going 2 or 2½ miles. I did not try to ascertain from deceased's father or mother or any one else whether they could give information about the other assailants mentioned in the dying declaration.

R. P.

I did not ascertain from the deceased when or how long ago he and Sellappan's wife were surprised by Sellappan together and I did not ascertain anything from the deceased's parents about this surprising of the deceased by Sellappan.

I ascertained that the dying man had been already questioned at the temple. I ascertained that from the Pulampatti Constable there. He said that the dying man had been questioned by the Police at the temple and had given some answers. I did not go into details further. So I did not ask the Constable if the Police recorded at the temple what the dying man said.

About midday of this day—the day on which I took the dying declaration—and after I had taken it, I received at Yedappadi the Police occurrence report containing the dying declaration made to them at the temple.

I took the dying declaration down at about 7 A. M. I did not see the Pulampatti Station House Officer at Yedappadi all that day.

I did not ask the dying man whether there were persons present at the temple other than the persons he mentioned to me.

Q.—Did you ask the dying man whether he saw any one else come to the temple afterwards and before the Village Magistrate, came?

A.—He told me Sellappan and four others had held him down. So I thought further questions needless.

Re-examination:—I recorded every answer given me by the dying man. The dying declaration contains his full statement. I did not note down that the dying man told me the other persons were friends of Sellappan. I speak from memory—not from having looked into the dying declaration on this point. I recollect that this statement was made while I was recording the dying declaration.

I asked deceased's father what he knew in the matter. I asked him of what his son said was true that is about the criminal intimacy with Sellappan's wife. He said that it was on the evening of the day on which I took the dying declaration. I ascertained from the Police at the temple, that they had, on the preceding night, questioned the deceased man. I did not ask them if they had recorded his statement to them.

R. P.

I have now seen the Mahazar containing the statement made by the deceased man (then dying) to the Police. I received it on the 5th February. So with the Village Magistrate's 2nd report.

P. VENCATAROW,
9—8—95
2nd Class Magistrate.

Given and read over in English and admitted correct.

W. J. TATE,
SALEM, 9—8—95.
District and Sessions Judge

Exd. by R. Philbert

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

HIGH COURT.

FURTHER EVIDENCE

IN

Referred Trial No. 41 of 1895.

To be heard on

1895
Judl.
Enclos. No. 1
7
O. N 4334

Enclosure I. *to the High Court's letter dated* 10th September 1895 No. 1762.

Judicial.

CHIEF SECRETARY
12 SEP. 1895
GOVERNMENT OF MADRAS

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Fri day, the twelfth *day of* July,
*One thousand eight hundred and ninety-*five.

PRESENT :—

The Honourable Sir Arthur J. H. Collins, Kt., Chief Justice,
and
The Honourable Mr. Justice Parker

Referred Trial No. 41 *of* 1895.

1. Sellappan and
2. Sengodan

*Prisoner.*s (1 & 2)

Trial referred by the Court of Session of the Salem *Division for confirmation of the sentence of death passed upon the said Prisoner*s *in Case No.* 27 *of the Calendar for* 1895.

CRIMINAL APPEAL No. 269 OF 1895.

Appeal by the 1st & 2nd *Prisoner*s *against the said Sentence.*

This case coming on for hearing, upon perusing the Petition of Appeal, and the record of the evidence and proceedings of the said Court of Session, and upon hearing the arguments of Mr. M. Venkataramiah Chetty for the 1st Prisoner and of Mr. P. R. Sundara Aiyar for the 2nd Prisoner, Vakils engaged for the defence under G. O.

500—6-2-95.

G. O. dated 17th December 1884, No. 3273, Judicial, and of the Public Prosecutor in support of the conviction, the Court made the following

Order. – Apparently by an oversight the dying declaration taken by the Magistrate from the deceased man on February 3rd was not proved and put in at the Sessions. The Magistrate was examined as a witness and deposed to the circumstances under which he took the declaration – but the statement itself was not identified by him and made part of the record at the trial.

This is a most material omission and we must ask the Sessions Judge to re-examine the Magistrate in the presence of the prisoners and allow the dying declaration to be proved.

(Sd) A. T. Forbes,
Dy: Registrar
App: Side.

(A true copy)

D W G Cowie
Ag: Registrar,
Appellate Side

18
10/9 KW
10/9

Enclosure II *to the High Court's letter dated* 10 September 1895 *No.* 1762 *Judicial.*

CHIEF SECRETARY
12 SEP. 1895
GOVERNMENT OF MADRAS

1895
Judl.
Enclos. No. 2
C. N. 4334

CURRENT No. 4334 High Court of Judicature,
No 1762 Judl. Madras, 10th September 189

From,

D. W. G. Cowie Esqre.,
Registrar, High Court,
Appellate Side.

To,

The Honorable Mr J. F. Price, C. S. I.
Chief Secretary to Governme
Fort St. George, Ootacamu

Honorable Sir,

With reference to your telegram of the 4th instant, I ha the honor to forward a printed Copy of the Further Evidence tak in Referred Trial No. 41 of 1895 (Cri minal Appeal 269 of 1895) together with a Copy of the High Court's order — calling for such evidence.

I have the honor to
Honorable Sir,
Your most obedient Servan
D. W. G. Cowie
Ag: Registrar,
Appellate Side

10/9
10/9

[G/69]
1,000—18-3-95.

Genl. DEPARTMENT.

CHIEF SECRETARIAT, MADRAS.

Memorandum.

Despatch 4/9 (Dept)

Read the following

Telegram to the Hon. the C. J. High Court

No. 543 x / T. Please cause transmission of copies of evidence called for by High Court in its order of 12 July in Crimil. appeal 269 of 95, together with copy of order

D
4-9-95

4/9/95

[G/69]
1,000—18-3-95.

DEPARTMENT.

CHIEF SECRETARIAT, MADRAS.

VB/2

Memorandum.

Dept. D
13/9

Read the following

Telegram to the High Court

No. 570x. Please cause transmission copy High Court judgment in criminal appeal 269 of 95 ~~High Court file~~.

(Fernandes)-

D
13.9.95

JT.
13/9/95

Duplicate

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the twenty-eighth day of August,
One thousand eight hundred and ninety-five.

PRESENT :—

THE HONOURABLE SIR ARTHUR J. H. COLLINS KT., *Chief Justice.*

AND

THE HONOURABLE MR. JUSTICE PARKER.

REFERRED TRIAL No. 41 OF 1895.

1. Sellappan and 2. Sengodan	*1st and 2nd Prisoners.*

Trial referred by the Court of Session of the Salem Division for confirmation of the sentence of death passed upon the said Prisoners in Case No. 27 of the Calendar for 1895.

CRIMINAL APPEAL No. 269 OF 1895.

Appeal by the 1st and 2nd Prisoners against the said Sentence.

This case coming on for re-hearing, the Court delivered the following

JUDGMENT.

We think it is established on evidence which cannot be reasonably questioned that the deceased Andi left his village on the evening of February 1st with 1st Prisoner,— with whom he had been for some time on friendly terms. It also appears that 1st prisoner's wife Sellakkal had been before her marriage on terms of intimacy with Andi,—who lived next door to her mother's house ;—and that this intimacy was continued even after her marriage when she visited her mother. The 1st Prisoner appears to have come to know something about this, and it is shown that he had taken his wife from her mother's house and back to his own house a few days before the events of February 1st.

On the morning of February 2nd Andi was discovered in the temple with his throat cut, and with a stab in his stomach from which his bowels protruded. He was first found by the Pujari (10th witness) who gave the alarm and summoned the Village Munsiff. Andi was then alive, but unable to speak and could only make signs. After his father and mother arrived in the afternoon and when some water had been given him he was able to speak in a whisper. He then told his father that 1st Prisoner had brought him to the temple to worship the god and had then stabbed him in the stomach while four other persons seized him. He afterwards told his father that Sellappan had cut his throat.

Before daybreak on the 3rd February Andi was sent off on a cot to the Hospital,—but was met by the Magistrate, Inspector and Hospital Assistant near the Yedappadi Police Station. There the Hospital Assistant attended to his wounds, after which a dying declaration was taken from him by the 2nd Class Magistrate. By some oversight this declaration was not made evidence at the Sessions, but by direction of this Court the omission has been since rectified. In it the deceased Andi described how Sellappan had taken him to the temple and stabbed him twice,—but said he was not able to identify those who had assisted Sellappan. The 2nd Class Magistrate who was examined as a witness deposed that Andi was then perfectly sensible and conscious at the time though he died later in the day while on his way to the Hospital.

In addition to the statements made by the deceased the prosecution relies upon the testimony of the approver Karuman, and of a little boy of 9—11 years old one Ramasawmy. The latter is the nephew of 1st Prisoner, and deposes that he followed 1st Prisoner and Andi into the temple expecting to be given some plantains and as he entered witnessed the scene when Andi was murdered. His account is that 2nd Prisoner Sengodan took the knife from the waist cloth of 1st Prisoner and inflicted the 1st wound on the neck—while 1st Prisoner and the others held Andi by his top-knot and by his legs and hands, and that when Andi struggled to release himself 1st Prisoner seized the knife from Sengodan and stabbed Andi in the stomach. The same account of the occurrence is given by the approver Karuman, and it will be noted that there is a substantial difference between these accounts and that of the deceased who certainly spoke of both wounds as inflicted by Sellappan.

It is urged that Ramasawmy's evidence cannot be regarded as good corroboration of that of the approver since though he told this story when first taken before the Magistrate on February 3rd he retracted it on February 25th in the course of the preliminary enquiry. We might have attached weight to this objection had it not been for the fact that it is proved the boy told the story of how and by whom "the fair man" (Andy) had been cut and killed in the temple to the 3rd witness and in the hearing of the 4th witness on the very night of the occurrence and within about an hour of the occurrence. The story seemed so extraordinary that the woman did not at the moment believe the child,—but the next day she heard at noon of Andi being found wounded in the temple. It was no doubt information obtained from this source that led the Sub-Magistrate to send for Ramasawmy on February 3rd and take his statement A. This is verified by Exhibits III and IV.

Though the approver Karuman was no doubt an accomplice in the design to give Andi a beating in consequence of his intrigue with a Vellala woman we are not prepared to hold it established that either he or the others who assisted Sellappan had formed the deliberate design to commit murder. Except Sellappan none of them had any personal wrong to avenge, and it seems improbable that they should have planned a murder to be committed in a temple. This view was taken by the Judge with regard to Thappayyan and Selli (p. 3 and 4) and he would no doubt have acted upon it with reference to Sengodan also had it not been for the evidence that Sengodan inflicted the first stab with the knife.

If we accept this view of Sengodan's conduct his conviction for murder must undoubtedly be confirmed. But in his favor it is fair to remember that deceased stated,—and undoubtedly belived even if the belief were mistaken—that Sellappan inflicted both stabs, while the evidence to the contrary rests upon the testimony of tainted witnesses,—one of them being an accomplice and the other having once retracted his statement. It is true that Ramasawmy described Sengodan's conduct as early as February 3rd (Exhibit A) before there had been much time for tuition,—but it would be natural to him to minimize the guilt of his uncle and we observe that this statement A does not allege that the stab in the stomach was inflicted by Sellappan,—a fact which in the face of the dying declaration can hardly be open to doubt. Sengodan had not, like Sellappan, any personal motive for joining in the attack and under the circumstances we think it safer to find that his use of the knife is not conclusively proved. We shall therefore set aside his conviction for murder, and treating him as the Judge has treated the 3rd Prisoner convict him of hurt under Sections 323 and 114 and sentence him to nine months' rigorous imprisonment.

As regards the 1st Prisoner Sellappan we have no doubt that he must be convicted of a treacherous and deliberate murder. The sentence upon him is confirmed and the appeal dismissed.

By the Court.

C G Todhunter
Dy. Registrar,
Appellate Side.

Exd. T. Ramakrishna Pillai.

14-9'

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

Recd 17 Septr 1895 W M Standen

17/9/95

No. 692

Forwarded to the Superintendent of the Central jail, Salem, with two spare copies for delivery to the 1st appellant and one Copy for delivery to the 2nd. appellant.

Sessions Court,
Salem,
16th Septr. 95.

Sessions Judge.

HIGH COURT OF JUDICATURE
AT
MADRAS.

17.

JUDGMENT
IN
REFERRED TRIAL No. 41 *of* 1895,
Criminal Appeal No. 269 *of* 1895.
(From Sessions Case No. 27 *of* 1895, *Salem).*

1895
Judl
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4429.

Dated 28th August 1895.
Sent

Urgent

CURRENT No 4429

Salem Central Jail
office. 18th September 1895.

No 866.

From,
W. M. Standen Esquire,
Ag. Superintendent, Central Jail,
Salem.

To,
The Chief Secretary to Government
Madras.

Sir,

Cf No 4214/95 in the file.

In continuation of this office letter No. 814 dated 2d September 1895, I have the honor to submit a copy of Judgment, received yesterday the 17th instant from the Sessions Court Salem, in Criminal appeal No. 269 of 1895 and Referred trial No. 41 of 1895 on the file of the High Court of Judicature at Madras.

I have the honor to be,
Sir,
Your most obdt. Servt.
W. M. Standen
Ag. Superintendent of Jail

18/9/95 -

"Urgent"

Telegram No 570(d) 13.9.95
+ papers.

CURRENT No. 4429

Judl. Deptt

From,

W. M. Stenden Esquire,
Ag. Superintendent,
Central Jail,
Salem.

To,

The Chief Secretary to Government
Madras

Dated 18 }
Despatched 18 } September 1895.
Recd. 19
Regd.

No. 866.

Enclosure (1) One.

Subject

Submitting a copy of Judgment in Criminal Appeal No. 269 of 1895 and Referred trial No. 41 of 1895 on the file of the High Court of Judicature at Madras.

J/43. 200—21-5-95.

JUDICIAL DEPARTMENT.

Current Number. 4214 & 4334

FOR ORDERS.

APPEAL for mercy from Convict No. 8982 Sellappan under sentence of death in Salem Sessions Case No. 27 of 1895, which sentence has been confirmed by the High Court.

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

D
12-9-95

I find no statement here of the reasons (Judgment) of the H.C. for confirming the sentence of death on the appellant & acquitting the 2nd prisoner of murder & convicting him of hurt & sentencing him to 9 months R.I. — nothing but the formal order, dated Augt 28, to that effect. It seems impossible that the H.C. recorded nothing more than this mere order — Please enquire —

12/9/95

D
12/9/95

12/9/95

The case has been dealt with in great detail by the Sess. Judge & has been twice before the H.C., who have given another man who was also convicted of the murder the benefit of a doubt which they may almost be said to have created for themselves — The petr. tells a confused story about having been beaten by the Police & having been asked for a bribe &c &c, of which there is no proof at all — The circs. on the other hand, under which the Commitg Magte procured the evidence of the boy Ramasami are such as to give great weight to that evidence, independently of the dying declaration of the deceased & of the evidence of the approver. I do not think that there can be a reasonable doubt of the petrs guilt — The petn shd. be dismissed

19/9/95

I have no doubt petr committed the murder. The conflicting evidence shows that the story is not a concocted one. The facts of Ramaswamy's relationship to petr, of his living in petr's house with his mother & of his being sent for in consequence of a consultation between the Village Mag & the Sub Mag give weight to his evidence. The case has been very carefully considered by the S. Judge & the High Court.

The law must take its course

JG
26/9

4204
4334
4429

PETITION FOR MERCY.

I think there is no doubt of the guilt of the petitioner – & would dismiss the petition.

W
21 Sep

VERY EMERGENT.

Hon'ble Member and Circulation.

(FOR ORDERS.)

A copy of the High Court's Judgment has since been recd. with C No 4429 & is sub^d.

D
19-9-95

JS
19/9/95

JS
19/9/95

C 12/9. C 20/9.
12/9 23/9

C 12/9/95
R 13/9

J.
16.
1,000—5-2-94.

Judicial Department.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following letter, dated 2 · Sept. 95, No 814, from the Superintendent of the Central Jail at Salem, forwarding petition from Convict No 8982 Sellappan under sentence of death in Salem Session Case No. 27 of 1895, confirmed by the High Court of Judicature.

Read also letter, dated 10 · Sep. 95, No 1762 from the Registrar of the High Court, Appellate Side, forwarding ~~the record of the case.~~ certain records.

C No 4429 – X.

ORDER THEREON, dated 24 · September 1895, No. 1983.

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 8982 Sellappan

2. The law will take its course.

~~(True Extract.)~~ (From orders)

D
23-9-95

JS
23/9/95.

Chief Secretary.

JS
23/9/95

To the Superintendent of the Central ~~Salem~~ Jail, Salem for communication to the Prisoner.
" Inspector-General of ~~Jails.~~ Prisons
" Hon'ble the ~~Judges of the High Court, with papers returned.~~ C.J. with C.L.

Despd
24/9

~~7~~ C.C. No 4606/95.

given for copying ______
copied ______
examined ______
signed ______
} 189 .

AIN G.O., No. DATED
189 ,

T No.

LOSURES TO C. No

OF GOVERNMENT .. .. A A A A A A A

OF GOVERNMENT.

EMENT WITH DITTO.

ES 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.