

[3]
1,000-85-7-99.

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 2040

DATED 3^d Oct. 1895

INDEXED.

[Despatch Abstract.]

SENTENCE OF DEATH.

Declining to interfere with the-----passed on convict No. 7751, Kutbuddin Sahib, in Bellary Sessions case No. 45 of 1895, and directing that the law shall take its course.

Bv
Para-2

BACK PAPERS.

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

FURTHER PAPERS.

[illegible]

ಸು ಕು ರಾಜೇಶ್ವರಿ (೨) ಲೇಖನ ಚಿಂತನಾ
 ಸಾಹಿತ್ಯ ಸಂಪಾದಕರು
 ಶ್ರೀ ರಾಜೇಶ್ವರಿ

ಬಳಿಗಿಂತಲಾಗಿ ಬಳಿಗಿಂತನೆಷ್ಟೇ ತ್ರಿಂಶತ್ಪಾಂಶತಾಭಿವೃದ್ಧಿಯು
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 95- ಶತಮಾನಗಳಲ್ಲಿ ನಡೆಯುವುದು ಎಂಬುದು ಸ್ಪಷ್ಟವಾಗಿರುತ್ತದೆ. ಆದ್ದರಿಂದ
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[illegible]

— १५७ —

[illegible]

பல்கலை நகரம்

— உலக சாதுக்கள் கி. பி. 1048

scn

Belted Bl-Tail

27. Septem.

Surg: major

2. *Phyllanthus*

[Faint handwritten notes at the bottom of the page]

Translation of the
Verucular petition
of Cor: no: 7751. That
Ludwig Jakob now
confined in the Belfry
St-Jail in deten-
tion of death.

Offence ...	...	Murder, under Section 302, I. P. C.
Plea ...	...	Not guilty.
Opinion of Assessors ...	...	Guilty, under Section 304, I. P. C.
Finding of Court ...	...	Do. do. 302, I. P. C.
Sentence ...	...	Death subject to the confirmation of the High Court.

No. 1824.

SESSIONS COURT,
BELLARY.
23rd July 1895.

From,

LEWIS MOORE, ESQUIRE,
Sessions Judge,
Bellary.

To

D. W. G. COWIE ESQUIRE,
Ag. Registrar of the High Court,
Appellate Side,
Madras.

Sir,

I have the honor, under Section 374 of the Criminal Procedure Code, to forward herewith the records in Session Case No. 45 of 1895 in which I have sentenced one Kutbuddin Sahib to death on a charge of committing murder (Section 302, Penal Code) by causing the death of one Santamma, subject to the confirmation of the High Court.

2. It appears that a Madiga woman named Santamma, daughter of the 1st prosecution witness, was living with her first cousin Earaga (2nd prosecution witness), a shoe-maker, in Vooloor. Earaga states that, for about six months before Santamma's death, she was kept as a concubine by the prisoner. She had a separate hut close to the house of the witness in which she used to sleep, but she always took her meals with him and his wife (3rd prosecution witness). He deposes that, early on the morning of Sunday the 9th of June last, Santamma left her hut with the prisoner. He asked the woman where they were going, and she and the prisoner replied that they were on their way to the market in Bellary. He adds that the only person who ever kept Santamma as a concubine is the prisoner and that, as far as he knows, no one else was in the habit of having sexual intercourse with her. His wife Earakka (3rd prosecution witness) gives similar evidence and states that, when she asked the prisoner and Santamma where they were going on the morning of the 9th of June, they said that they were going to Bellary to buy a woman's *cheera* cloth. She also deposes that Santamma was the prisoner's concubine and that, as far as she knows, she had no sexual intercourse with any one else.

3. The 4th witness states that, at about noon on the 9th of June as he was returning to his village Kaggallu, he saw the prisoner and Santamma going from the direction of Dammur towards his village. They were walking together along the bandy track and the prisoner had a stick in his hand.

4. The 5th witness is a Constable attached to the Brucepetta Police Station in Bellary. He deposes that, at about 5 p. m. on the 9th of June last, a drunken man was brought to the Police Station. A number of people assembled outside at the time, and the witness told them to go away. They all left the place with the exception of the prisoner who remained standing there. The witness asked him who he

was and why he did not go away. He said that he came there as he had killed a woman. He then described in detail to the Constable the manner in which he had killed his concubine Santamma.

5. The 6th witness is the Village Magistrate of Dammur. He deposes that he received information at about 10 p. m. on the 9th of June that a corpse was lying close to his village. He went at once to the place and saw the body of a woman lying under a tree at a distance of about two or three yards from the road. It was covered with a *cheera* cloth. The witness left a *taliari* to watch the body and sent a report to the Police and to the Stationary Sub-Magistrate. He states that the body was at a distance of about six miles from Vooloor where Santamma lived with her cousin, about one mile from his own village and about twelve and a half miles from Bellary. On the following day, the prisoner was brought to Dammur by the Police, and he then took the Village Magistrate, Inspector and others to the place where the body was lying.

6. The Hospital Assistant in charge of the Kurugodu Dispensary, in his deposition given before the Stationary Sub-Magistrate, states that, on the morning of the 10th of June last, he examined the dead body of a woman which was lying at a distance of about a mile from Dammur. He found externally a number of contused wounds in various parts of the body, on the head exposing the bone above the ears and on the back and chest. On dissecting the body, he found that the skull had been fractured. He was of opinion that the injuries that the woman had received on the head were the cause of death and that all the wounds and injuries observed in various parts of her body had been caused by blows with blunt instruments.

7. The prisoner, when the charge was read over to him, pleaded guilty and admitted that he had killed his concubine Santamma. As, however, it appeared to me to be advisable that the evidence in the case should be recorded so that I might be able to ascertain the exact circumstances under which the woman was killed, I directed that a plea of not guilty should be recorded and proceeded to examine the witnesses.

8. When first brought before the Stationary Sub-Magistrate on the evening of the 9th of June, the prisoner made a full confession and admitted that he had murdered Santamma by giving her repeated blows with a stick on the road between Dammur and Kaggallu. He stated that he kept the woman as a concubine for about six months, that about six days previous to her death he had found her having sexual intercourse with another man whose name he did not know and that he questioned her on the subject but that she protested that there was no truth in the charge made against her. He added that during the six days previous to her death the man whom he had seen having sexual intercourse with the woman was in the habit of visiting her. On the morning of the 9th of June, as he and his concubine were on their way to Bellary, he felt stomach-ache and proposed that they should return to their village. She refused and said that she would go to her father at Kolagallu. He pressed her to return with him to their own village, but she refused to do so.

and said that she did not want him and that she would go with the man in whose company he had previously seen her. He then said that he would not allow her to do so. On that she abused him, and he lost his temper, beat her with a stick and kicked her to death. He also stated that he had promised to give her two Rupees and that, on the morning of the 9th of June, he proposed to her that they should go together to Bellary and there buy a woman's cloth with that sum, but he added that he had really no money with him at the time that he killed the woman and that his object in taking her with him that morning was not really to go to Bellary to buy a cloth but to get an opportunity of killing her. When the charge was read to him on the 14th of June before the Sub-Magistrate, he adhered to the statement that he had previously made, pleaded guilty and admitted that he had killed his concubine.

9. Before this Court, he has made the following statement:—He and his concubine Santamma started on the morning of the 9th of June to go to Bellary in order to purchase a female cloth to be worn by her at the Muharram festival. On the way he felt stomach-ache, and the woman proposed that they should go back together to the village and he agreed. After they had gone a little distance, Santamma said that she would never look at his face again, that everything between her and him had ended that day and that he should go to his house and she to hers. The prisoner then said that they had better return to their village and that she could afterwards do whatever she pleased. She, however, refused to go back, stated that she could not continue to live with such a man as he was as a concubine and began to abuse him in a very violent language. He told her to go to her own house and not to abuse him. She continued to abuse him, and on that he became very angry and struck her a number of blows on various parts of the body and killed her. He had Rupees 5-8-0 with him, and he threw away that money and the stick in a *vunka* not far from the place where Santamma's body was lying, went into Bellary and gave himself up at the Brucepetta Police Station. He further stated that he had never suspected Santamma of having had sexual intercourse with any one else and that his sole reason in striking her was because she abused him violently.

10. The 1st Assessor is of opinion that the prisoner should be convicted of culpable homicide not amounting to murder but not of murder on the ground that he acted without premeditation and that, when he struck the woman with his stick, he had not the intention of killing her. The 2nd Assessor is also of opinion that the man should be convicted of culpable homicide not amounting to murder and gives as his opinion that he believes that the prisoner received provocation though not grave and sudden provocation. I cannot agree with the Assessors in considering that there are any grounds for convicting the prisoner of culpable homicide not amounting to murder and not murder. Santamma, it appears, had been for some six months previous to her death the concubine of the prisoner. There is no evidence to show that she was unfaithful to him. The 2nd and 3rd prosecution witnesses with whom she lived depose that the prisoner was the only man who ever kept her as a concubine and deny that she had, as far as they know, sexual inter-

course with any other person. Before the Magistrate the prisoner stated that the woman had been unfaithful to him and that he had discovered that she was in the habit of having sexual intercourse with others. Before this Court, after hearing all the evidence, he withdrew this allegation and admitted that he had no grounds to suspect the woman of unfaithfulness.

11. It appears that the prisoner and Santamma had a dispute because the prisoner did not pay her enough money. He states that, on the morning of the 9th of June, he took Rupees 5-8-0 with him promising the woman to go to Bellary with her and there buy her a *cheera* cloth to be worn at the approaching Muharram festival. It appears that on the road, he on the pretext that he was suffering from stomach-ache proposed that they should turn back without buying a cloth. The woman appears to have been irritated at this, to have abused the man and to have refused to have any thing further to do with him. On that he also seems to have become very angry and to have beaten the woman to death striking her several violent blows with a stick which he held in his hand. The 2nd Assessor, notwithstanding that it was pointed out to him that unless he was satisfied that the prisoner when he struck the woman had received grave and sudden provocation he would not be justified in finding him guilty of the lesser offence of culpable homicide not amounting to murder, gives as his opinion that the provocation that the prisoner received was not grave or sudden but that, notwithstanding this, he should be convicted on the lesser charge. It is clear from the opinions of the two Assessors that what they really consider is that the prisoner did not start from his village with the intention of killing the woman, that his act was not premeditated, that it was due to irritation caused by abusive language used by her that he struck her and that, therefore, he should not be convicted of murder. I agree with the Assessors in considering that it has not been proved that, when the prisoner started with the woman, he had determined to kill her. It would appear that, in order to satisfy the woman's demands for money, he agreed to start with her for Bellary under the promise of buying for her a woman's cloth. That promise, however, it may fairly be assumed, he had no intention of fulfilling for it is shown that the statement made by him to the effect that he had Rupees 5-8-0 with him which he threw away in a *vunka* after he had killed the woman is untrue and that he had no money with him. On the road he appears to have raised a false pretext that he was suffering from stomach-ache and the woman irritated at his conduct in breaking his promise regarding the purchase of a cloth used abusive language on which the prisoner beat her to death.

12. It is utterly impossible to hold that the prisoner received any thing that can be called grave and sudden provocation and, it appears to me, therefore, that I have no option but to convict him of murder and, as he is shown to have behaved with the greatest possible brutality and to have beaten the woman to death for what must be looked upon as very slight provocation, I sentence him to death subject to the confirmation of the High Court.

I have the honor to be,

Sir,

Your most obedient servant,

(Signed) LEWIS MOORE,

Sessions Judge.

PRINTED AT THE SCOTTISH PRESS, BY GRAVES, COOKSON AND CO., MADRAS.

Copy applied for 25 July
Copy ready 26 August 1895
Copy sent do-

L. B. Balagisay
Sheristadar

The Superintendent of Jail
Bellary

Duplicate

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Thurs. day, the nineteenth — day of September,

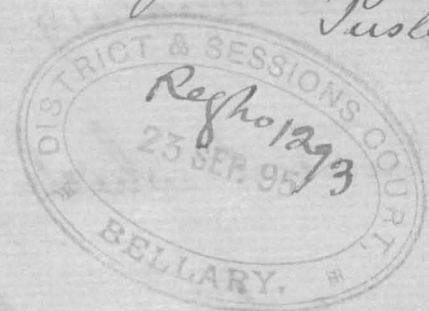
One thousand eight hundred and ninety-five.

PRESENT:—

The Honourable *Sir Arthur T. H. Collins, Knight, Chief Justice*
and

The Honourable Mr. Justice *Parker*

Referred Trial No. *60* of 189*5*



Kutbuddin Sahib

Prisoner.

Trial referred by the Court of Session of the *Bellary* Division
for confirmation of the sentence of death passed upon the said Prisoner in Case
No. *45* of the Calendar for 189*5*

CRIMINAL APPEAL No. *457* of 189*5*

Appeal by the Prisoner against the said Sentence.

This case coming on for hearing, *the Court delivered the follow-*

ing
Judgment.—The prisoner admitted before
the Sessions Court that he had killed his
concubine Santamma, and then with-
drew the accusation of infidelity which

he

5
Just
3
O. No. 4576

he had made against her when before the Magistrate.

We are unable to see that there are any extenuating circumstances. The first statement which prisoner made on the day of the murder (Exhibit D) appears the more reliable and in it prisoner stated that he had brought no money to buy the woman a cloth but had taken her away from home for the purpose of beating her. The medical evidence shows that the murder must have been carried out with the greatest brutality.

The conviction and sentence must be confirmed and the appeal dismissed.

By the Court

C. J. O'Hunter

Sy. Registrar

21.9.1895

FORM No. 53.

Nominal Roll of Convict No. 7757. Kuthudeni

Crime.	Sentence.	Date of sentence.	Adjudicating Courts.	Age.	State of health.	Conduct in Jail.	Result of the appeal to High Court.	Remarks and previous convictions.
Re Arson 302. 2. 1. 1. 1.	Death.	23-7-95	Seasons Judge, Bellary in	30 years. mo. 85	Good	Good	Result of the appeal to High Court.	nil

Bellary District Jail,

27. September 1895.

S. J. O'Hunter, Surg. Major
Supt. of Jail.

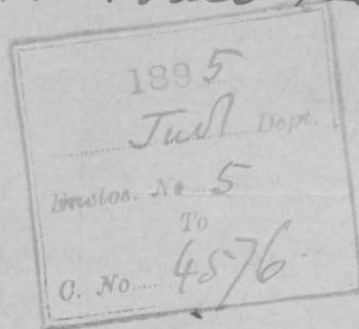
JUDICIAL DEPARTMENT.

Form No. 53.

Nominal Roll of Convict No.

confined

in the District Jail, Bellary.



*Nominal Roll of
Cav: No: 7751. Kutbud-
dui Fakih now confined
in the D.C. Jail Bellary.*

✓ No. 3093.

CURRENT NO. 4576
OFFICE OF SUPERINTENDENT OF JAIL,

Bellary, 27 Sept 1895

FROM *Surgem Major J. W. Evans*
ag THE SUPERINTENDENT OF JAIL,
BELLARY.

To

THE CHIEF SECRETARY TO GOVERNMENT,
FORT SAINT GEORGE.

Sir,

Enclosures:-

1. Vernacular petition
1. Translation
1. Copy of judgment of the District Court.
1. Copy of the appellate judgment of the High Court.
1. Nominal Roll.

I have the honor to forward the enclosed petition from Prisoner No. 7751. *Kutbuddui Fakih* in C. C. No. 45/95 on the file of Sessions Court, Bellary, whose sentence has been confirmed by the High Court.

2. The Nominal Roll as required by para 701 of the Jail Code, is herewith forwarded.

3. The Prisoner will not be executed until a definite reply is received to the enclosed Memorial from Government.

I have the honor to be,

Sir,

Your most obedient servant,

J. W. Evans
Surgem Major

ag: Superintendent of Jail.

Urgent - Just Sept.
APPEAL for MERCY
From
CURRENT NO. 4576

The Superintendent,
District Jail,
Bellary.

BELLARY DISTRICT JAIL.

FROM
THE SUPERINTENDENT
OF JAIL,
BELLARY.

To
The Chief Secretary,
Government,
Fort Saint George.

TO
THE CHIEF SECRETARY
TO GOVERNMENT,
FORT ST. GEORGE.

Dated 27th
Recd 27th
Recd 30th
Ref 30th
September 1895

No. 3093.

Enclosures: 5

Subject:

Submitting a Petition
of Prisoner No: 7751. Kuttu-
buddin Sahib in C.C. No.
45/95 on the file of the Session
Court of the Bellary Dist. with
the usual nominal Roll.

Dated
Received

No.
Enclosure

Submits a Petition from Prisoner No.
in C. C. No.
on the file of Sessions Court, Bellary, with
the usual Nominal Roll.

J
43. 200-21-85.

JUDICIAL DEPARTMENT.

Current Number. 4576

FOR ORDERS.

APPEAL for mercy from Convict No. 7751

Kuttubuddin Sahib under sentence
of death in Bellary Sessions Case
No. 45 of 1895, which sentence has been
confirmed by the High Court.

The Superintendent of The Bellary

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

The petn. wants to make out
that the deceased died
from natural causes; but
it is clear that he killed
her. The only question is whether
the offence amounts to murder
or not. I think it does
amount to murder. There
is no evidence of anything
approaching grave and sud-
den provocation; & the petn's
original statement goes to show
that the killing of the woman
was premeditated. The petn.
should be dismissed.

M
7/10/95

The evidence of the Hosp. Assist.
makes it certain that the new
story of death from natural causes
is false. I have no doubt the
prisoner committed murder. The law
must take its course.

J. Speer
2 Oct

25/1/10

30/9/95

30/9/95

Ref. J. Speer

Urgent - T. L. Scott.

PETITION FOR MERCY.

VERY EMERGENT.

Hon'ble Member and Circulation.

(FOR ORDERS.)

C. 1/10 C. 1/10
R. 1/10 R. 1/10

[J.]
[16.]
1,000-5-2-94.

Judicial Department.



Chief Secy
Madras
Judicial
Dept.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following letter, dated 27. Decr. 95, No 3093, from the Superintendent of the *L.P.* Jail at *Bellary*, forwarding petition from Convict *No 7751 Kuthumbin Sahib* under sentence of death in *Bellary* Session Case No. 45 of 1895, confirmed by the High Court of Judicature.

Read also letter, dated _____ from the Registrar of the High Court, Appellate Side, forwarding the record of the case.

ORDER THEREON, *3-10-1895* 1897, No. 2070.

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 7751 Kuthumbin Sahib*.

2. The law will take its course.

(True Extract)

(From index)

h2
2/10/95
Chief Secretary.

2/10/95

To the Superintendent of the *L.P. Jail, Bellary* for communication to the Prisoner.

„ Inspector-General of *L.P. Prison*

„ Hon'ble the Judges of the High Court, with papers returned.

The C. J. with C. A.

Despatch
3/10

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

READ AGAIN G.O., No.
189 ,

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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

N.B.—

A = Copy in full.
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P = Copy abstract only.
Q = Copy heading only.