Judicial (1895) Department.

ORDINARY MS.

G.O., No. 2180

Dated 28th Oct. 1895

INDEXED.

[Despatch Abstract.]

BIMLIPATAM MURDER CASE.

Directing the Government Pleader, with remarks, to present an appeal to the High Court against the judgment of acquittal in Vizagapatam Sessions case No. 4 of 1895.

BACK PAPERS.

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

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G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	5205		95	2290 8-11-95			

Judicial Dept

CURRENT NO 4593

From,

The District Magistrate

Vizagapatam

To

The Chief Secretary to Govt

Judicial department

Rc 2031 dt. 10.9.95 "
Rc 4730 dt 30.5.95 Mis.
" 7020 dt 17.6.95 R.
" 1680 dt 7.7.94 Mis
" 1826 dt 5.6.94 "
" 9448 dt 4.6.94 (also)
& encl. papers.

Dated 23rd September 1895

Rcd _____

Rpd 1-10-95

CHIEF SECRETARY'S OFFICE GOVERNMENT OF MADRAS 28. SEP. 1895

R. No. 369

Queries &c as per list enclosed. Separately sent.)

40

Subject

Submitting the judgment and part of the records of the Sessions Court in Session case no 4 of 1895 (Bimlipatam murder case) in order that Government if so advised may prefer an appeal to the High Court against the order of acquittal passed by the Sessions Judge.

[V. C. P.—1-11-94.—300.]

CURRENT No. 459

Re. C.
~~Dis.~~ No. 3195

VIZAGAPATAM COLLECTOR'S OFFICE,
Dated 23rd September 1895.

From

L. C. Miller Esqr.
~~F. D'A. O. Wolfe-Murray Esq^re.~~
Ag. Collector,
Vizagapatam District.

To

GOVT. PLEADER'S OFFICE,
Date 30/10/95
MADRAS.

The Honorable J. F. Price
Chief Secretary to Government,
Judicial Department,
Madras.

Sir,

I have the honor to submit herewith the judgment and part of the records of the Sessions Court in Session Case No. 4 of 1895, commonly known as the Bimlipatam Murder Case, in order that Government if so advised may prefer an appeal to the High Court against the order of acquittal passed by the Sessions Judge.

2. I would premise that the accused persons were acquitted at the Sessions held in January of this year but the date at foot of the note to the Judgment shews that the judgment was not out till after the middle of July. My predecessor was refused a manuscript copy on the ground that no copies should be given before the necessary copies always sent to the High Court were despatched, and I had therefore to await the appearance of printed copies before I could take any action.

3. I am greatly averse from asking Government to appeal in cases of acquittal on a charge of murder

DEPARTMENT.

FROM

THE COLLECTOR OF VIZAGAPATAM.

TO

THE CHEEF SECRETARY TO GOVERNMENT,

DEPARTMENT,

MADRAS.

Dated
Received } 189 .

Re. C. / *Dis.* No.

ENCLOSURES.

Subject.

and the more so in such a case as this when the trial was concluded nearly 8 months ago; and though I think that the evidence in this case would probably be deemed sufficient for a conviction if viewed impartially and without prejudice, I am not satisfied that it is so strong that the High Court would be willing to upset on the strength of it an acquittal pronounced so far back as January last. But whether or no the Government thinks an appeal desirable I consider that I am bound to bring the case fully to its notice and obtain its orders on it for the following reason :—

4. The Government will see that a most violent attack has been made in the judgment on the Magistracy and Police officers of this District, and a suggestion has been made (para 35, page 7) that extraneous help should be applied for, with a view as I understand the para, to the detection of the case and the prosecution of the Magistrate and the Police officers concerned in it. Apart from any question of an appeal against the acquittal it would be my duty to bring such a suggestion to the notice of Government, coming as it does from the Sessions Judge of the District, even though I do not concur in it.

5. I think I shall be able to shew that the Judge's attack on the Police and Sub Magistrate is not warranted by anything appearing in the evidence in the case, and is based entirely on inferences drawn from premises which altogether fail to support them. I may mention that in the case referred

to in para 35 at page 71 of the judgment (Sessions Case 21 of 1894) the police officers concerned were prosecuted at the instance of the Inspector General but were acquitted by the Sessions Court of Godavari. The judgment of that Court with Mr. Wolfe Murray's letter No. C/1601 dt. 1st May 1895 has already been sent to Government for perusal.

6. In case the Government should be disposed to prefer an appeal against the acquittal, I enclose a rough draft of grounds of appeal suggested by the local Public Prosecutor, as well as his notes on the trial in which he deals with such points of the case as taken by the Sessions Judge. It will be convenient I think for me to follow the same line in discussing the trial, though I am not sure that this mode of dealing with the case puts it in the clearest light. The judgment is however so long and contains so much repetition and reiteration, that it is more convenient to follow it as it stands than to attempt to rearrange the statement of the case.

7. The Judge in his opening paragraph attacks the prosecution case on the ground that it has been put before him hastily in order to avoid the appearance of taking time for preparation and to prevent the proper scrutiny of the record before the Sessions. This is I think a most unfair assumption and is based on nothing whatever in the evidence, which was fully heard and completed in time for the Sessions of January though the murder occurred only on the 1st of that month. No doubt had the Magistrate kept over the case for the February Sessions the form of attack would have been reversed, and we should then have heard of delays allowing time for the intimidation of

the prisoners and the concoction of evidence. The Sub Magistrate may I think fairly be credited with an honest desire to get the case tried without delay; the Magistrate has explained to me and I have no doubt his explanation on this point is true in fact, that he addressed a letter to the Sessions Court asking to what date he should bind over the witnesses to appear as he hoped to conclude his enquiry in time for the January Sessions. It was then open to the Sessions Judge to tell him that there would not be time to scrutinize the record. There is absolutely nothing so far as I can see to indicate that the case was smuggled into the Sessions in a hurry in order that there might be less opportunity for a fair trial of the accused persons, and the Public Prosecutor at page 3 of his notes gives a good reason why this was not likely to have been done.

8. This inference at the outset of the judgment and the supposition that the Magistrate had in view the probability that the accused would fail to get legal help are indications of the way in which the Judge has approached this case. The latter statement seems to mean from the reference to para 31, that the Magistrate knew the 1st accused had well-to-do relatives and hoped that by hurrying on the case he might make it impossible for them to come to the accused's assistance, a very far fetched assumption surely. If it means that the Magistrate relied on the 1st prisoner's poverty for his conviction it would follow that no murderer who is not well-to-do can be convicted in Visagapatam. There are many such

indications of the same kind; for instance the Judges argument from the discrepancies in the statements of the deceased boy's mother (1st witness) as to his age (para 10, page 26 of the judgment) the Judge as I shall point out shortly, believes that the boy was killed probably by accident, because he was a mischievous & unruly youth, and from the fact that his age was stated as 10, then as 9, and lastly as 8 years he argues that the mother was, at the instigation (I suppose) of the police, endeavouring to make him out younger than he was and consequently less mischievous. Surely a fairer view of the discrepancies would be that they are due to the well known ignorance of the exact ages of themselves and their children, which prevails among even well educated natives of this Country. The Judge's inference is wrested with great labour from the premises and implies incredible folly in the Police Inspector & Sub Magistrate who were clever enough to concoct a plot which it has taken so much skill & time to demolish.

9. But it is unnecessary to multiply instances to shew how the Judge has twisted the evidence to his own preconceived views of the case; or that while he is satisfied with nothing less than the absolute impossibility of innocence in the case of the prisoners (vide page 11 para 35) he declines to give the benefit even of the ordinary presumption of innocence to the Magistrate or the police.

10. The facts of the case as disclosed by the evidence are these. On the 2d of January the body of a boy Jayanti

Appalaarasimulu about 10 years of age, was found in a privy in a yard into which open the houses of the 1st accused and some other persons: the evidence shewed that on the evening of the 1st of January the boy was sent by his mother the 1st witness to take them medicines to the house of the 2d prisoner and thence to go to the house of one Pentamma for rice that he went out and was never seen again alive. The 1st and 2d accused confessed to the Sub Magistrate that they had killed him for his gold bangles worth 15 to 20 Rupees, and placed his body in the privy, and evidence was adduced to shew that on the night of 1st January the two accused endeavoured without success to get a goldsmith (5th pros: witness) to melt the bangles, and that on the 2d of January the bangles were found in the house of the 1st accused.

11. The Leprous Judge's theory is that the boy being mischievous went to the house of Venuri Ramasastu the Sub Magistrate's head clerk which is in fact part of the house in which the boy lives with his mother, and there in some way made a nuisance of himself: that in endeavouring to frighten or punish him he was accidentally killed, and his body placed in the latrine to get rid of it and the case concocted against the accused to screen the real perpetrators of the homicide. This theory is set forth at page 25 of the judgment and is there stated to be the only one consistent with certain facts proved by the prosecution themselves. The theory amounts to this

* V. plan referred to before (para 9)

that Venuri Ramasastri the Sub Magistrates' head clerk was if not the murderer, at least cognisant of the murder and by his influence with the Sub Magistrate and the police induced them blindly if not dishonestly, to afford him facilities for the concoction of a case against the two accused, to enable him to escape the suspicion which would naturally fall on himself. I would just call attention in passing to an inference contained in the paragraph (page 25 of judgment) stating this theory. "Judging from the appearance of the mother the boy must have been a frail lad." This is hardly a judicially drawn inference and is certainly not supported by universal experience. It is used to support the theory that the boy was easily killed and is a good specimen of the method of argument employed by the Sessions Judge to support his theories throughout.

12. The part of the evidence first dealt with by the Judge are the Confessions said to have been voluntarily made by the 1st prisoner. They are Exhibits C & B. I need not deal with the legal question whether Section 342 or Section 164 of the Criminal Procedure Code is to be applied to the first of these statements - Exhibit C. The Magistrate has explained to me that he considered himself to be acting under Section 164 CPC and omitted by mistake to record the certificate required by that Section. I do not consider this explanation entirely satisfactory but considering the circumstances of the case, the confusion that must have prevailed at the scene of the crime

and the fact that the Magistrate had been working all day at the case without food or rest, I do not think the mistake is unexcusable.

The Judge finds (page 17 of the judgment) that at the time Exhibits C & D (the 1st statement made by 1st accused) were taken there were no circumstances appearing in evidence against the 1st accused to justify his being questioned under Section 342 but even when Exhibit D was recorded there were the Magistrate says statements B. E. F. on record which together with the finding of the body in his latrine cast some suspicion on the 1st accused. The 1st prisoner denies that these statements were taken before his examination and the Sub Magistrate asserts that they were so taken, and is entitled in my opinion to the greater credit of the two, though this is, it must be said, apparently not the Judge's opinion. (P. 19 of judgment). However that be it would be reducing the investigation by the Magistrate to an absurdity to hold that he was precluded from questioning those who by their residence in the immediate neighbourhood of the place where the body was found might be able to give information which would help the detection of the crime. The Magistrate has explained that he did then suspect the 1st accused and so did not solemnly affirm him as he did the deponents of B. E & F. The accused had perhaps as the Judge says nothing very definite which he could be called upon to explain when D was taken but it would be impossible to conduct any investigation without asking questions of suspected persons, and in this case there was even if statements B. E & F. were not recorded before D, the fact that the body

was found in a latrine close to the 1st accused's house.
The Judge's views of the value of the evidence afforded by the finding of the body are decidedly inconsistent. At one time he holds that the finding of the body in an open latrine is no evidence against any one: that is his view when the Sub Magistrates action is in question: again he holds that the position of the body was such as to indicate Ramasastri as the murderer. That is when he has to account for his suspicion against Ramasastri and finally at page 61 of the judgment he states that the body was "just in the place which might create suspicion against the prisoner." That is when he has to shew the improbability that the prisoner would put it there. But if we take the last view first, we find that the Judge himself justifies the Sub Magistrates questions.

13. As regards C (the first confession) there was the damning fact of the finding of the bangles which the accused had to explain. The Judge deals with this on page 18 of the judgment and seems to hold that the Magistrate had no right to ask the 1st accused anything because the fact of the finding of the bangles had not been reduced to writing or stated by a witness in Court. If this be a correct ruling the personal investigation of crimes by Magistrates can be of no possible use, for they cannot ask any questions until evidence has been recorded.

14. The further allegation that the room was accessible and therefore the finding of the bangles was not a circumstance calling for the explanation of the 1st accused is hardly worth combating. That the room was accessible from outside was shewn during the trial but unless the Magistrate is held to have been lying to the Sessions Judge – and his evidence is said to have been given in a straightforward manner (V. page 70 of the judgment) he did not at the time of the finding of the bangles think it was accessible. Then he would have done well had he carefully examined the aperture on the top of the wall of which

6 the Judge has made so much and which I shall refer to at length further on, may be admitted, but it does not follow that at the time Exhibit C was recorded, which was immediately after the search of the 1st accused's house on the afternoon of the 2nd of January, he had reason to suppose that the bangles had been surreptitiously introduced. I have no doubt the Judge is right in holding (pp 18 & 19) that the Sub Magistrate's questions were put with the intention of strengthening the case against the accused and eliciting from him the circumstances of the boy's death. Some of them may be conceded to have been questions going beyond what is allowed by Section 342 Cr.P.C. if strictly construed, though the questions mentioned by the Judge at the top of page 19 do not do more if read with the answers to previous questions than call for further elucidation of the answers and of the circumstances of the finding of the bangles.

15. As regards Exhibit C which is the statement made by the 1st accused in Court to the Sub Magistrate at the preliminary enquiry, there is no doubt that it was intended to supplement and amplify the previous statement, and in regard to it I am of opinion that the Sub Magistrate shewed a want of discretion in putting so many questions to the 1st accused. He has explained to me that at the time Exhibit C was taken, evidence had been given of the movements of the prisoners on the night of the 1st of January. In the Judgment (p 19) it is said that 10

out of 18 witnesses had been examined and from the record of the preliminary enquiry it is clear that some evidence as to the movements of the prisoners was then on record.
It is of course possible that some of the questions were prompted by the Police Inspector who was in Court in charg of the case. However that be I fail to find in these statements, admissible or inadmissible, evidence that the Sub Magistrate was intentionally endeavouring to prop up a false case. He may have been endeavouring to strengthen a weak case by adding additional true statements, but he is certainly entitled in the absence of reasonable evidence or even suspicion to the contrary, to the benefit of the presumption of honesty.
Whether there exists any suspicious circumstances which cannot be more easily explained on the theory of honesty will be discussed in dealing with the Judge's "Part III the merits of the case" to which I now pass on. The Public Prosecutor (pg 9 of his notes) considers the confessions admissible and though I am not sure that the High Court would take this view, I think it is arguable at any rate that they cannot be rejected wholesale. The Judge's findings, that they were procured by inducements and threats (p. 64 of the judgment) and that they are untrue in fact (p. 65) will be discussed further on. The prisoner if may be noted here never raised this defence till he was placed before the Sessions Court.

6. The merits of the Case - Para 9 - 35 of the judgment

The Public Prosecutor in his notes commences the discussion of this part of the judgment by detailing some inferences drawn in it on an insufficient basis and which tend to shew that the Sessions Judge was unduly prejudiced against the prosecution.

The theory of the Judge being that Vemari Ramasastri or some one of his household killed the boy by mistake because he made a nuisance of himself, he at the commencement of para 10 of the judgment outlines the theory which as Public Prosecutor points out is based on surmise and faulty inference rather than on fact. The Public Prosecutor gives instances of the sort of surmises made by the Judge. I may add a few instances of defective inferences. I find nothing in the deposition of the 1st Prosecution witness to indicate that the boy was vicious and always trying to get money from his mother. (p. 23) Even if he did try to get what money he could, that fact would not support the inference that he was a nuisance to his neighbours. A loose statement in Exhibit G is made the foundation of an assertion that the boy could not have gone out at night, in spite of the evidence that he did go to give matches to the 1st accused and the 1st accused's admission that his mother came and asked about the matches, an admission which shews at any rate that the woman who knew most about the boy did not think it improbable that he would go out at night. The contradiction between the statement in Exhibit G and the statement in Exhibit K pointed out by the Judge should have been sufficient to

shew that Exhibit G was not an accurate statement in this respect. Why the Judge prefers to believe it to all the rest of the evidence is not clear. The statement at p. 23 that the Vemuri man was searching all night for what was in sight of his premises is most misleading. The body could not be seen from any part of the premises except by a person leaning over the well, and could not be seen at all at night in the corner of the privy. Moreover if Vemuri Rama Sastri did not know the boy was dead he would not look over the wall to see if he was in the corner of a privy not used by his household. There is therefore nothing improbable in his assertions that he searched all night without looking in the privy.

17. Again the tendency of the Judge's mind is shewn by his remark on Exhibit G that Ramasastri was endeavouring covertly to throw suspicion on 1st accused. All that is said in Exhibit G is that the boy was last seen when he went to give matches to 1st accused, a statement which seems to an unbiassed mind natural enough, and rather to support the prosecution theory than that of the defence. The rest of para 10 is devoted to a long exposition of the case and the facts mentioned in it can be dealt with in discussing the Judge's 'best facts' in detail.

18. The 1st of these is the accessibility of the room in which the bangles were found.

The prosecution alleged that the 1st accused's house

was searched on the afternoon of the 2nd of January and in a hole in the wall bangles identified to be those of the deceased boy were found. This is a most important piece of evidence to meet which the Judge finds that the bangles were introduced by the police or with their connivance by way of an aperture on the top of the wall between the room in which they were found and the quarters of the "Vaishnava people" of whom a good deal is said later on in the judgment.

19. To arrive at a conclusion on this point it is necessary to study the plan printed at p. 29 of the judgment. The aperture in question is marked K on that plan and is or was, for when I saw the place it had been filled up with mud, a hole of an irregular shape something like that delineated at page 31. It was proved that it was possible for a man to get through this aperture (v. quotation from deposition of Sub Magistrate given at page 31) and so the Judge concludes that some one did get through and put the bangles in the hole in which they were found in room B.

20. But the Judge has, so far as I can ascertain, entirely omitted to mention a most important fact in connection with this aperture, which is that as shewn in the plan it opens on to an open verandah (v. C. W. 3 evidence) which borders on an open courtyard. The dotted lines from g to k are not walls: there is a door at the opening near H and the Sub Magistrate has asserted to me

that many people men and women were sitting in the yard at the time of the inquest, that he himself sat for part of the time near P. and that 1st accused was also near P whence the aperture could be seen. These facts are not brought out in the evidence in the Sessions Court. The Judge saw the place but did not ask any questions about this point so far as I can see in the evidence. Were I to adopt his line of argument I should ask "can there be any possible & reasonable hypothesis to account for this omission other than that the Judge did not want these facts, which militate against his theory, to come out?" I would not for a moment think of making such a charge on such flimsy grounds, even against a Sub Magistrate or a policeman, but it is unfortunate that the openness of the place into which the aperture opens was not more clearly brought out either by the Sub Magistrate (C.W. 3) or the Superintendent of Police (C.W. 18) in their evidence. Owing to this defect the Sessions Judge was led into the mistake of saying that the aperture was "admittedly concealed from the view of the spectators" (para 12 at page 35).

This fact and the Superintendent's evidence as to the presence of black cobwebs (v. his deposition as C.W. 18) renders it most improbable that any person should during the time of the inquest have entered the room and secreted the bangles. It is however the gist of case made by the Judge for the defence that this fabrication of evidence occurred while the 1st accused was secluded

from his house, i.e. while the Sub Magistrate was making his enquiry (V. remarks in paras 13 & 14 of the judgment discussed infra).

21. It is true that the Sub Magistrate stated in his first deposition that the aperture was not large enough to admit a full grown man. At that time he had not examined it with any care and his mistake was not unnatural considering the appearance and irregular form of the hole. He was examined on the 16th January: on the 17th after his return to Bimilipatam he measured the aperture again and found it to be larger than he had thought, but did not then return to the Sessions Court and say so. The Judge came on the 19th to Bimilipatam and saw the place for himself. He takes exception to the Magistrate's failure to correct his mistake as soon as he ascertained it, and not I think without justice. A person in the position of the Sub Magistrate should have endeavoured to correct his mistake, and his explanation why he did not do so is not entirely satisfactory or consistent. But, at the same time, the charge of giving false evidence so freely made by the Sessions Judge is not at all made out. There is nothing unnatural in the mistake at first made: the 4th witness, the woman who occupies the Vaishnava house spoke of the aperture as one that would admit a cat and though the Judge assumes that she was tutored in this respect, there seems to be little if any ground for the assumption for there is absolutely not

an iota of evidence in the case to warrant the presumption that any one responsible for the prosecution ever thought of the aperture as in any way important before the trial came on in the Sessions Court. The Judge's theory is a mere hypothesis. If there is any evidence in support of it, it is that there was in the aperture a broken stick, but the stick may have been broken when Chundrah went through the hole at the instance of the Sessions Judge or when as described by the Magistrate the Vaishnava people put up a mat between their verandah and the room in question to keep the light out of the room when the death occurred. The possibility of the introduction of the bamboo by the aperture is no doubt proved; the alleged probability that they were so introduced is undoubtedly not proved and is rather negatived by the facts of the case.

22. The 2? so called test fact is that the Magistrate gave four hours time to enable the safe introduction of these bamboos into the room, i.e. abetted the fabrication of false evidence.

The conclusion at the end of para 13 of the judgment is absolutely true, but the further conclusion that the opportunity for introducing the bamboos was taken or is likely to have been taken is negatived by the plan (Exhibit J) and the evidence spoken of above which shews that the place was open. There would have been nothing easier had the Sub Magistrate desired to give the alleged opportunity, or thought of doing so, than to close the door near F in the plan on the plea that the Vaishnavas as neighbours should also be searched

Had this been done the aperture would really have been a 'secret' way: as it was it was as visible to the crowd as was the door of the house. I have seen the place myself and the aperture as shewn in the plan is in full view of the door way at F.

23. The 3? test fact: the Magistrate gave an untrue explanation in respect of the 4 hours opportunity given by him.

The Magistrate said he did not want to delay the inquest and the post mortem. The Judge finds that the inquest could not have taken four hours. Throughout the judgment instances will be found where small differences and discrepancies as to the hour at which a certain event occurred are treated as of great importance. The Judge throughout seems to ignore the fact that the time of day is always very loosely stated by native witnesses, and that even the Sub Magistrate and the Head Constable are not likely to have been looking at their watches as each step in the enquiry was completed.

24. The Judge has fallen into the mistake of judging the time taken over the inquest by the length of the report and the depositions B, E & F. The Magistrate explains what is manifestly true that a great deal more time is spent at an inquest than the mere recording of the report. There is a long and detailed examination of the body by the panchayetdars, there is much questioning and conversation and confusion that does not appear on the record: there is a

deliberation as to the cause of death, there is the recording of statements, an operation which takes very much longer than the mere recorded words would indicate and there are innumerable petty delays in proceeding with the report which always pelard the enquiry. The Judge if he has ever held an inquest must have known all this but in his anxiety to fix on the Magistrate the charge of helping the police and his Head clerk to fabricate the case he has taken a view of the case which cannot possibly be correct. Even if the enquiry in question were a regular enquiry in a quiet Court, with everything ready at hand, the time occupied by it could not fairly be computed by the length of the depositions and judgment. There is even in Court much more time occupied in taking a statement than merely the time required to write down what is actually recorded.

25. As to statements B, D, & F. the Magistrate has explained, with what I think is a reprehensible want of candour that he took them in addition to the inquest under Section 174 of the Criminal Procedure Code. I have no doubt that he never thought of that section at the time of taking the statements. I do not however agree with the Sessions Judge that these statements afforded no evidence on which the Magistrate could proceed to search the house of 1st accused. (V.S. last fact, para 16, page 31 of Judgment). They afforded evidence that the 1st accused was the last person heard of in connection with the boy and that the

place where the body was found was a latrine used by him. I do not attach much weight to the statement (F) as to the 1st accused's demeanour but it is incredible. I think that, if, as the Judge finds, his uneasiness was due to the fact that he saw opportunities allowed to the police to fabricate false evidence against him, he would have kept silence and said nothing about it to the Magistrate or the Panchayatdars. The 1st we hear of his suspicion that the bangles were introduced during the time he was excluded from the house, is when the Judge proceeds to make out a defence for him. His own story in the Sessions Court is quite different. He says that when the bangles were produced from a hole in the wall he cried out "you must have put them there" but never suggested either then to the Magistrate or afterwards that he knew beforehand that they were being placed there. The Judge's finding is thus unsupported in this case also, and in his anxiety to account for the prisoner's uneasiness he has allowed himself to record an inaccurate assertion in two places in the judgment. He says at page 41 that the 1st accused "had been kept out of his house for hours when he wanted a drink" (p. 41) and "he had been kept without a drink all day" (p. 24) whereas the evidence is that the accused "drank water 2 or 3 times" (C. W. 11) and there is no allegation that he was not free to go anywhere he chose except into his own rooms all the time the enquiry was in progress.

26. I think the Magistrate has been led by the criticisms passed on his action in the judgment, to try and justify each of his acts by reference to the law to an extent which is not quite consistent with truth. I do not see that any particular justification is required of the search or the exclusion of the 1st accused from his house. But whether there was or was not good foundation for the Sub Magistrates suspicions, there is no reason whatever to believe that they did not exist. If they were instilled into his mind by Ramasastri that is not evidence against either him or Ramasastri that they were not reasonable suspicions and not being possessed of the same ingenuity as the Supreme Judge, or at any rate not having time to think out the case so fully the Sub Magistrate can hardly be blamed for the failure to suspect Ramasastri of having murdered a little boy living in his own house for the sake of his bangles. The theory of accidental homicide never presented itself before the trial to any one, and it is not a theory which was likely to have come into the mind of the Sub Magistrate. That the Sub Magistrate was too ready to fix his suspicions on 1st accused may be true, & that he committed errors of judgment may be also true but the facts so far disclosed do not support the finding that he was helping Ramasastri and the police to concoct a false charge.

27. The 4th last fact. Discovery of the body para 15 of the judgment at page 38.

The Judge commences by an assertion that

suspicion pointed strongly to the family of the Magistrates Head clerk. I confess I fail to see how it did so. The Magistrate had not before him the statements which, the Judge considers, prove the boy to have been mischievous and unruly, and the finding of the body in an open latrine is the Judge has stated elsewhere in his judgment, not evidence on which a suspicion against any one could be based. It is true that the Vemuri people alone could have placed the body in the latrine without putting foot on land open to others but this is surely merely the very weakest of evidence: if evidence it be at all, against them. The accused or the Vaishnava people had only to cross a very small yard, and it was not likely that any one except the occupants of the yard would enter it at night as it is not a thoroughfare. I am unable to find in the deposition of prosecution witness 3 (the Sub Magistrate) the statement (p 38) that the body was visible from the Vemuri back yard. Having seen the place I should say it was more easily visible from many points in the public yard, and as the back yard wall was 4 1/2 feet high* the body lying under it would not have been visible to any one not close to the wall. It is by no means clear to me (v. p 38) that the body would, if thrown over the well, have been found just where it was. It is curious perhaps, considering the importance which the Judge has attached to this point, that there is no where to be found in any of the depositions of the

* v with ½ plan. The wall 4½ feet high in the well which is joint with that of the latrine

witnesses taken in the Sessions Court not even in that of the 8th prosecution witness, the first finder of the body, any detailed description of how the body was lying. To assert that as the Judge does that it was lying just as it would be if thrown over the wall seems to me to be going beyond the evidence. The description given to me by the Magistrate of the way in which the body was lying is not quite consistent with the theory of its having been dropped over a 4½ feet wall; he said it was close to the wall, on its back, one arm by the side & one a little raised; the head actually in the corner of the two walls, a position not likely to be found if the body had been hastily dropped from a height of 4½ feet or more for the latrine floor is lower than the backyard at that point. However that be the Judge seems to have had not sufficient evidence before him to decide the question and his inferences drawn from his findings are therefore defective. I do not wish to hazard surmises based on insufficient evidence, but it seems possible from the absence of evidence on this point and the examination of V. Ramasastri (D.W.9) that the absence of evidence is due to the fact that at the time of the trial the suspicion against Ramasastri had not formed in the Judge's mind. There is nothing really suspicious in Ramasastri's going first to the Sub Magistrate in the morning. He was the Head Clerk in the office: he lived in the house in which the deceased boy lived.

13. he had helped the boy's mother by searching for him all at night and he was naturally greatly interested in the case. The Sub Magistrate might have done better had he searched all the houses opening into the yard but he can hardly be blamed for not suspecting his Head Clerk of having murdered a boy of his own caste and sex for no reason at all.

28. The whole of the reasoning in para 15 is based on insufficiently supported assumptions. It is highly improbable that the boy's mother would have, if she knew Ramasastri to be the murderer, joined with him in the plot against the 1st accused and the Judge has not elicited from her or any witnesses whether it would have been possible for Ramasastri to cross the backyard and put the body over the wall without her knowing something of it. But it is useless to discuss all the possibilities of the case when there is no sound basis on which to found even a reasonable suspicion.

29. The 5th test fail. The question of the statements D. & F: this I have dealt with sufficiently in para 25 above and need not refer to it here again. I further them to point out that even if the object of taking these statements was to furnish evidence against the 1st accused that fact does not incriminate the Magistrate, or shew more than that his suspicions were too easily fixed, a characteristic frequently attributed to investigating officers in all Countries

30. The 6th last fact. para 17 at pag 43-45.

The Vaishnava people it has been stated owned the house adjoining the 1st accused's rooms, and the Judge now proceeds to shew that pressure was brought to bear on these people to enable the aperture in their wall to be used by the police for the introduction of the bangles.

31. The Magistrate should have sent for the 1st prisoner at once: this is the burden of the 1st subpara. Possibly the Judge may be right but it does not follow that his object in not doing so was first to gain over the Vaishnava people. His explanation that he first sent for the apothecary and the village munsiff, that he and the apothecary examined the body before anything else was done seems to me perfectly credible: his action may not have been as prompt as it might but he was not long at the place (only one hour at most) before sending for 1st accused. It is therefore an unfair assumption to say that the Sub Magistrate did not send for the 1st accused till after his suspicions against the Vaishnava people had been lulled by Ramasastri or he and they had been gained over to join in Ramasastri's plot. The Judge without allowing for inaccuracies in stating time has accepted the statement of D.W. 9 that Exhibit B (the statement of the boy's mother) was recorded at 9.30 A.M. and ignored the Sub Magistrate's statement that "the first 4 depositions" (i.e. Exhibits B, D, E & F) "

14 "were taken from 10 to 15". The Judge seems to find this from the fact that Exhibit B is in two parts: but did not ask the Sub Magistrate to explain this. I have done so and he has told me that he did not commence to record any examination before his second visit i.e. about 10 because he had no paper or writing materials with him, and that the reason Exhibit B is in two parts was that after taking the 1st witness's mark to the 1st part he found he had more to ask her and so continued it. This is not an incredible or improbable explanation. However even if the Judge is right there is nothing much in this point. The Magistrate went home about 9.30 to get his books and (he tells me) his writing materials and naturally enough did not set about recording statements till he returned 10 minutes later. The Vaishnava people were on the spot and may were questioned. The 1st accused was sent for and examined or questioned after he came and after, or perhaps before, the deposition of the sweeper (Exhibit E) and that of the panchayatdar (Exhibit F.) were taken. That the Vaishnava people were questioned as suspects does not appear anywhere in the evidence. Their house opened into the square & near the latrine while it was only a back door of the Komatees house (V. bot of pag 44 of judgment) that opened into the lane leading into the square. "The police roughly asked the women if she knew anything (D.W. 2)". Upon this single statement is based the presumption that the whole household was terrified by the police into acquiescing in the fabrication of false evidence. The presumption so deduced

is held like a "fact beyond dispute". It is hardly necessary to argue against such assumptions as this, but I may point out that the police with all their power did not induce the Vaishnavas to shut their door. The incidents mentioned on page 44 of the judgment as supporting the assumption have no real significance. The Vaishnava woman (D.W. 4) may have given false evidence in a sense though her description of the aperture as one through which a cat could pass would not seem unnatural to one who has seen the place, and if she were tutored afterwards, so the Judge finds, were many other witnesses upon whom it was not necessary to bring pressure earlier in the Case. The influence of the old man (D.W. 10) is somewhat problematical and his presence at the place is natural enough as his work lies at a temple a few yards from the entrance to the 'Square' in which admittedly a large crowd was assembled. The examination of the nephew of 4th prosecution witness is hardly sufficient to base any assumption upon and the reason for selecting him as a witness could doubtless have been ascertained had the Magistrate been asked about it.

32. I need not touch much on the 7th test fact (para 18). A more natural inference from the facts thus stated would be that having examined the Vaishnava people who were neighbours and on the spot the 1st accused was next examined as suspicion pointed to him. The examination of the Vaishnava people is so natural an occurrence that it would not occur to anyone to question it. The significance attached by the Judge to the 1st &

2d visits of the Sub Magistrate vanishes when it is remembered that the Sub Magistrate simply went home to get his books and have a cup of coffee. He was not he says away more than 10 minutes.

33. Para 19. 8th test fact. absence of the Sub Magistrate from the 2d prisoner's house when it was searched.

The explanation of the Magistrate is to the effect that he was not responsible for the searching operations, and that he had worked at the case all the day from 9 to 5 without rest or food and so went home after recording Exhibit C. This seems at least a simpler and more credible explanation than the one suggested by the Sessions Judge in para 19. The Magistrate's failure to record the 2d accused's statement is explained to be due to the fact that the 2d accused simply said he knew nothing about the matter and there was at that time nothing against him but the 1st accused's statement in Exhibit C. There is nothing in the 8th test fact of importance.

34. The 9th test fact. para 20.

The omission to search the 1st room is explained by the fact that there is really only one room, the dark room in which the bangles were found. The rest is the verandah spoken of by the Magistrate (D.W. 3) which was searched first. There were not two searches at all and it is no where admitted by the prosecution that there were. The Head Constable the witnesses say came out and asked for a light. That was not an unnatural thing to do

considering that the room at midday is absolutely dark having no aperture to admit light except the one of which so much has been made in this case. The search may not have occupied so long as is said, but considering that the whole place was searched – the verandah first and then the room – it is not impossible that the prosecution witnesses are telling the truth. As the Public Prosecutor has pointed out had the search been soon over, it would have been doubtless attacked on that ground. The statement that there were two searches is based on the allegation of the 1st accused in the Leprosie Court. It is easy to attach too much weight to this statement and even if it be true it does not implicate the Sub Magistrate in the plot. As to the 'unnecessary show of care' remarked on on page 47 it is well known to be the universal practice in searches to change the clothes of the police officer making the search. The sneer of the Judge at the end of this subpara is quite pointless as against the police but shows how ready is the Judge to snatch at any excuse for discrediting their evidence.

35. The 10th last fact is the absence of the testimony of Avathanula Narasimham the real discoverer of the body. The Magistrate explains that Narasimham was a feeble old dotard unable or unwilling to give sensible answers to questions and he thought it useless to send him up. His description of the man is confirmed by the Lepros Judge – "a very feeble old man" (page 49) "an old man in his dotage" (page 50). His evidence

was to the effect that the body was seen by him and the 8th prosecution witness in the latrine on the morning of the 2nd January. The Magistrate may have thought the evidence of the 8th prosecution witness would be sufficient to prove a fact not in dispute. Nevertheless I quite agree with the Judge that this old man should have been sent up as a witness, and the Sub Magistrate erred in not doing so. His explanation of his failure to do this is however by no means incredible or improbable, and the Judge's inference in para 21 is I venture without hesitation to assert entirely unwarranted and even assuming that the old man did find the body first what follows from that? The Judge has to go very far for his deductions on this point. Ramasastri is in the public service and A. Narasimham was once in the public service. They are of the same caste. Therefore it follows that Ramasastri told Narasimham he had murdered his neighbour's child and put the body in his latrine. Why did he tell him anything about it? Because he was the employer of the Vaishnavas and in order to allow of the introduction of the bangles into the 1st accused's house through that of the Vaishnavas it was necessary to win them over. This aspect I have disposed of above in considering the question of the introduction of the bangles and with its fall falls the charge against the Magistrate of suppressing Narasimham's evidence. The Judge has made a great deal more out of the supposed position of Narasimham than the

evidence warrants. My information is that he is an old pensioner who has obtained a sort of sinecure office in the temple as a means of supplementing his pension, and that his influence is of the smallest. However that be, it is surely easy to conceive (if we are to go by surmises) a theory to account for his being the 1st person to see the body, without resorting to violent presumptions involving improbable conspiracies and casting accusations of murder at presumably innocent men. Is it not possible that the municipal latrine inspector may as the Public Prosecutor suggests have felt it desirable that he should not be the only person to first discover the body?. It will be in the knowledge of Government though it is not apparently in that of the Learned Judge that this officer's duty is not limited to the inspection of privies cleaned at Municipal expense, but he is expected also to examine private premises with a view to see whether the Council should take steps against the owners to force them to keep their privies clean. Is not this a more probable hypothesis even that of the Learned Judge or is it not possible that Narasimleam, an old man employed at the temple which is near this place may have gone ~~to~~ in the morning to the yard, it may be to see one of the Vaishnava people in his employ, or even to use the privy himself, and may then have seen the body?. These are mere surmises for the old man's evidence is not straight forward or clear, but they are as probable at least as the Judge's surmise, and do not violate the important rule that innocence is to be presumed till guilt is proved.

17.

36. The eleventh last pact relates to the search.
(para 22 p. 50 etc).

That the rules laid down for conducting searches were broken by the exclusion of the witnesses required by the law to be present is quite clear: the Sub Magistrate deputed himself on his ground that he was not conducting the search and only waited about outside the house to see the result, but this explanation I cannot accept. He was certainly present at the commencement of the search and he should have seen that it was carried out in accordance with the law. Had this been done, though of course on the Judge's theory of the introduction of the bangles the evidence created by their discovery would have been equally worthless, it would have been impossible to allege the confession in Exhibit C, which the Judge finds was extorted while the police were alone in the house with the 1st accused. The 1st accused himself gives a very circumstantial account of what happened in the house, and it seems not impossible that part of it is true: but it must be remembered that it would take but little alteration to make the statement true, supposing the fact were that the police on the discovery of the bangles, forced the 1st accused to confess the truth. The confession would be inadmissible in evidence but might be none the less true.

37. But admitting as I must do, that the search was improperly conducted it by no means follows that the witnesses were kept out by the Magistrate with a view to give the police opportunities for malpractices;

there is a much simpler explanation and one which I have reason to believe is quite true: that is, that it is not the practice when searching small houses, to allow the witnesses into the house. They are made to see that the searching party takes nothing in with it, and then remain outside till the search is over. The reason given for this practice which is certainly as I read the law, illegal, is that were it not adopted the accused person would if any thing were found incriminating him, accuse one of the witnesses of having brought it into the house in collusion with the police. The Judge has a sneer at this reason on page 51 of the judgment but he has not fully grasped it. What is feared by the police and respectable men is that an accused person would not hesitate to charge with malpractices the most respectable of the witnesses, who would very likely have to go to the Court to give an account of himself and be put to much trouble and inconvenience. To prevent this the witnesses would have to be searched and stripped before entering the house and to this they would not unnaturally object. My reason for believing that this explanation which was offered to the Judge by the Sub Magistrate is true, is that I have had occasion in other cases during the last time I have been in this District to notice the prevalence of the same practice. I find therefore that the absence of the witnesses from the room does not evidence dishonesty on the part of the Magistrate.

38. The twelfth & thirteenth last facts depend on the assumption of Ramasastri's guilt. If this assumption

is not made suspicion disappears. It cannot be said to be suspicious that he should take an interest in the search for his widowed neighbour's missing child, that he should in the morning have gone to the Sub Magistrate, his immediate superior, to give him the news, that the mother should have got him, a magistrate's clerk and supposed to be versed in the ways of the law, and the police, to report her loss for her at the police station, and next he should be so far interested in the question of the death of this boy who lived practically in his own house and whose body was found in close proximity to it, that he remained throughout the inquest, to hear the result. It will be noticed that he was not asked to explain the inconsistencies in his evidence, and next throughout his examination by the Court he is not asked one single question which could indicate that he was under suspicion at all - possibly he was not so at that time. The omission of the name of the owner of the house 4 in the plan (page 54) can hardly have been done with deep design. No witness attempted to deny that Ramasastri lived there and it could hardly have been expected that it would not be known who occupied the next house to that of the murdered boy. If it be assumed that Ramasastri wanted his name kept out of the case, his folly in taking a prominent part in bringing the murder to light becomes so astonishing as to be absolutely incredible.

39. The 14th last fact the helplessness of the prisoners may go for what it is worth. It is elsewhere said

that 1st prisoner is well-to-do and his father 1st defence witness is well off and not without influence. But that is not of any great important.

40. The Judge having disposed of the finding of the bangles proceeds to deal with the evidence on other points: he states first that there is no evidence worth speaking of as to the identity of the bangles. In this he is I think right: it is always difficult to obtain satisfactory evidence of identity in the case of native jewellery of ordinary make, and to say that the best available evidence was produced is no argument, when that evidence is bad. The 2d prosecution witness and the 9th prosecution witness profess to identify the bangles as does 1st prosecution witness but they may be mistaken as well as the goldsmith.

41. But the Judge cannot rely on non-identification in this case because unless he holds that there were no bangles (they were mentioned in Exhibit G) it is part of his case that the bangles produced were those of the deceased boy. It is not part of his case that Ramasastri introduced some one else's bangles into the house. That would have been unnecessary folly in so artful a schemer.

42. The Judge in dealing with what he calls the 1st episode (page 55) starts with the assumption that 1st witness was partly examined by the Magistrate before he went to his 'breakfast' i.e., before his 10 minutes' absence. This I have shewn in para 31 above is not proved and is denied by the Magistrate. If Exhibit B is taken as one statement the bangles are mentioned in it, but whether or not the

woman forgot them in making the 1st statement, it will be found that they are mentioned in Exhibit G the first report of the occurrence – a report prior to any of the statements. I do not think the Judge's deductions from the other facts of 1st witness's evidence and most of the 4th witness are unfair. It seems clear enough that they have attempted to make the case against the 1st prisoner stronger than they had done in the committing Magistrate's Court, but it is not fair on that account to reject their story altogether and to hold that the boy was not sent out with matches to the 1st accused. The first accused himself in the Sessions Court stated that the woman came and asked him about the matches, and it is thus evident that that whole story is not a concoction: and if all the evidence be rejected which purports to shew that the deceased was actually seen with the 1st accused, there remains at least the presumption that the boy did as he was told and took the matches to the 1st accused's house.

43. But there does not seem to be sufficient reason to reject all the evidence. The only ground on which the 2d witness's evidence is impeached is that he was told by the police to tell the truth. This witness is the cousin of the 1st accused and prima facie likely to speak in his favour and not against him. The 6th witness does not say very much on this point and the 9th witness did not repeat in the Sessions Court what he said in the Sub Magistrate's Court. The reason seems to be that he was not questioned by either Public Prosecutor or Judge on this point, and

before condemning him it might have been well to ask him to explain.

The descrepancies as to time noticed by the Sessions Judge would be very important were it not well known that in such matters even well educated witnesses who carry watches in their pockets are apt to be inaccurate in this respect and much more persons in the position of 1st and 6th witnesses.

44. As to the 2d episode, the Judge believes that the accused went to the house of the goldsmith (page 59) though he does not believe that they tried to get the bangles melted there. Consequently it is inaccurate to say (page 58) that "the whole incident is false". The 2d accused's Cross examination of this witness in the Committing Magistrates' Court shewed that both prisoners did go together to the goldsmiths house, and it might have been expected that, did he wish to deny the story of the bangles, he would have asked some question on that point. There is no doubt that the goldsmith has not given satisfactory evidence as to the time at which he first heard of the loss of the bangles, but it is not improbable that he thought it would be better for him to say nothing about the matter if he could help it, and did not in Court like to admit that he was unwilling to come forward as soon as he heard of the loss. There is no proof whatever that the witness is a man "generally available at police stations to identify property", or that his name was suggested to the police by others than the accused. Even if it were supposed by persons desirous of detecting the case e.g. Ramasastri himself (who may as I have

pointed out, without any guilty motive, have been anxious to discover the murderer of the child of his neighbour and caste fellow) it cannot follow that the suggestion was improper or dishonest, because the Judge himself finds that the goldsmith was visited by the accused. The same remark applies to the question discussed on pages 60 & 61 of the judgment. The prisoners are found to have gone to Narayana's house and it matters little how the Police got their information of this fact. It is not shewn that there was any 'limited source' (p. 61) of information on which they could have drawn, and consequently I need not enter on the explanation given by the Police Inspector of the differences between his statement and that of the Head Constable.

45. The prisoner's demeanour (4th episode p 61.62) is not to my mind important evidence of his guilt. The Magistrate was of course not summoned to prove this point only: he was present at the search, and recorded the confessions and his evidence was clearly desirable. The prisoner's knowledge of the aperture may be conceded, but his knowledge of the details of the previous Bimlipatam case 5 years ago is problematical and if he had really had before his eyes the concoction of evidence going on acquit him at the time of the inquest, he would certainly have appealed to the crowd if not to the Magistrate. He had not at that time been bullied by the police, even in the Sessions Judge's view of the case for it was not till the search in the afternoon that the police had a private interview with him.

46. Antecedent improbability of the case. p.p 62, 63, 64.

The discrepancies do not amount to much. The mothers statement is that the boy wore his bangles first on 30th December. The prisoners statements fix the date as 29th. Is it not possible that the mothers '15 days' may have been merely an approximate date: '10 or 15' is not an unusual approximation adopted by native witnesses. Ramasastris discrepancy is wider but he was less likely to know and most unlikely to have noted the matter particularly. He is admittedly only approximating.

47. If this were the 1st case in which Brahmin children had been murdered for their jewellery in cold blood the Judges remarks on page 64 would have more point than they have.

48. The improbability of the story that the prisoners attempted to get the bangles melted at once may be conceded, but on the other hand it must be remembered that they were not unlikely to have been anxious to get this damning evidence against them destroyed as soon as possible.

49. It is true that the 1st prisoner did not confess when exhibit D was taken, but that it must be remembered was before the bangles were found.

50. It were surely safer for the accused to murder the boy in the house than to trust to finding a lonely place, without being seen in his company, and the non removal of the earrings may be accounted for either by their not noticing them or by their finding some difficulty in removing them.

51. The story is thus not so improbable as it appeared to the Judge.

52. The confessions have been discussed before in para 12 of this report. I agree with the Judge that the alterations in the statements as to the time of concealing the body and bangles were probably made in consequence of questioning by the magistrate, but that that questioning was made in good faith. I do not see sufficient reason to doubt. The Magistrate had then before him further evidence as to the prisoners movements, which shewed that the 1st statements could not be accurate, and he accordingly endeavoured to get an explanation of the discrepancy.

53. To sum up: the case for the prosecution is that

(1) the deceased was last seen with the prisoners.

(2) the prisoners tried to get the boys bangles melted on the night of his death.

(3) the 1st prisoner looked uneasy when suspected

(4) the boys bangles were found in his house

(5) he confessed and implicated 2nd prisoner.

I am not by any means sure that on the evidence adduced on these points the High Court would reverse the acquittal and convict either prisoner and a retrial at this late date is perhaps hardly to be desired. The confessions have been retracted, the identification of the bangles may be questioned, the prisoners demeanour is not of great importance and the evidence on the 1st point is not of course conclusive of the prisoners guilt. The Public

Prosecutor considers that an appeal should be preferred and as I have said at the outset the evidence impartially viewed is perhaps sufficient for a conviction, but as the case depends a good deal on a retracted confession and the acquittal was so long ago as January last I am not very hopeful of success in appeal.

54. It will doubtless have been noticed that this regrettably long report is occupied rather with the defence of the Sub Magistrate than the guilt of the accused: this has perhaps naturally resulted from the fact that the Lepron Judge's judgment is far more an indictment of that officer than a judgment of acquittal of the accused. The Sub Magistrate and the Police have been charged with the very grave offence made punishable by Section 194 of the Penal Code (v. p 67 of the judgment) and it has been suggested on pp 70 & 71 that the Government should take further steps against them. I venture to think that I have shewn that the charges are unfounded and that no necessity is made out for the exceptional action suggested.

55. The Sub Magistrate may have and I think has committed errors of judgment: he should not have questioned the 1st ~~que~~ accused so much as he did in Exhibit O. He should have allowed the witnesses to the search to go into the 1st accused's house at the time of the search: and he should have recorded Avadhanula Narasimham's evidence. It would also have been better had he informed the Lepron Judge as soon as he discovered that he had made a mistake in his evidence as to the size of the aperture between the 1st accused's room and the verandah of the Vaishnava house and had he also supervised the search of 2d accused's house.

56. The Police Inspector did not arrive at the scene of the offence until the evening of 2d January after the search was over and can have had no hand in getting up the case before that time. After that all that is against him is the discrepancy between his statement and that of the Head Constable in regard to the interpolation in his diary, as to which no doubt his departmental superiors will consider his explanation.

57. I have shewn I think how improbable it is that the Head Constable should have procured the introduction of the bangles into the house as found by the Judge, but it is not impossible or even improbable that he while in the house and after finding the bangles put pressure on the accused to confess: nor is it improbable that inducements were offered to the 1st accused as he says to confirm his confession but unless there is more against the police than a mere statement of the accused person they cannot be punished. Perhaps an enquiry might be held by a superior officer of police who would give the accused the opportunity of substantiating his statements. There is nothing from which it can be inferred that false evidence was concocted by the police.

58. At page 71 of his judgment the Lepron Judge asks a number of questions which he considers arise out of the Considerations of this case: I think I have shewn that most of them do not require any answer. Some of them apply with whatever force they may have to the system of administration of Criminal justice which

prevails all over India and on which I need not touch: others seem to indicate that in Mr. Farmer's opinion 2d class Magistrates should not be given the power of Committing cases to the Sessions Court, and I am inclined to agree with him so far, that it would be better where the Sub Magistrate himself practically holds the inquest and investigates the case, if it were placed before another magistrate for preliminary inquiry and if in Serious Cases preliminary inquiries were often made by 1st class Magistrates. I do not agree that the way in which this case has been dealt with in the Committing Magistrates Court is a scandal to the Government, and I fail to see why a Sub Magistrate or his Head Clerk should be deemed fit subjects for punishment because other persons, guilty or innocent will not be satisfied unless this is done. I have shewn that the accusation against the Head Clerk is based on nothing more than a groundless suspicion which it is probable was not present to the mind of the Judge when he was trying the case, and which receives no support from the evidence, and I have dealt with the Sub Magistrates part in the affair above. After the way in which this case has been dealt with by the Sessions Judge and after the enormous delay of nearly 6 months during which no one could obtain a copy of his judgment it is certainly not likely that further evidence can be procured in the case, whether against the persons accused by the police or against others.

59. The effect of this and other cases in which un- substantiated & groundless charges have been and are being made against the police and subordinate magistrates cannot but be bad: officers who know that all their acts will be twisted into evidence against them whatever they may do, will certainly sooner or later decline to exert themselves in the execution of their duty, indeed this is occurring already: if police officers and Magistrates know that the evidence put forward by them will be discredited before it is heard, that it will be weighed and tested not to ascertain whether it is true or false, but to see if it is not possible that it might be false, it is not likely that they will continue to try and get evidence at all. The lives of innocent men are in jeopardy no less from the systematic acquittal of murderers than from the machinations of the police.

60. The Sessions Judge has laid me under great obligations by the great care he has bestowed on this case and the clearness with which, at the cost of much labour and time, he has recorded his indictment of the executive, and I regret the more that I have to ask Government to decline to accept his conclusions.

I have the honorable
Sir
Your most obedt. Servant
[signature]
Divisional Magistrate.

Note.

The Sessions Judge has called attention to previous Cases tried by him and I may not be out of order

if I have my say on that subject also.

Against the former Bimlipatam case S.C. 10 of 1890 in Vizagapatam and 5 of 1890 in the Ganjam Sessions Court an appeal was preferred, and the High Court ordered a retrial: the Ganjam Sessions Judge Mr. Higgens however acquitted the accused.

In case 21 of 1894, though there was no appeal the prosecution of the police officers concerned resulted in their acquittal on the merits - and the Sessions Judge of Godavari in his judgment remarked that unfair assumptions of concoction of evidence by the police "pervaded and vitiated" the judgment of the Vizagapatam Sessions Court.

In the Anakapalli case S.C. 6 of 1894 there was a successful appeal against the acquittal of the accused. On the retrial the accused was convicted and the High Court upheld the conviction.

In the Chepurupalli Case, S.C. 11 of 1894 there was also an appeal from the acquittal and in that case the retrial also resulted in a conviction, reversed however by the High Court on appeal.

The judgt. in S.C. 24 of 1894 was not appealed against. It contained a few remarks against the committing Magte. regarding the irregular use of sec 164 - 36th Cr.P.C.

All these were murder Cases, and all were tried by the Sessions Judge who tried the case now under report.

Judicial Dept.

C.No. 4593

FOR-JUDGES

In this current the Dt. Magte. of Vizagapatam submits for the perusal of Govt. the judgment and a portion of the records in Session Case No. 4 of 1895. This is the Bimlipatam Murder case, the delay in issuing the judgment in which formed the subject of Mr. Wolfe-Murray's letters disposed of in G.O. dated 30th May 1895, No. 1178. The judgment is dated the 18th March, but from the foot-note appended to the 72nd page it appears that it was not ready for issue until the 18th of July and was not actually supplied to the Supt. of Police until the 1st of August. It is of a stupendous length, a mere perusal occupying at least two or three hours, and the great bulk of it is taken up by an attempt to prove that the committing Magte. and the Police officers who investigated the case deliberately concocted false evidence with a view to secure the conviction of the two persons who were placed on their trial and to divert suspicion

Most of the question formed subject matter of a first time & read all this through, but an appeal appears necessary both in order that there may, if possible, become a strict ground on which to base the next step & in order that the H.C. may have impressed on them the danger of having Mr. F. there again. They rather defended him before, I think -

I suppose the Govt Pleader will get the D. Magte's letter & the Pub: Prosr's letter & that is near all of these the various points are taken which have been so fully brought out in this note - Next, it might be as well to direct his attention & then, if the simplest way of doing so would seem to be to send him (D.O.) a copy hereof.

When the H.C. has done with the case, the papers can both be sent me again

WW
22/10/95

suspicion from one Vemuri Rama Sastri the head-clerk of the Sub-Magistrate. The Dt. Magte's letter discusses the Session Judge's method of reasoning. I have been carefully through the whole of the judgment and submit that Mr.Miller's criticisms are fully warranted and that his letter is generally couched in fair and impartial terms. He expresses doubts as to the result of an appeal against the acquittal in this case and a perusal of the judgment certainly does lead to the belief that an appeal would probably fail. The main strength of the prosecution rests upon certain confessions, the admissibility of which is open to question -- the Session Judge ultimately held them inadmissible-- and upon the discovery in the room occupied by the first accused of two plated gold bangles said to have been worn by the murdered boy which cannot be identified with certainty and which may possibly, though not probably, have been introduced into the room without the first prisoner's knowledge. It is however necessary to devote further consideration to Mr.Farmer's judgment, because of his allegation

of

(1. apparently at the chapa of the Govt. Plender, Madras.)

of gross misconduct on the part of the Police and the Sub-Magte. and of his suggestions that they and certain witnesses should be prosecuted for giving or fabricating false evidence with intent to procure conviction of a capital offence, extraneous help being brought in to secure punishment for their mis-deeds. Mr.Miller in his letter defends both the Magte. and the Police from these charges though he does not acquit the former of errors in judgment. The matter is too complicated to admit of any brief summary and for the proper understanding of the case, it is submitted that it is necessary to peruse the whole of the judgment. Such a perusal shows clearly that Mr. Farmer has adopted entirely different methods of weighing the evidence according as it tells against the accused or fits in with his own theory that the murder was committed by Vemuri Rama Sastry or with his cognizance. In the former case Mr. Farmer refuses to accept anything short of absolute proof. In support of his own theory however he is ready to substitute conjecture for evidence. A remarkable instance of this latter tendency will be found in para 17 of the

judgment

judgment, pages 42 to 45, in which Mr. Farmer assigns reasons for considering it to be a "fact beyond dispute" that "pressure was brought to bear on "the Vaishnava people who occupy "a part of the house in which the first "prisoner lived to get them to lend "their rooms for the purpose of introducing from them the bangles into the "first prisoner's room." The evidence which Mr. Farmer considers to prove this beyond question is, it is submitted, of the flimsiest possible description and it is open to grave question whether an officer who accepts it as convincing is fitted to exercise judicial powers. Another striking specimen of Mr. Farmer's method of argument is to be found on page 25 of the judgment in the sentence * "judging "from the appearance of his mother, he "(the deceased boy) must have been a "frail lad" Mr. Miller quotes what is perhaps a still more remarkable instance which is to be found in the fact that in the first portion of the judgment, vide page 17, it is held that the fact of the discovery of the murdered boy's body in the prisoner's latrine was not a circumstance appearing in evidence which

* This sentence is introduced into the judgment in order to support Mr. Farmer's theory that the boy was accidentally throttled to death in an attempt to prevent him from making an outcry.

which required explanation and that it was consequently irregular to question the prisoner on the subject.

On page 64 of the judgment in discussing what he calls the "antecedent improbability" of the story for the prosecution, Mr. Farmer speaks of the prisoners as being "supposed to have placed the body "just in the place which might excite "suspicion against 1st prisoner when other "places not open to this objection were "available;" that is to say, the same circumstance is utilized in two places to support wholly inconsistent theories.

If a further contradiction is wanted, it will be found at page 43 where the position of the boy's body is spoken of as, obviously, throwing suspicion on Vemuri Ramasastri.

2. Since dictating the above, I have read through the records forwarded with the Dt. Magte's letter and cannot help feeling convinced that Mr. Farmer evolved his theory as to the manner in which the murder was committed, after the conclusion of the trial.

In his judgment he frequently draws inferences from the statements of the magisterial or Police

witnesses

witnesses which might have been decisively confirmed or negatived if the Court had afforded the witness an opportunity of explaining themselves. Granting however that the prosecution is not based upon unimpeachable grounds, it must be admitted by any candid and impartial reader that Mr. Farmer's own theory is based upon reasons which are open to much more serious objections.

3. He notices the case for the defence at page 7 of the judgment in which after dealing with the prosecution theory he goes on to recite "some of the points relied on by the prisoners" as furnishing the outlines of their story. He then puts them into the mouth of the prisoners, so to speak, reasons for supposing that Vemuri Ramasastri and his cousin are the persons to whom evidence points as the murderers.

Not a suggestion of this defence is to be found in the cross-examination or in the prisoners' statement and it is clear that Mr. Farmer is going beyond the record in attributing his own ingenious theories to the prisoners.

4. Special attention is invited to the last 10 lines on page 7. It is said that it was only from the premises of these two individuals that the body could have been placed where it was found without taking it through a public place. The answer to the argument is that it is highly probable that they would have passed in view of the deceased boy's mother whose house adjoined their own, the doorway looking to the back yard, through which they must have passed in order to get to the latrine where the body was placed. Again to use the Judge's own reasoning it is highly improbable that they would have placed the body in a spot which according to his view was certain to excite suspicion against them.

It is then stated that the Head Clerk, Vemuri Ramasastri "has endeavoured while keeping in the back ground as far as possible to help the prosecution as far as he could hazard such help" If there is one thing which is clearer than another it is that he was taking a prominent part in the proceedings. He was searching for the boy on the night when he was missed; in the early morning he reported the matter to the Magte. It was he who reported it to the Police and apparently he did all he could to assist

the boy's mother who seems to be rather grateful to him than otherwise.

In the next sentence it is argued that his going to the Magte. and remaining ~~there~~ with him is evidence that he ~~tried~~ tried to work up a ~~false~~ false case.

Surely his own explanation is what a reasonable man would prefer to accept viz. that he made the report instead of the boy's mother, because she was a woman who in great distress had consulted him about the matter and lived practically in the same house with him.

As to his remaining in the immediate neighbourhood of the Magte. throughout the inquest, it is what 99 people out of 100 would have done under the circumstances. The boy who was murdered lived next door to his; he had been asked to help find him by his mother; he was the clerk of the Magte. who was enquiring into the case.

Mr. Farmer next states that the Head Clerk indicated suspicion against the first prisoner in the original complaint to the Police which he himself wrote. (Exhibit G.) The only

by the boy's mother

words which can bear this construction are his statement that ~~the boy~~ he had been informed that had come and told his mother that the 1st accused wanted some matches and that she accordingly told him to take some matches to the 1st accused. This statement is in exact accordance with what the first accused himself said in the Sessions Court. I quote his exact words. " I "heard at 7 P.M. the night before of the "disappearance of the boy. The mother "was crying about 7-15 or 7-30 P.M. The "mother Jayanti Jaggamma had come and "said to me that her son had said that "I had asked him for matches." Yet this very statement in the original complaint, the accuracy of which can hardly be doubted, is made the basis of the insinuation that the Head Clerk endeavoured to cast suspicion upon the 1st accused in the very first instance

Reference is then made to the contradictory statements in the report and the evidence of the Head Clerk; none of which, it is submitted, are of much importance.

Mr. Farmer next speaks of the "almost undisguised invitation which was "for 4 hours extended to the people living

next

"next to the 1st prisoner's rooms, to
"convey the bangles into the first pri-
"soner's rooms through a secret aperture,
"while the 1st prisoner and every one
"else where, on an untenable pretext,
"kept out of his rooms''

This line of argument is exploded by a reference to the plan at page 29 and to Mr.Miller's statement of the result of his own personal examination of the scene. It is clear that this "secret aperture" was in full view of the northern portion of the square in which the inquest was being held and where it is stated that there was a large crowd. Mr. Farmer had himself seen the place and yet in his judgment he speaks of this aperture as ~~distinctly~~ admittedly hidden from the view of the spectators (vide page 88). I cannot find any such admissions in those portions of the record which have been sent up by the Dt. Magte. and it seems clear from the plan that people in the north-eastern portion of the square could easily have seen the place.

5. Special attention is invited to another portion in the judgment, at ~~p.~~ p. 2., page 38, where Mr.Farmer elaborates his theory

theory that Vemuri Ramasastri caused the boy's death. He speaks of the boy as "spending his time in the gambling den," when the evidence only shows that he had occasionally visited the lottery house. From this, the inference is drawn that he was a mischievous lad who would be more troublesome than ever in the Xmas holidays; and the murder was committed on the 1st of January 'Such a boy', it is said, would probably be "a plague to his neighbours and likely to "provoke the resentment if not castiga-"tion." From this and the fact that Vemuri Ramasastri lived next door, it is deduced that to no family was the boy likely to make himself more of a nuisance than to this one.

Reference is then made to the so-called suspicious circumstances that mention of the 1st accused has made in the original complaint written by the Head Clerk, this has already been dealt with above.

It is next argued that "a "man presumably in the confidence of the "Vemuri family knew all along that the "body was lying along side their back-"yard wall." There is nothing whatever in the evidence to show that this individual was in confidence of the Vemuri family except

except the fact that he belonged to the same caste though to a different sect.

6. As regards the mischievous propensities of the boy, a striking instance of what, I submit, must be styled Mr. Farmer's perverted ingenuity is to be found at page 26 where he deals with the age of the murdered boy which was described at different times as 8, 9 and 10 years. Mr. Farmer apparently believes that the boy was 10 years old and that it was subsequently stated by his mother that he was 8 years old (and so less likely to be mischievous) in order to assist the prosecution in anticipating the defence that the boy being of a mischievous age, had got into mischief and thus met his death.

7. This note has already run to an excessive length but I have by no means exhausted the criticisms to which Mr. Farmer's judgment lays him open.

Further instances of his fallacious methods of reasoning can easily be found if desired. If Evidence of the bias by which he has been actuated is required, Attention is solicited to the 1st and 85th paras of the judgment which contain instances of the sweeping conclusions which Mr. Farmer has drawn from premises similar to those which have been described above. This is not the first occasion upon which the unjudicial attitude which he usually assumes towards the Police and the Magte. has been brought to the notice of Govt., but it is perhaps unnecessary now to recite other instances as they must be fresh in H.M's mind.

8. From Mr. Miller's letter it seems unnecessary to take any action against either the Magistracy or the Police in this case except to express the dissatisfaction of Govt. at the careless errors committed by the Sub-Magte. and noticed by Mr. Miller.

9. It is however for consideration whether it is not desirable to appeal against the acquittal order, (though it is questionable whether such an appeal would be successful), with a view to draw the attention of the High Court to the inaccuracies in the judgment and the false reasoning with which it is replete. It is not only, I submit, the accused who are entitled to consideration at the hands of Govt., but also the

the Sub-Magte., the Police and the Head Clerk, Vemuri Ramasastri, against whom Mr. Farmer has throughout his judgment ~~brought~~ made charges of the gravest description, which will be brought charges up against them as long as they live, unless either Govt. or the High Court places on record some expression of its disagreement with Mr. Farmer's views.

H.M.

(FOR ORDERS)

5.10.95

I have read the Dist's letter the Judgment, the Sub Magte's explanation and the Pub Prosecutor's notes and the case but not the depositions & Statements of the accused.

I have never read anything so extraordinary as Mr Farmer's Judgment: it is his master piece.

How any man in his senses could have propounded such a theory as Mr. F. has I cannot conceive.

The Judgment is full of the most contradictory arguments and Mr. F appears to be utterly unable to distinguish between assumptions and proof. I entirely disbelieve that Ramasastri murdered the boy or that he or the Sub Magte or the Police fabricated or gave false evidence and I believe that the persons accused were the guilty parties and that there has been a gross failure of justice in this case.

What the Public Prosecutor says in his notes touching the Judgment appears to be fully deserved. Mr.

[G. 25] 300—5-10-95

DEPARTMENT.

C. No.

FOR ORDERS.

I seems I have got a wild theory - have picked up it not apparently out his head and to have set himself to work to distort every little point to suit his chimera.

I do not consider that an appeal should be preferred in this case. The lapse of time does not consider his dismissal. Either Mr F is absolutely right or he is absolutely wrong: if the former the Magistrate and Police should be hunted down and the accuser of this Ramasastri to justice

Should be taken of the letter, Mr Farmer should be made to remain for the wild & cowardly way in which he has written of the Magistrate & Police and the severe manner in which he has criticised their conduct and laid at their door an offence of the most serious character.

The concluding portion of Sections and of Section 12 Act XV of 1877 would seem to allow of an appeal being filed, for the Dist. might not for months

more

Bimlipatam Murder case

trying to get a copy of the Judgment.
JD
21/10/95

FOR ORDERS.

~~H. E. THE GOVERNOR.~~

THE HON'BLE MR. H. W. BLISS, C.I.E.

~~THE HON'BLE MR. J. GROSE.~~

[G./24.]
500—21-5-95.

JUDL. DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated 189 , No.

Again G.O., dated 189 , No.

Current No. 4593 of 1895, dated 23.9.95 from the Dt. magte. Vizag

" " " 189 , " , ,

" " " 189 , " : "

ORDER. 28 October 1895 No 2180

The Govt. Pleader will be instructed to present an appeal against the judgment of acquittal in Vizag. Session Case No 4 of 95. Care should be taken to explain that the delay in issuing this order is due to the inordinate length of the judgment and to the fact that no copy of it was available until over four months from the date upon which it was delivered.

(Sgn Orders)

JD 25/10/95 JD 24.10.95

To

The Dt. magte., Vizagapatam (R+O) dispd 30/10/95

" Govt. Pleader (with record in consent — original to be returned) Despd 29/10

D 28/10.

Note.

The arguments cited in the note for orders have been mentione

C 29/10
R 23/10

tioned either by the St. Magte or in the Public Prosecutor's note.

2. The Judicial Clerk will see that the papers are brought to H.M's notice as soon as the records are returned by the Govt. Pleader together with the appeal judgment of the High Court.

8/24/1886

for full Bench

30/10

25/11/85

Bimilipatam Murder Case

C.J.

(Jms Rders)

n given for copying ____
n copied ____
en examined ____
en signed ____ } 189

AGAIN G.O., No. DATED
189

GENT No.

LOYURE TO C. No.

ADER OF GOVERNMENT	A	A	A	A	A	A	A	
ER OF GOVERNMENT.								
MENT WITH DITTO.								
APERS 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.