Judicial (1895) Department.

ORDINARY MS.

G.O., No. 2185

Dated 28th Oct: 1895

INDEXED.

[Despatch Abstract.]

SENTENCE OF DEATH.

Declining to interfere with the----passed on convict No.9992 Narayana Bhattu in South Canara Sessions case No. 38 of 1894.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
C	5217		1895				

7

To

His Excellency the Right Honorable
Sir Beilby Lawley, Baron Wenlock
G.C.I.E
Governor in Council,
Fort Saint George,
Madras.

Humble petition of Narayna
Bhatta, Prisoner. District Jail,
Mangalore. Dated 20th October 1895.

Most respectfully sheweth.

That Your Excellency's
Petitioner the 2nd accused in case No. 38 of
the Calendar of the Court of Session of South
Canara and appellant in Criminal appeal
No. 178 of 1895 before the High Court at Madras
humbly begs to apply under Section 401
of the Criminal Procedure Code Act X of 1882
for remission of the sentence of death pas-
sed upon him and to submit the follow-
ing circumstances for kind and favourable
consideration.

2. That Petitioner was among
the four accused who were tried and
convicted in the said Sessions Case No. 38,
but is the only one, whose sentence is
confirmed by the High Court, the rest
having been finally acquitted and release
on

on appeal.

3. That the charge against all the accused was one of murder and all were convicted by the Court of Sessions, but the 1st and 2nd accused (Petitioner) were sentenced to death, the 3rd to transportation for life and 4th to Seven years' rigorous imprisonment.

4. That, in appeal the High Court while unanimous in their acquittal of the 3rd and 4th accused were divided in opinion as regards the guilt of the 1st & 2nd, Shephard J holding that the conviction of both ought to stand, Best J that the conviction of both should be set aside while Justice Subramanya Aiyar, to whom the case was referred in consequence of this difference of opinion between these two Judges, set aside the conviction of the 1st accused but upheld that of 2nd accused (Petitioner). The consequence is that Petitioner alone is left without an acquittal, and he therefore begs to seek remission of his sentence at Your Excellency's hands on the grounds stated below and requests that Your Excellency's Government may, on careful consideration of the same, be pleased to sanction the remission prayed for by Petitioner.

5. That the whole case is discussed at length in the learned Judgment of His Lordship the Honorable Mr Justice Best, whose opinion in this case is of special value, not only on account of his long experience as a Judge, but of his particular acquaintance with the District of South Canara where he was a Sessions Judge for over 4 years and had thus facilities to study the conduct of the local Police. He is therefore most likely to arrive at the truth in a case, and he is decidedly of the opinion that the case was got up by the Police. Petitioner solicits a reference to the said Judgment.

6. That the case against Petitioner rests mainly on the evidence of the two approvers, of which it is rightly said by Subramanya Aiyar J. in his Judgment (p. 12) "Nevertheless it must be admitted that on several material points their evidence does not appear to be true." x x. With these clear indications of mendacity in addition to the tainted nature of their evidence as that of hired murderers, it is impossible to act upon their word except so far as it is corroborated by perfectly trustworthy evidence." All the three Judges have refused to act upon their evidence with reference to the part, which they say the 3rd and 4th accused took, and Best and Subramanya Aiyar J.J. with reference to the part ascribed to the 1st accused. There is no valid ground, why that portion against Petitioner alone

alone should be received with perfect faith. It only stands to reason that as shewn by Best J. this portion also should be rejected for the very weighty objections stated by him.

7. That the corroborative evidence or rather the only evidence urged against Petitioner by Subramanya Aiyar J. is that of Saraswati (16th witness), Gowramma (7th witness) and Honnakka (8th witness).

8. That by Saraswati it is stated that on Thursday, the day previous to the date of the alleged murder, she happened to be at Venkappa Bhattas house, and there on that day the 1st accused and a stranger came, that the 1st accused alone entered the house and spoke to her, and that the stranger went aside on the 1st accused beckoning to him. She subsequently identified the stranger as the 2nd accused, whom again she identifies as the Brahman who came to Venkatramanas house on the following evening and slept on the pyal with him. If this statement be accepted, it follows that she knew the man on Thursday before the Friday when he appeared as a Brahman come from her husbands house to call her, and this would have certainly aroused at once a suspicion in

her

She could recognize him, but she may not have known him

JS

her regarding his representation the very next day, and it cannot be "that owing to that false representation he was allowed to stop in the house." In her deposition she said "a Brahman came to the Chavadi and sat and asked for water," that after her brother Venkatramana put several questions as to the whereabouts and how he found his way to the house "her brother asked her if she knew the man and she said she did not." These statements negative the assertion that she saw the stranger on the previous day and identified him. And Justice Subramanya Aiyar in giving reasons for the acquittal of the 1st accused, has strongly expressed his doubts regarding the 2nd accused's company with the 1st accused during the latter's meeting with Saraswati at Venkappa Bhattas house. Neither Venkappa Bhatta nor any other of those alleged to have been present at Venkappa Bhattas house at the time was examined. And it appears from the Inspector's report that Venkappa Bhatta, on being questioned on the 7th August, denied having seen Saraswati. The description of the stranger as given by Saraswati and referred to by Subramanya Aiyar J. may hold good in the

case

case of any person, not necessarily Petitioner. There is neither evidence that Petitioner is the only person who answers to this description nor evidence to show that the Petitioner's description answers to the one given. Saraswati is a young female, who lives with her mother and brother in a State of total separation from her husband and was admittedly so living for the preceding 15 months. It may be, and it would not be unfair to assume, under the circumstances appearing in their evidence, that the person whom Saraswati describes as an unknown Stranger came to her house that day on her own account, and it may also be that Venkatramana, who was the only male member in the house, was murdered by him in order to make the way for his admission smoother and free from all obstacles. It is far more consistent to make an assumption of the kind than to connect, in a far fetched manner, the crime to the 1st accused, and through him, to his distant relative the 2nd accused (Petitioner).

9. That as regards Gowramma and Honnakka, it is by no means improbable, as Brot. J. has found, that they identify the 2nd accused (Petitioner) merely because Saraswati had already done so. These two witnesses refer to a sentence or two they say they heard the Stranger speak, and they have both admitted they had no time to notice him particularly. Gowramma according to the report of the Constable Aitu told him that she cannot identify the Brahmin. His present explanation that he made a mistake in this matter as well as another important for an omission to enter in the property list the Langoti said to have been found on the way from Venkatramana's house to the river only supports the view of Brot J. that the Police concocted this case. If the Constable and his Inspector had obeyed the express orders of the Local Magistrate, that they should send him daily reports of information received by them in this case, the explanation that there were mistakes and omissions on account of pressure of work would have carried some weight. But here it would be found that such reports were sent at intervals of nearly a week between each report and the Inspector's explanation for this disobedience of directions of the Magistrate is that he was not bound under the

Criminal Procedure Code to send such daily reports. The delay has facilitated insertion in the Mahazar Exhibit I, the suspicion expressed therein against 1st Prisoner and the Petitioner by name, though at that time and for weeks afterwards, till the approvers made statements against the accused, the Brahmin remained an unknown person. As a further argument supporting the view of Best J. that the Police had got up the case against the 1st and 2nd accused and arrested the other accused with the view of obtaining confessional statements by promising them to be admitted as approvers is clear from the fact that the 1st accused was arrested on his voluntarily appearing before the Inspector. Of course the Local Magistrate released him on bail by his proceedings dated 16th August till he was retaken when the Inspector procured some false evidence against him. Thus it is clear that the Police having formed an opinion against the 1st and 2nd accused, pains were taken to make evidence conformable to it but that the very first step of improperly arresting the 1st accused, compelled the Police to find false evidence & to associate the

the Petitioner with him on account of his distant relationship. The part of Gowramma's evidence regarding discovery of a cloth in the flooded river Seven weeks after the alleged occurrence on the spot where Venkatramana's body is said to have been first thrown, and stated to be that of Venkatramana (See Mahazar Exhibit VI) and subsequently to be that of the 1st accused as deposed to by both Gowramma and Saraswati, and c which evidence was wholly kept in the back ground by the prosecution on account of its untenableness, but elicited in the cross-examination of these witnesses (See para 13 Sub para 7 of the Sessions Court's Judgement), very clearly shows that these women were capable of lending themselves as parties to false evidence. This circumstance unfortunately escaped all notice by the High Court Judges. If, as assumed, the murder, if it took place, was due to a love affair, it is but fair to suppose that Gowramma bring in Saraswati's mother would naturally follow her daughter's version of the story. And Honnakka is a girl of 10 or 11 who would but state things in the way represented to her by in Saraswati and Gowramma.

10. That as regards the evidence of the other corroborating witnesses

Rayappa Shanbogue (3rd witness), Subunji (4th witness) and Hamade Kunhi (9th witness) Petitioner begs only to refer to the opinions of the Judges with respect to the same.

11. That of Rayappa Shanbhogue the Judge was of opinion that "it would not be advisable to put much reliance on his evidence", and Best J. says that "this witness deposed to having seen the approvers with the 2nd accused & others when 1st approver told him they were going to bring tobacco and see about some medicine, but as remarked by the Judge the witness said nothing about tobacco in his deposition before the Magistrate." And Subramaniya Aiyar J. observes "as to Rayappa Shanbhogue, it is sufficient to observe that the Sessions Judge himself places reliance on him."

12. That of Subunji Subramanya Aiyar J. remarks "Subunji is another witness whom the Judge seems to accept as reliable. The expedition to which this witness speaks does not appear to be likely"; and Best J remarks "the other witness Subunji States that the accused Krishna Bhatta with seven or eight others (of whom he identifies 2nd accused Narayna and 4th accused Madana and the 2nd approver Muse) came and purchased tobacco from him. According to the approvers this happened on Friday; but the witness stated to the Inspector that it was on Thursday and to the Magistrate that it was two days before he heard of the murder. Before the Sessions Court also he began by saying it was two days before the Saturday on which he heard of Venkatramana's death, but subsequently varied it by saying two or one day before. Another contradiction between this witness and the approvers is that the witness says Krishna Bhatta alone came to his field and it was only on going to his house that he saw the other persons; whereas the approvers say they all went to the field. Moreover, this witness says he was working in the field with seven or eight others; but he alone has been examined."

13. That of Hammad Kunhi the Judge says "this witness stated in cross-examination that he had been convicted of murder in this Court of Sessions but had been acquitted in appeal. He had been twice convicted by a Magistrate. He also stated in cross-examination that he had gone with the 1st accused for rioting. The man had the appearance of being a desperate character. The witness is not a man on whom much reliance could be placed" and Best J. says

the Judge has rightly remarked with regard to this witness that he is "not a man on whom much reliance could be placed", and Subramanya Aiyar J. writes "Some of his answers shew he is ready to make any statement favourable to the prosecution". (Shephard J. is wrong in supposing this witness was arrested in this case in support of the theory that witness was asked by 1st Prisoner to join in this adventure) "In these circumstances the man appears to me to be utterly unworthy of credit".

14. That it cannot be denied that in a criminal case like the present the Police after making any necessary investigations fix a plan on which to proceed before the Magistrate and that the several witnesses for the prosecution do form regular links in the whole chain. Where these links form a connected series, and some of them drop, the chain must fall. The two approvers (1st & 2nd witnesses) were intended to speak of things from first to last. Their evidence is rejected by Best and Subramanya Aiyar JJ on all material points. Of the witnesses for corroborating the evidence of the approvers Kayappa Shanbhogue (3rd) and Subunji (4th) were cited to prove that the accused or some of them including Petitioner were seen together some time before the alleged occurrence, the females (6th, 7th, 8th) to show that Petitioner (2nd accused) was last seen with Venkatramana, and Hammad Kunhi (9th) to speak of facts soon after the alleged occurrence. The evidence of Kayappa Shanbhogue, Subunji and Hamad Kunhi is rejected in toto by two of the High Court Judges, their Lordships the Honorable Mr Justice Best and the Honorable Mr Justice Subramanya Aiyar. When these links, connecting the middle ones, namely, the evidence of the females, fail it is impossible to conceive how the latter alone can stand by itself. This evidence must therefore be received with caution and due regard to the circumstances already mentioned in paras 8 & 9 supra, from which it will be seen that Petitioner had as little concern in the affair as any of the other accused who have been acquitted.

15 That the main question still remains whether Venkatramana was at all murdered. As regards this Best J. says "the mark of identification now specially relied on is a double boring in the right ear. But in the Mahazar Exhibit I recorded on the Examination of the corpse (on the 9th August) there is no mention of this. It merely states that "from the hands

feet, colour and form and youth" the corpse is identified by the mother and others as Venkatramanaiá. It is certainly remarkable that this double boring in the ear is not mentioned when the fact of the existence of three-fourths of the right ear is specially mentioned. If it had not been stated from what parts of the body it had been identified the omission of double boring may not have been important. It is unfortunate that Subramanya Aiyar J does not notice the admitted relationship of Kudkoli Shankra Bhatta 12th witness with Gowramma, the important part played by the witness in this case and the part taken by the members of the 1st accused's family in the excommunication of this witness and his family in Connection with an improper marriage as also Keshwa Bhattaiá (16th witness) relationship to Gowramma through Gangamma, as also the fact that Keshava Bhatta stated that it was dark in cross-examination when the body was brought ashore and there was no light near the body during the night and that he left the place at dawn. Hence Justice Subramanya Aiyar was led to observe that "there is no suggestion that they are unfriendly to any of the accused and Keshava Shastri does not appear to be a relation of Gowramma or Sarasawati or Honnakka. The first of these is mother and mother-in-law of the latter two. The assertion of Keshava Shastri that the state of the body was perfectly good and recognizable even as to color when he found it and only turned to the state described in Mahazar Exhibit I by the action of flies at night is absurd: for the flies abandon at night even an ulcer, at which they are at day time. The body found was very much decomposed, as appears both from the Mahazar and from the evidence of the Apothecary Mathias, 21st witness for prosecution, who examined it on the same day. The Apothecary states that there was "no skin or muscle on the neck" at the time of his examination, and he infers from the extensive and disproportionate decomposition on the neck and front of the chest that the case is one of strangulation. but he adds he "is not positive about it". Moreover owing to the disallowance by the Court (on the objection of the Public Prosecutor) of the very necessary question asked by the accused's Vakil, as to whether the body was that of a man or woman we are left in the dark even as to the sex of the deceased, whose body was examined. A circumstance much

There was no skin over it as was the body of her own.

relied on by the defence as leaving room for doubt as to the body discovered being that of the missing Venkatarayanga, is that none of the members of his family took the trouble to see that the remains were cremated, but allowed the same to be buried by Pariahs. No doubt some purificatory ceremony would be necessary, the cost of which, according to the prosecution 16th witness Keshava Shastri, would be Rs 100 - or 200; but this circumstance does not appear to be sufficient to account for the members of the family being so altogether indifferent to the manner of disposal of the remains of their deceased relative". Further it is admitted by Gowramma that Hanumakke's hair had not been shaved, and as the shaving of hair among females of this caste, whether young or old, is a ceremony that is invariably and rigidly observed, the omission to do so in this case is proof that the women themselves may not have believed that the body discovered was that of Venkatramana. As regards the medical evidence it has to be said that the opinion of the Civil Apothecary (21st witness) is not entitled to any weight, because he said he was not positive that the case was one of

of Strangulation, the body being very much decomposed, and also because he failed to resort to the only test possible for detecting Strangulation, namely incision of the part. Gribble in his outlines of Medical Jurisprudence III Edition para 298 says "The appearance of Strangulation, from a mark round the neck, may often be caused by post-mortem lividity or hypostasis. When a body is advanced in decomposition, the neck may become discoloured, so as to exactly simulate the mark caused by a ligature. Great care should, therefore, be used before expressing an opinion founded on such a mark, and it should always be remembered that the only test for distinguishing between hypostasis and real ecchymosis is by incision of the part. If this has not been done, no reliance whatever can be placed upon the evidence of the Medical witness as to the cause of the mark." It is remarked by Shephard J. "No reason for his leaving his family has been suggested". But Petitioner begs to submit that it has been shown from the evidence of the 7th Court witness that people of Venkatramanaiah Caste do go at an early age to Malabar and Travancore. Some of them leave

Not admissible
JG

their home for good and get themselves married to Malabar females. and in Venkatramanaiah's case, his wife being only a small girl and not of age to attract him, if he was disposed to leave home, might have left the home with this purpose. In this connection it may be stated that Ellapanna spoken of in this case has not been seen or heard of since). It was also suggested that Venkatramanaiah's sister who admittedly lived & separate from her husband might not have been an agreeable inmate to Venkatramana and he might have left home on that account. From the evidence of Gowramma and Honnakka it appears that when they came out to shut the door before going to rest they found Venkatramana and the Brahmin lying near him conversing in a low voice. It is probable that the disappearance of both before next morning may have been due to any unpleasant discoveries which is the impulse of the moment may have given use to some or thought less course of action. As regards traces of something having been dragged to the river though Gowramma says she discovered marks of dragging and communicated the same to the persons who informed the Potail, the latter's report Ex says nothing about these marks except that the mats was as stached on the narrow pyal. There is no mention in it made of the discovery of Lazigoti nor of the dragging track on the way to the river nor of the pole & the Sandavu said to have been used for strangulation nor of the disturbed bedding. Vide last part of para 19 of the Session Court Judgement. Whatever may be the explanation delay there was in reporting to the Potail and Police of what is now stated to be a serious occurrence (Vide last part of para 71 ibid) Subramanya Iyer J who lays much stress on the information to the Potail and Police and the disturbed condition of bedding has not considered the above and the fact noticed by the Sessions Judge in para 13 of his Judgment that that Gowramma and her daughter Saraswathi materially differed in the description of the bedding as they saw on Saturday morning. This report shows that the case was one of simple missing and so it must have been represented and treated. The fact that only an ordinary Constable leisurely

came there the next day though the Station was not more than 9 miles distant confirms the view that the case was only one of missing. If the traces clearly showed the direction of the disposal of the body, the body could have been found earlier than it was. In fact the whole of this part of the evidence goes to show the murder of Venkata-ramana doubtful.

16. That no well founded motive on the part of Petitioner has been proved to connect him with the guilt. It is said "the alleged motive for the murder is a claim said to have been threatened by the deceased for the restoration of property in the hands of Krishna Bhatta" (1st accused). Petitioner the 2nd accused is a distant relative of the 1st accused and has no interest whatever in the property. Even Krishna Bhatta's interest in the said property is but a fractional, a twelfth, and is not a sufficient inducement to drive him to a capital crime for providing against a contingent loss of such interest. If the acquisition of a right to property be held to have been a motive for the murder, there is on the other hand greater reason to believe that Venkatramana's

relatives

relatives on the father's side, namely the members of the wealthy Kadangodlu family of Perwai Village, who by Venkatramana's death would become entitled to his share, a fifth which is considerably more than what the 1st accused could get from the Bolubyle property, must have been the perpetrators of the crime inasmuch as their motive for the commission of the act was stronger than what the 1st accused's could have been. It is admitted that soon after his marriage Venkatramana "went to the Kadangodlu family house to see about his rights" and he was promised his share soon after he attained age in March 95 i.e. only 4 months before this occurrence. There is no doubt there were differences between Gowramma, Venkatramana's mother, and her late husband's family with Venkatramana. She was turned out of her husband's family house some 4 years ago and went to leave with her mother Sarasamma at Kudukoli and she sued her late husband's family for maintenance and about jewels (See page 27 of the Session's Court Judgment). Here are circumstances enough to constitute a motive for the Kadangodlu family to commit

Not before
after

the offence which is as good rather better than the one imputed to 1st accused. And the only evidence relied on by the Judge in presuming absence of any such motive in the Kadangodlu family is that of the 13th witness who however states that an attempt had been made by him on behalf of his son-in-law Venkatramana soon after he gave him his daughter in marriage to recover Venkatramana's share, and the fact that the Kadangodlu people did not comply with his request immediately or at any time there after and that they wanted an indemnity if the share was to be given at once shows that they were not as willing to deliver Venkatramana's share as the 13th witness now represents them to be. (illegible). There is the fact that just 40 days previous to the offence the District Immoif of Kasargode held on the 25th June 1894 in Regular Suit No. 77 of 1894 (Exhibit) that some monies which the Kadangodlu family claimed as their family property was Venkatramana's being the self-acquisitions of his father. The Judgment in that suit was of so recent a date that it must have had something to do with the event in question.

Another circumstance favourable to this view is that "no member of Venkatramana's father's family is went to Kambla to see to Venkatramana's body being burnt and to perform the necessary funerals ceremonies." All attempts on the part of the Judge to explain away these strong contentions somehow or other are only due to his having formed a prejudicial opinion against the accused from the commencement. If instead of the present accused the Kadangodlu people had been put up for trial before him by the Police for which there were strong reasons he would have in all probability accepted these very contentions as valid when advanced by the then prosecution & rejected those now urged for the prosecution on similar reasoning as that he adopted. That the Judge's line of reasoning pursued in this case is incorrect generally so proved by the fact that in the appeal more than 75 per cent of the same has been thrown away by the High Court. Another important fact is that the approvers are admittedly residents of a place much nearer to the Kadangodlu house than to that of the 1st accused and were therefore more likely to

have been engaged by the former than the latter. Even if the motive ascribed to the 1st accused is accepted it is, but remotely traceable to the 2d accused. At all events then the 1st & 2d accused must stand or fall together on this ground.

17. That it would be serious miscarriage of justice if in spite of the overwhelming evidence for Petitioner the High Court's order of confirmation of Petitioner's sentence be upheld on such weak evidence as that furnished by the prosecution and discussed variously by the High Court Judges with considerable divergence of opinion between them.

18. That Your Excellency's Petitioner most humbly and respectfully begs to solicit therefore that on a kind and favourable consideration of the above grounds Your Excellency's Government may be pleased to exercise in favor of Petitioner the powers conferred on Your Excellency's Government by Section 401 of the Criminal Procedure Code so as to sanction remission of the sentence of death passed upon Petitioner by the Sessions Court of South Canara and confirmed by the High Court.

And Your Excellency's Petitioner shall, &c in duty bound, ever prays.

Signature of Narayna Bhatta

Honoran
Lieut Captain
Suss

Judl. Dept.
Enclos. No. 4
To 4992

Mittal Rao

Suliu 21.10.95 Superintendent of Suliu.

Received 17. 10. 95

Copy for the 2nd Prisoner.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Monday, the 23rd day of September,

One thousand eight hundred and ninety-five.

PRESENT:—

THE HONOURABLE MR. JUSTICE SHEPHARD,

THE HONOURABLE MR. JUSTICE BEST,

AND

THE HONOURABLE MR. JUSTICE SUBRAMANIA AIYAR, C. I. E.

REFERRED TRIAL No. 27 OF 1895.

1. Krishna Bhatta.
2. Naraina Bhatta. } *Appellants (1st and 2nd Prisoners).*

Trial referred by the Court of Session of the South Canara Division for confirmation of the sentence of death passed upon the 1st and 2nd Prisoners in Case No. 38 of the Calendar for 1894.

CRIMINAL APPEALS NOS. 177 AND 178 OF 1895.

Appeals by the said Prisoners against the said Sentence.

CRIMINAL APPEALS NOS. 179 AND 180 OF 1895.

1. Biranna.
2. Madana. } *Appellants (3rd and 4th Prisoners).*

Appeals by the said Prisoners against the sentences of transportation for life and seven years' rigorous imprisonment passed upon them respectively in the said case No. 38 of the Calendar of the said Court for 1894.

These cases coming on for hearing in the first instance before their Lordships the Honourable Mr. Justice Shephard and the Honourable Mr. Justice Best on Wednesday and Thursday the 17th and 18th days of July 1895, their Lordships, after taking time to consider the cases, recorded the following

JUDGMENTS.

Shephard J.—The three Prisoners Krishna Bhatta, Naraina Bhatta and Biranna have been convicted on the charge of murdering one Venkataramana during the night of the 3rd August. Venkataramana was a young man living at Manjalkeri with his wife Honnakka, his mother Gouramma and his sister Saraswati. The evidence of these persons proves that he was in the house on the evening of the 3rd August, a Friday, and that he lay down to rest at night on the pyal in company with a Brahman who had come to the house. Since that time he has not been seen. No reason for his leaving his family has been suggested. Immediately on finding in the early morning that Venkataramana had disappeared a search was instituted. The women went to the house of a relative, K. Shankara Bhatta, and he went to inform the father-in-law of the missing boy, namely, K. Shinu Bhatta. The same day, Saturday, the Potail was informed of what had happened and accordingly wrote a report (F) which was received at the Perdal Station at 7 P. M. This Police Station is about nine miles from Kudukoli the place where Shankara Bhatta lives. On the Sunday, he and Sham Bhatta went to the house of Venkataramana—the Police Constable Aitu also came there. They examined the ground between the house and the neighbouring river and say they found marks indicating that something had been dragged along the ground. They also saw marks showing that a man had slipped and fallen and footsteps on the path. In consequence of this discovery, it was determined to search the river which at the time was in flood. The search continued on the Monday. On the Tuesday, the Inspector came. On the Wednesday Shankara Bhatta and another witness Keshava Sastri went to Kandel lower down the river and there in the evening they found a body

in the water. They contrived to bring it to land and then found, as they say, that it was the body of Venkataramana. They both say that the body was then recognizable. They sat watching it that night till, on the Thursday, the Police came. Then they say decomposition had begun. On Thursday Gouramma and Saraswati saw the body and both say they recognized it. The fact is recorded in the inquest report signed on the same day by the Inspector Pais (p. 435). This report does not mention a peculiarity said to exist in the ears of Venkataramana. His ears are said to have two holes instead of one and this omission is naturally relied upon by the Vakil for the Prisoners. I do not think that any importance is to be attached to it, for it is not likely that care would have been taken to record all the marks of identification in a case where several persons well acquainted with the individual affirmed that it was his body that lay before them. The evidence of identification is in my opinion very strong and it is not sensibly weakened by the conduct of the relations of Venkataramana with regard to the burial and with regard to the treatment of his wife. I see no reason why the explanation given by the witnesses with regard to both these matters should not be accepted. I agree in the conclusion at which the Judge arrived that the body taken from the river was the body of Venkataramana. Apart from the evidence of the approvers there are circumstances which go to show that Venkataramana was murdered. There is the disordered state of his mat &c., the marks on the foot-path leading to the river and on the bushes and, what is more important, the testimony of the medical witness to the effect that strangulation was probably the cause of death. An accident, which is the only other way of accounting for the man's death, seems extremely improbable.

We come now to the question whether there is evidence to prove that the deceased was murdered by the Prisoners or any of them. This involves a consideration of the approvers' evidence. The two approvers, it should be stated, both live in Karopadi. The Prisoner Naraina lives in the same village and his relative Mapanna in the neighbourhood as also the Prisoner Madana. The other Prisoners Krishna Bhatta and Biranna belong to the neighbourhood in which Venkataramana lived, some eighteen miles from Karopadi. Krishna Bhatta and Naraina are related to each other as also to the family of the deceased and the alleged motive for the murder is a claim said to have been threatened by the deceased for the restoration of property in the hands of Krishna Bhatta. There is evidence to show that such a claim was being made by Venkataramana. The evidence of K. Sham Bhatta is particularly weighty on the point. Rightly or wrongly it is clear that the suspicions of the family at once fell on members of the Bolubyle family to which Krishna Bhatta belongs as well as on an individual of the Kadangodlu family. The fact of disputes existing between the deceased on the one hand and these two families on the other is mentioned in the Mahazarnama. It seems to have been thought that the evidence with regard to the dispute with the Kadangodlu family diminished in some way the importance of the evidence as to the original dispute. Obviously however, Venkataramana may have had two sets of enemies, and because some member of his father's family was supposed to have desired his death it is none the less likely that the alleged motive operated in the mind of Krishna Bhatta.

The case for the prosecution is that Krishna Bhatta and his relatives Naraina and Mapanna actuated by this motive engaged the Karopadi men, namely, the two approvers and Madana to go with them to the house of the deceased for the purpose of putting him out of the way. The pretext on which these men, who are in a humble rank of life, were engaged was the purchase of tobacco. The approver Babu Kampti begins his story by saying that Naraina and Mapanna both of whom he knew before came to him and proposed an expedition to buy tobacco on the Tuesday. The next day, he says, he was called by Naraina, went with him to Mapanna's house and found there Krishna. Then they started off and picked up the Prisoner Madana. They describe the journey on the Wednesday which brought them to the house of Krishna, a journey of about 18 miles. In the course of that day, it is said that the party was seen by two witnesses Rayappa Shanbagh and Ammu. Thursday, the approvers say, they passed at the house of Krishna, it was raining. Krishna and Naraina, however, went out ostensibly to see about a buffalo. That same day Saraswati says Krishna and another came to the house where she was,—Venkappa Bhatta's. On Friday, Krishna Bhatta with Naraina, Mapanna, and the approvers went to Subunji's place and bought some to-

bacco. This done, Krishna went off and the rest returned to his house. Biranna, who had been mentioned to them before but was not known to them came to the house in the course of the day. In the evening again Krishna and Naraina with Biranna separate from the others. The pretext on which they leave the house in the evening is an entertainment. After some delay and waiting about, Krishna and Biranna but not Naraina reappear, and then and not before the real object of the journey is disclosed by Krishna. The approvers go on to describe the directions given to them and the manner in which the murder was effected. Afterwards they say Hamed Kunhi was called and they were handed over to be guided by him to the ferry. This is the outline of the story which they tell and which Musê is said to have told the Inspector of Police on the 25th August, about three days after his arrest. It is not shown that the two approvers contradict each other in any material particulars. Unfortunately they were not examined before the Magistrate till the 12th November. Meanwhile they were in the Sub-Jail (see p. 390.) Their stories are consistent and in my opinion probable. The conduct of Krishna Bhatta in concealing the real object of the expedition and keeping it back till the last moment is conduct which might have been expected. It would have been needlessly rash to tell the approvers and Madana what they proposed to do till they knew that their victim was in his own house and that the deed could be done. Unless the whole story of the journey with Krishna Bhatta is a fiction, which is most improbable, it has to be explained why Krishna Bhatta should in the night of the monsoon have taken three coolies such a long distance from their own village merely to carry some tobacco. On the other hand Krishna Bhatta had a distinct object in bringing strangers to help him. He might well have thought it safer to do so than to employ men who were known in the neighbourhood of Venkataramana's house. Apart from any question as to the exact parts which were taken by the several persons present in the commission of the actual murder, the story of the approvers appears to me alike a probable and consistent one.

We have however to see whether it is corroborated by other evidence in such a manner as to show that the approvers have not represented the Prisoners Krishna Bhatta, Naraina and Biranna as playing the parts actually played by themselves or some unknown person. If the evidence of the other witnesses goes to show that it was the three Prisoners Krishna and Naraina Bhatta and Biranna and no other person who started with the approvers from Karopadi, were seen on the road during the Wednesday and were ultimately seen in the neighbourhood of Venkataramana's house, then I think there is corroborative evidence such as the law demands. The witnesses relied on for the purpose are Rayappa Shanbagh, Ammu, Subunji, Saraswati, Gouramma, Honnaka, Mohidin Saib and Hamed Kunhi. Having regard to the observations of the Judge I do not think it would be safe to place much reliance on the evidence of the witness Rayappa Shanbagh. The evidence of Ammu is much more important. Ammu lives near the Kandige ferry. He says that on the Wednesday—fixing the time by reference to a sale—a Brahman with some other persons came after sunset and asked him for torches. That Brahman, whom he had never seen before, he declares to be Krishna Bhatta. The other persons he does not appear to have seen distinctly. The Judge accepts the evidence of Ammu as reliable. The circumstance detracting from its weight is that Ammu apparently never saw Krishna from the day in August, when he was crossing the river, until January when Ammu was first questioned by the Police. The approvers, though mentioning the fact of torches being given, did not mention Ammu by name—they did not know him. On the 4th January they pointed out the house to the Police and then only he was examined. Ammu may be a perfectly honest and truthful man. There may be some doubt, however, whether after the lapse of five months his recollection as to the face of the Brahman who asked for torches can be relied on. The next witness Subunji is the man who is said to have sold tobacco to Krishna on the Friday. He knew Krishna before, being a neighbour, and therefore as far as he is concerned the witness cannot have been mistaken. He says he saw several persons and among them he identifies Naraina, Madana and the Mopla approver. These three he did not know before, but he saw them afterwards in the Magistrate's Court at Kassergode. Both of the approvers speak of Subunji by name though they did not know him before that day in August. They were not asked to identify him as they should have been. The next witness

Malikarajuna I pass over as the Judge places no reliance on him, although rather inconsistently in a latter part of his judgment (§ 79) he gives his name among those of the corroborating witnesses. I now come to the evidence of Saraswati which is of great importance. On the Thursday while the rest remained in Krishna's house, he and Naraina are said to have gone out. Saraswati says that on that day he came to the house where she was, with a stranger and asked her questions as to her return home and as to the whereabouts of her brother Venkataramana. The stranger she now says was Naraina and that same person came to her own brother on the following evening. Then at any rate, according to her account, she had ample opportunity of seeing and identifying him. It was in his company that she left her brother when she and her mother shut the door and retired for the night. With regard to the visit of Naraina she is corroborated by her mother and sister-in-law. I agree with the Judge that this fact is clearly proved. The evidence of Saraswati lends a powerful support to the story of the approvers about the proceedings of Krishna and Naraina on Thursday and Friday. In order to carry out their project it was necessary to ascertain where Venkataramana would be in his own house. Hence Krishna's visit on the Thursday and his inquiries. The strong probability is that Naraina went with him on this visit; but was, as Saraswati says, kept rather in the background. The evidence of Saraswati is not contradicted. Mohidin Sahib also speaks to Krishna being on the road just before sunset on Friday between his own house and Golitadka. The next day he saw Biranna who said that he had injured himself by a fall. He says there were other persons on the road in front of Krishna, but he does not identify them. If this man is to be trusted it is clear that Krishna was about the place that evening and not, as he says, at Kassergode. Hamed Kunhi's evidence relates to an occurrence which took place after the murder was committed. In the morning of Friday, he says, he was asked by Krishna to come to his house and that he went but found he was not at home. At night he was called upon by Krishna and asked to guide three persons, namely, the two approvers and Madana on their way back to Kassergode. With Krishna were Naraina and Madanna who said they were going to Kassergode. The witness knew Krishna well and had seen the other two at Krishna's house. The approvers and Madana were strangers to him but he had ample opportunities of making their acquaintance on that Friday night. I do not find that the man was called and identified by the approvers, but they speak of him by name. This man's reputation is certainly bad. Had it not been so, Krishna Bhatta would never have asked him to join in his adventure. He himself appears to have been arrested in connection with this murder. Notwithstanding these circumstances, his evidence, which was not shaken in cross-examination is, I think, entitled to weight. The question now is whether the evidence of these witnesses called to corroborate the approvers is sufficient to justify a conviction of the three prisoners or any of them. The case is strongest with regard to Naraina; against him it is proved beyond doubt that he was the person last seen in the company of the deceased. He came to the house on a pretext which is shown to have been false. Earlier in the day he was seen by Subunji in the company of the approvers and others, and again in the night by Hamed Kunhi. I think there can be no doubt that he was one of the party and that he took an active part in the murder of Venkataramana. With regard to Krishna there is, apart from the approvers' evidence that he was making inquiries about Venkataramana on the Thursday, the evidence as to the purchase of tobacco on Friday and the evidence of Mohidin Sahib. There is also the evidence of Hamed Kunhi. If this evidence is true it is clear that the approvers have not introduced into their story the name of a man who was not one of the party. It was argued that the corroborative evidence required by the law should go to show that the persons charged actually took part in the offence charged against them. In my opinion this is not the law. Whether approvers are called or not, the direct testimony of witnesses who saw the murder committed and can describe what part each prisoner took is not required. Here there is direct testimony in the shape of the evidence of the approvers. Finding that the story told by them is generally corroborated by other witnesses, we have to see whether they can be trusted in their account of the actual murder. The Judge doubts their veracity with regard to Biranna and also thinks they probably took a more active part than they admit to have taken. The observation of the Judge that at least three men would have been required to overpower Venkataramana—himself apparently a strong man—is entitled to weight. At the same time, I am inclined to think that bystanders would have been able to give a graphic account of

what took place better than those who took an active part. However this may be, I think it is clearly proved that Krishna Bhatta and Naraina were not only present and took some part in the scene but were from the beginning the organizers of the project.

I agree with the Sessions Judge that the *alibi* set up by Krishna has not been proved. He has not succeeded in proving that he was at Kassergode on the Friday, buying a stamp and executing a document. He has wholly failed to account for himself on the Friday night which, he would have us believe, he spent at Kassergode.

Since writing the above, I have perused Mr. Justice Best's judgment and considered his reasons in favour of an acquittal. Notwithstanding his suspicions with regard to the Inspector's conduct and the other doubts which he has expressed about the evidence, I adhere to my opinion that the main story told by the approvers is the true one. I need hardly say that it is with considerable diffidence that I differ from such an experienced Judge as Mr. Justice Best. It does not seem to me fitting that I should reply upon the judgment of the learned Judge. I will only add that in my judgment the conviction of the two first Prisoners ought to stand. As to the other two I think they ought to be acquitted. Against Biranna the evidence of the approvers is not accepted by the Sessions Judge with regard to the part that he is said to have played in the actual murder. I have no doubt that he was present and I think it is most probable that he went to the house with the knowledge that a murder was to be committed. But apart from the approvers' evidence it is possible that he was an innocent spectator as the approvers represent themselves to have been. I do not quite understand why a distinction was made by the Judge between Biranna and Madana. Still less do I understand the conviction of the latter under Section 365. I think both these Prisoners ought to be acquitted.

Best J.—The four Appellants were tried together in the Sessions Court of South Canara on a charge of murdering one Venkataramana. The first three * have been found guilty of the murder and the two first sentenced to death and the 3rd to transportation for life; while the 4th [Madana] has been acquitted on the charge of murder, but found guilty of kidnapping and sentenced under Section 365 of the Penal Code to be rigorously imprisoned for seven years.

* 1. Krishna Bhatta.
2. Naraina Bhatta.
3. Biranna.

Venkataramana's sister Saraswati, mother Gouramma and wife Honnakka (who have been examined respectively as 6th, 7th and 8th witnesses for the prosecution) depose that he lay down to sleep on the night of Friday the 3rd August 1894 on the outer pyal of his house in the company of a Brahman who had come to the house shortly after nightfall that evening saying he had been sent by Saraswati's husband's people to take her to her husband's house and that on the following morning both that Brahman and Venkataramana were nowhere to be found. In consequence of traces being seen of something having been dragged to the river, parties were sent to search the river and on the 8th August a body was found which was identified by Saraswati and Gouramma, as also by the 12th and 13th witnesses for the prosecution, Kudukoli Shankara Bhatta and Kunchinadka Sham Bhatta—the former a relation of Venkataramana's mother and the latter the father of Venkataramana's wife—as the body of the missing man. The mark of identification now specially relied on is a double boring in the right ear. But in the Mahazar (I) recorded on the examination of the corpse (on the 9th August) there is no mention of this. It merely states that "from the hands, feet, colour and form and youth" the corpse is identified by the mother and others as Venkataramana's. It is certainly remarkable that this double boring in the ear is not mentioned when the fact of the existence of three-fourths of the right ear is specifically mentioned. The body found was very much decomposed, as appears both from the Mahazar and from the evidence of the Apothecary Mathias, 21st witness for prosecution, who examined it on the same day. The Apothecary states that there was "no skin or muscle on the neck" at the time of his examination, and he infers from the extensive and disproportionate decomposition on the neck and front of the chest that the case is one of strangulation; but he adds he "is not positive about it". Moreover, owing to the disallowance by the Court (on the objection of the Public Prosecutor) of the very necessary question asked by the accused's Vakil as to

whether the body was that of a man or woman we are left in the dark even as to the sex of the deceased whose body was examined.

A circumstance much relied on by the defence as leaving roo n for doubt as to the bo dy discovered being that of the missing Venkataramana, is that none of the members of his family took the trouble to see that the remains were cremated, but allowed the same to be buried by Pariahs. No doubt some purificatory ceremony would be necessary, the cost of which, according to the prosecution 16th witness Keshawa Sastri, would be Rupees 100 or 200; but this circumstance does not appear to be sufficient to account for the members of the family being so altogether indifferent to the manner of disposal of the remains of their deceased relative.

It is quite possible that the witnesses who speak to the body being that of Venkataramana really believe that such is the case, or it may be that though not identifiable they think it must be that of their deceased relation. Assuming that they are not mistaken and that the evidence of the Apothecary is sufficient to justify a finding that strangulation was the cause of death, are these accused or any of them proved to have committed the offence?

The principal evidence against them is that of the 1st and 2nd witnesses who have been examined as approvers. If their evidence is true the offence of murder is clearly brought home to the three Appellants Krishna Bhatta, Naraina Bhatta *and* Biranna. But the Judge discredits their evidence so far as it relates to the part this Biranna is said to have taken in the matter. According to the approvers it was this Biranna who sat on the chest of Venkataramana and applied the noose to his neck and strangled him as he lay on the pyal. But this the Judge disbelieves and thinks that one of the approvers must have done what they now attribute to Biranna. Hence the sentence of transportation for life as against Biranna.

It is contended on behalf of the Appellants that the story told by the approvers is false and concocted by the Police. The first Appellant Krishna Bhatta's case is that on the night of Friday the 3rd August, when Venkataramana is alleged to have been murdered, this Appellant was at Kassergode, 18 miles from the house in which the murder is alleged to have been committed, and in support of this plea he has produced Exhibit VIII a document purporting to have been executed by him at Kassergode and registered there on the following day. The writer and two attesting witnesses of VIII have been examined, the former Stanika Naraina as Defendants' 3rd witness and the other two Aita Baida and Bekal Subbaraya, respectively, as 18th witness for the prosecution and 5th Court witness. They have all stated before the Sessions Court that the document, though dated 3rd August, was in fact written on the 4th. But, as appears from the evidence of Police Constable Venkataramana (examined by the Court), both the writer Naraina and the attestor Subbaraya, when examined by him on the 12th August, stated that the document was executed on *Friday* at 5-30 P. M. The 12th of August is the day on which Appellant Krishna Bhatta surrendered himself to Inspector Pais (4th witness examined by the Court). In this Inspector's report of his proceedings of 12th August 1894 (page 254 of the Mss. record) I find it recorded that this Krishna Bhatta on being questioned stated as follows:—"On the 1st of August Wednesday morning I and Yettu Naraina Bhatta of Karopadi village together started from the house of Teraji Mapanna Bhatta of the said village, came to Kandige ferry, crossed it and went to our house and *remained in my house on Thursday and Friday, and on the 4th idem, Saturday, started and went to Kassergode and I purchased a stamp* paper and executed a bond for Rupees 200" and again (on the following page) "As I and Yettu Naraina Bhatta together had got up early in the morning of *Saturday the 4th August* and gone from our house to Kassergode we did not come t› know anything about Venkataramana". See also the examination of the Inspector on page 370 of the printed documents. The above *cannot but be a false record of what was stated by the accused*, for it is impossible that after taking the trouble to get up a false record (as is contended for the prosecution) he would thus give himself away; and the very existence of such a false record in the Inspector's report goes a long way, in my opinion, to support the Appellants' contention that the whole of the evidence for the prosecution in this case must be regarded with the gravest suspicion.

The principal evidence is, as already stated, that of the two approvers which, as a rule of practice, requires corroboration; and as observed in Queen Empress *vs.* Ram Sarn I. L. R. VIII All. 312,—"A second accomplice does not improve the position of the first, nor does the fact that there are two make it unnecessary that both should be corroborated." In the present case certain other witnesses have been examined whose evidence, if true, would be sufficient corroboration—especially the 9th prosecution witness Hamed Kunhi who supports the approvers' statement that on the night in question the four Appellants and the two approvers came to his house and that as requested by the 1st Appellant Krishna Bhatta, he accompanied the 4th accused Madana and the two approvers as far as Kandel ferry on their way back to Karopadi while the 1st and 2nd Appellants and Mapanna Bhatta proceeded to Kassergode. The Judge has rightly remarked with regard to this witness that he is "not a man on whom much reliance could be placed."

The only other witnesses who can be considered as corroborative of the approvers are Subunji (4th Prosecution witness) and Ammu who was examined as Court 1st witness. This latter was examined for the first time in the Sessions Court (on 16th January 1895) and stated that on Wednesday night, the 1st August, some six or seven persons including the Appellant Krishna Bhatta came to his house and asked for torches. He only recognized the 1st accused.

The other witness Subunji states that the accused Krishna Bhatta with seven or eight others (of whom he identifies 2nd accused Naraina and 4th accused Madana and the 2nd approver Musê) came and purchased tobacco from him. According to the approvers this happened on Friday; but the witness stated to the Inspector that it was on Thursday and to the Magistrate that it was two days before he heard of the murder. Before the Sessions Court also he began by saying it was two days before the Saturday on which he heard of Venkataramana's death, but subsequently varied it by saying two or one day before. Another contradiction between this witness and the approvers is that the witness says Krishna Bhatta *alone* came to his field, and it was only on going to his house that he saw the other persons; whereas the approvers say they *all* went to the field. Moreover, this witness says he was working in the field with seven or eight others; but he alone has been examined.

The 3rd witness for the prosecution Rayappa Shanbagh also deposed to having seen the approvers with Mapanna Bhatta and the Appellants Krishna Bhatta, Naraina Bhatta and Madana on the new-moonday (1st August) when 1st approver told him they were going to bring tobacco and see about some medicine, but as remarked by the Judge the witness said nothing about tobacco in his deposition before the Magistrate. The Judge is of opinion with regard to this witness also that it would not be advisable to put much reliance on his evidence.

The 5th and 10th witnesses for the prosecution, Malikarjuna and Mohidin Sahib, merely speak to having seen 1st accused Krishna Bhatta in his village on the night of Friday. This, if true, would disprove the plea of Krishna Bhatta that he was then at Kassergode. The Judge does not consider that Malikarjuna's evidence can be relied on. 10th witness Mohidin Sahib further states that on Saturday 4th August he went to the Appellant Biranna to receive payment of a sum of Rupees 4-14-0 due to him, when he found the Appellant limping, which he accounted for by saying he had slipped when fetching thorns on the previous day. If it is true as stated by the approvers that Biranna was given Rupees 25 on the Friday night, there appears to have been no necessity for his taking this witness to Sham Bhatta's house to arrange for the payment of this small debt at a subsequent date. Witness says he was not paid till 21st August. As to the story told by the approvers the Judge observes "it might have been within the limits of possibility to drill the 1st approver, the Brahman Baba Kampti, to tell a story like what he told and in the way he told it, but it would have been impossible I think in the case of the young Mopla, Musê." The story is, however, a very simple one. On Wednesday the 1st August, they, with the Appellants Krishna Bhatta, Naraina Bhatta and Madana and the absent Mapanna Bhatta proceeded from Karopadi *via* the Kandige ferry to Appellant Krishna Bhatta's house where they arrived after dark. Next day they did nothing all day because it was raining. On Friday the

same six persons went out together and bought tobabcco of the witness Subunji; and in the evening, a *ghalige or two before sunset*, the same six persons *together with the Appellant Biranna* set out from Krishna Bhatta's house and proceeded towards that of the missing Venkataramana; and the approvers were only told of the real object of their being brought all that way just before they were taken to the scene of the offence of which they were unwilling spectators merely, having taken no part either in the murder or in carrying away the dead body. Such, in brief, is the story told to the Magistrate –in November—they having been in custody since August (Babu Kampti was arrested on the 21st August and Musê on the 23rd idem). There was thus ample time and, it may be added, opportunity for the story being drilled into both of them: for though they were kept in the Sub-Jail which is in charge of the Magistrate, their actual custodians were the Police, of whom the Inspector Pais is the local head.

Now, on referring to this Inspector's report of 26th August (pages 292 to 294 of the Mss. documents) it is found to contain a statement alleged to have been made by Musê on that date, a statement which is inconsistent with the evidence now given by Musê in that according to the report (1) Biranna only joined the party *after dark* when they were on a hill to which they had been taken on the pretext of going to a musical entertainment (Tala Maddala), (2) Mapanna also helped in dragging the dead body and (3) the amount paid to the witness was Rupees 10 and not 25, as now stated. Musê has however stated before the Sessions Court (p. 75 of the printed documents) that he *informed no officer or any one else* of this offence prior to his examination as a witness before the Magistrate. Again, as to the other approver (the 1st witness Babu Kampti) though he says (p. 12 line 21 of the documents) that on being questioned by the Inspector at Kassergode he "*stated all to him*" the Inspector's Report of 23rd August (p. 291 of the Mss.) is to the effect that this man, while admitting that he knew the facts of the murder, "*declined to state them* then, saying he would state to the Magistrate." If so, here was a case to which the provisions of Section 164 of the Code of Criminal Procedure could have been most usefully applied and it is much to be regretted that the prisoner was not at once placed before the Magistrate for the purpose of having his statement recorded. The reply is that "recent orders" prohibit such a procedure (see p. 392 line 35), but it was clearly not intended by the orders referred to that under no circumstances should the provisions of Section 164 of the Code of Criminal Procedure be made use of. The object of the order in question was to prevent the *abuse* of this section. A perusal of the several reports submitted in the present case by the Inspector leaves in my mind a strong suspicion that mischievous advantage has been taken of the orders referred to; for not only is it recorded that the Appellant Madana also admitted that he and the two approvers "were really taken by Karopadi Yettu Naraina Bhatta and Mapanna Bhatta and Bolubyle Krishna Bhatta for the purpose of fetching cart bullocks and tobacco" but declined to state any thing then; adding "if God inspire me I shall state hereafter what had occurred" (p. 291 Mss.); but there is also to be found a lengthy confessional statement purporting to have been made by the Appellant Biranna on the very day of his arrest (18th August) pp. 275-282, which is, however, inconsistent in several respects with the story told by the approvers. It is true that these reports have not been marked as Exhibits in the case, but it is equally clear that the trial proceeded on the understanding that it was not necessary to file them as Exhibits and that they might be referred to just as the charge sheet (see p. 376, lines 17 to 22.) Even however in the absence of any such understanding at the trial, we are, I think, at liberty, if not bound, to test the evidence by reference to these reports—which are part of the record of the case;—and having so tested the evidence, the conclusion at which I arrive is that there is ample room for doubt as to the truth of the evidence of the approvers.

In disproof of the evidence of the approvers the defence witnesses 8, 9 and 10 swear that the approvers never came to their house. They are all members of Appellant Krishna Bhatta's Bolubyle family and consequently not disinterested witnesses. But they, being occupants of the Bolubyle house, are persons likely to know whether the approvers came there or not. In this connection it is noticeable that though, according to the approvers, they and Madana were at the Bolubyle house the whole of Thursday and the greater part of Friday, not a single other witness is forthcoming to support this part of their story, though it is not even alleged that

measures were taken to keep the fact of their presence at the house a secret. On the contrary on both occasions of their going out on the Friday, it is alleged that the *whole party went out together* in open day, and it was on one of these occasions that Subunji is said to have seen them. This public parade of all the forces gathered together for the purpose of committing a murder seems anything but likely.

In further disproof of the approvers' story reliance is placed on Exhibit VIII as showing that Appellant Krishna Bhatta was at Kassergode at the time when the murder is alleged to have been committed. The mere fact of VIII (and the application for gun license XLVII) being dated 3rd August is, of course, not conclusive as VIII was not registered till the 4th; and it is also *possible* that the actual purchaser of the stamp paper on which VIII is written was not the Appellant Krishna Bhatta himself, but that the purchase was made by some other person in Krishna Bhatta's name. But such presumptions against an accused person are not warranted unless supported by reliable evidence that the facts are different from what they purport to be. The mere inability of the vendor of the stamp to identify the Appellant Krishna Bhatta as the purchaser is altogether insufficient; and even if the defence witnesses Nos. 4 and 5 who depose to having seen Krishna Bhatta in Kassergode on Friday are disbelieved, has it been shown that VIII was in fact written on Saturday and not on Friday? The writer and both the attesting witnesses have no doubt stated that such is the fact—but, as already pointed out above, two of these witnesses on being first questioned by Constable Venkataramana stated that the document was in fact written on *Friday at* 5 P. M. The other man Aitu Baida (prosecution 18th witness) was also admittedly at Kassergode on the 3rd August; so also was Potail Bainki Banta (prosecution 19th witness) who speaks to the execution on the 4th of a document by a Brahman to Mapanna—admittedly not Exhibit VIII, which is not attested by this witness. That document is not on the record nor is anything more known about it. The object of this witness's evidence appears to be to connect Mapanna with the Appellant Krishna Bhatta but the witness does not appear to be on the best of terms with Krishna Bhatta or his family and considering the manifestly false record made by the Inspector of a statement alleged to have been made by Krishna Bhatta (as pointed out already) I think there is every reason for believing that the writer and attesting witness of VIII have been tampered with and that their evidence now on record is the result of such tampering.

Another piece of evidence by which it is tried to connect Krishna Bhatta with the alleged murder of Venkataramana Bhatta is the statement of the latter's sister Saraswati (prosecution 6th witness), that on the day preceding Venkataramana's disappearance she met this Krishna Bhatta at the house of her relation Mailangi Venkappa Bhatta when he questioned her about her brother and the other occupants of her house. She adds that when Krishna Bhatta was coming to Mailangi Venkappa Bhatta's house there was another man with him who went aside and away on Krishna Batta beckoning to him. She subsequently identifies that other man as the 2nd accused whom again she identifies as the Brahman who came to her house on the following evening and slept on the pyal with Venkataramana. It is certainly strange that nothing of all this was mentioned till after the Inspector's arrival. If the witness had really seen in the company of the 1st accused, on the evening previous to the disappearance of her brother, the man who slept on Friday night on the pyal with her brother, surely earlier mention would have been made of the fact. However the fact of this witness having seen even the 1st accused Krishna Bhatta at Mailangi Venkappa Bhatta's house is doubtful. She says Venkappa Bhatta and others were present, and that Venkappa Bhatta actually asked this Krishna Bhatta who the man was that had come with him. But neither Venkappa Bhatta nor any of those others has been examined; and, as appears from the Inspector's report, Mailangi Venkappa Bhatta on being questioned on the 7th August, denied having seen either Saraswati or the Appellant Krishna Bhatta (See p. 228 Mss. documents, *et idem* p. 246). This fact was attempted to be ascertained in cross-examination of the Inspector (p. 367 line 10) but the question was disallowed on the objection of the Public Prosecutor. It seems this Mailangi Venkappa Bhatta was a witness cited for the defence, but was not examined;—and it is quite intelligible that the accused's Vakil should abstain from running any such risk, seeing how the witnesses to Exhibit VIII had been gained over.

There remains for notice the motive alleged for the Appellant's wishing to make away with Venkataramana,—namely, that the latter was claiming the Bolubyle property. It is said that there had actually been a Panchayat on the subject shortly before his mysterious disappearance. It is strange that neither the mother nor the sister of Venkataramana ever heard anything of the Panchayat ; nor was any mention made of it till the 8th November last, when the witness Sayadu Krishna Bhatta was examined by the Committing Magistrate. Kudukoli Shankra Bhatta and Kunchinadka Sham Bhatta (12th and 13th witnesses for prosecution)—the only others who now say any thing about the Panchayat—were examined by the Committing Magistrate in September and *said not a word about a Panchayat ;* and even before the Sessions Court Shankara Bhatta says merely that he *heard of* it, but was not present at it ; whereas Sham Bhatta says he was present on one of the two or three occasions on which it took place. The Judge observes that the evidence of this witness on this point " is perhaps the more important as it came out quite by accident and in reply to questions put by the Court. " The importance of the evidence thus obtained is however greatly discounted by the circumstance of the witness's failure to mention it when first examined, or at any time previous, though it was pointedly stated by Venkataramana's mother and sister that the guilty parties must be either the Bolubyle people or the Kodangodlu people.

Failing the evidence of the approvers, the Appellants Biranna and Madana must be acquitted and failing also the evidence of Saraswati as to her having seen the Appellant Krishna Bhatta at Mailangi Venkappa Bhatta's, Krishna Bhatta is also entitled to an acquittal.

As to the other Appellant, Naraina Bhatta, there is the additional evidence of Gouramma, Saraswati and Honnakka as to his being the man who slept with Venkataramana on the night of 3rd August. But Saraswati is discredited by her apparently false attempt to connect Kistna Bhatta with the murder by what she says happened at Mailangi Venkappa Bhatta's on the previous day and it is by no means improbable that Gouramma and Honnakka identify the 2nd Appellant merely because Saraswati had already done so.

It is noteworthy that the evidence subsequently discovered fully corroborates the view of the Panchayat (including the Inspector) as recorded so early as 9th August 1894 in the inquest report Exhibit I in which, under the heading, " If any person suspected who, and why" occurs the following :—" There is a strong suspicion that Naraina Bhatta's son Dodda Krishna Bhatta sent Yettu Naraina Bhatta of Teraji to the deceased's house at night and himself and others concealed themselves and pressed the neck of Venkataramana at night when he was asleep and may have killed him and thrown him into the river. In the first instance there is suspicion against Dodda Krishna Bhatta and Teraji Yettu Naraina Bhatta." The question is whether, having formed this opinion at so early a stage, pains have not been taken to make evidence conformable to it? From the various incidents in the Inspector's report which have been noticed above, I cannot help thinking that such is not at all unlikely to be the case.

After very careful, and I may add, laborious, consideration of the entire evidence in this case, I find myself unable to accept the finding of the Judge. I would set aside the convictions and direct the release of all the Appellants.

In consequence of the difference of opinion between their Lordships the Honourable Mr. Justice Shephard and the Honourable Mr. Justice Best, the cases were referred on Monday the 16th September 1895, to a third Judge the Honourable Mr. Justice Subramania Aiyar as provided by Sections 378 and 429 of the Criminal Procedure Code and his Lordship after hearing the cases and taking time to consider the same till this day, delivered the following

JUDGMENT.

The two main questions in this case are whether Vencataramana was murdered and, if he was, whether any and, if so, which of the accused were concerned in the offence.

Undoubtedly Vencataramana was last seen alive by his mother Gouramma, his sister Sarasvati and his wife Honnakka in his house just before they went to bed on the night of the 3rd August 1894. He was then in the company of a Brahman who had come to the house that evening and supped with him. The two lay down in the front part of the house, but next morning it was found they had disappeared.

A search was made by the mother and others in the neighbourhood and as marks were noticed between the house and the river not far off from it, indicating that something had been dragged along the ground and thrown into the river, the women got alarmed. They at once proceeded to the village of their relation Shankara Bhatta and informed him of what had happened. The marks referred to naturally led to a search along the river by the said Shankara Bhatta and another named Kesava Sastri. On the 8th August, within the limits of the village of Kandel eight miles lower down the river, they found a body which they at once removed out of the water.

Now in answering the question whether Vencataramana was murdered, two points arise for consideration. Before proceeding to consider them however, I should observe that the conduct of the women in putting themselves through Shankara Bhatta in communication with the Potail and the Police without any loss of time convinces me that they did really observe the circumstances spoken to by them in their evidence with reference to the condition of the bedding of Vencataramana as well as the marks on the ground and were thereby induced to entertain grave suspicion that something serious had happened to him. The first of the points referred to is, ' Was the body taken out of the river Vencataramana's as alleged for the prosecution ?' Upon this point there is the evidence of the two men who discovered the body and that of Gouramma and Sarasvati. The testimony especially of the two former, who saw the body under circumstances more favorable for the purpose of identification than the latter two, is entitled in my opinion to peculiar weight. Vencataramana had resided for many years in the house of Shankara Bhatta and Kesava Sastri also had known him well for a long time and they both are quite positive that it was the body of Vencataramana. Considering the time and the circumstances in which they first saw the body, it is impossible these witnesses could have fallen into a mistake. Their evidence is either wilfully false or is true. There is no suggestion that they are unfriendly to any of the accused and Kesava Sastri does not appear to be even a relation of Gouramma or Sarasvati or Honnakka. Why then should these men come forward falsely to identify the body of some unknown person as that of Vencataramana ? Now respectable Brahmans, as these witnesses apparently are, would, I am sure, have nothing to do with any corpse—particularly that of a person who had met with an unnatural death—except in the discharge of the unavoidable duty of assisting in the burial or cremation of a deceased person devolving upon them as relations or friends of such person. Consequently the fact that Shankara and Kesava after getting the body out of the river watched it for a whole night, strongly corroborates the view that they firmly believed it to be that of Vencataramana on behalf of whose helpless female relations they were taking so much trouble.

As to Gouramma and Sarasvati it is quite true that, when they saw the body, decomposition had advanced far more than it had on the evening of the 8th. Nevertheless I can scarcely believe that, if the faintest doubt upon this point had lingered in their minds, they would have admitted, as they did, that the body was that of Vencataramana. Again, who is likely to know better than the mother who had brought up the boy all his life whether the body she saw was his or not ? That the identification by her can be the result of a mistake, I am unable to accept. If she did not feel absolutely certain that the body was her son's, Gouramma would not, I think, have been as positive as she appears to have all along been. Maternal instinct would have operated strongly against her acknowledging that the corpse of an utter stranger was that of her son of whose death she could have had no indubitable proof except the body itself. These observations would of course lose all force if we could suppose Gouramma, well knowing that the body was not Vencataramana's, was wicked enough to enter into a conspiracy to make out that it was his. But there is nothing in the evidence to lend any support to justify such an imputation being made against her or her daughter or the other two witnesses who have given evidence on the point. The idea of setting up such a false identification could not have occurred to any one until the body was found and between the finding and the inquest there was neither time nor facilities for hatching such a plot, nor do I see sufficient motive on the part of any of the four witnesses for their getting up such a story. The fact that Vencataramana had two holes in his ears, which was mentioned subsequently as a

special mark of identification was, no doubt, not alluded to at the inquest; but when the four competent witnesses mentioned above were convinced of the identity of the body, it would not have been considered necessary to enter into such minute description. Moreover, unless the existence of marks like the one in question had been asserted before the body was found, neither a reference to nor the omission to mention such circumstances would, in my opinion, add to or detract from the weight of the testimony on the question of identification, since a false witness could easily be made to affirm that the alleged deceased person had during his lifetime the peculiarities actually noticed on the body discovered.

Nor in the circumstances of the case am I prepared to attach much significance to the conduct of the relations in the matter of burial or the treatment of the wife. The suggestion on behalf of the defence with reference to these appears to be that the customary rites and forms were not gone through, because the relations including the mother did not really believe that Vencataramana was dead. But having regard to the distance to which the body had been carried, the condition to which it had been reduced by the lapse of many days when the *post mortem* examination was made and the ill-feeling which must have been caused between Gouramma and her husband's kinsmen whom she suspected to have been concerned in the crime and on whom in the ordinary course it would have lain to assist her in having the ceremonies performed—the matter appears to me to be capable of the explanation offered on behalf of the prosecution. I have therefore come to the conclusion that the evidence as to the identification is quite reliable.

The second point is 'How did Vencataramana meet with his death?'

The inquest report says "the neck is abnormally swollen and is livid * * *. Below the neck there is lividity 4 inches long and 6 inches broad." The Apothecary though unable, owing to the advanced stage of decomposition, to give a positive opinion, yet states in his evidence that the extensive and disproportionate decomposition of the neck and the part of the chest leads him to think that death was probably caused by strangulation. Another pregnant circumstance is the disappearance of so many as twenty teeth including all those in the front. This is probably due, as suggested by the Apothecary, to the fact that some violence had been used to them. And obviously this violence must have been used for the purpose of gagging the deceased at the time of the strangling. (See the evidence of the approvers).

The condition of the neck and the chest, the loss of so large number of teeth, the traces of the dragging of something noticed on the ground between the deceased's house and the river bank, lastly the mysterious disappearance at night not only of the deceased who had lived up to that time on friendly terms with his mother, his sister and his wife (for which disappearance no explanation has been offered), but also of the stranger who had gained admittance to the house under the false pretext that he had been sent by Sarasvati's husband's people to take her to his village—all these considered together negative the theory of accident and strongly point to the death having been the result of violence and foul play.

Having thus come to the conclusion that Vencataramana was murdered, I have now to deal with the difficult question of the alleged guilt of the 1st and 2nd accused, the other accused being entitled to an acquittal in the opinion of my learned colleagues.

The determination of this question of course depends upon the weight to be attached first to the evidence of the two approvers and second to that of the witnesses called to corroborate them. As regards the former I have no doubt that both of them did actually take part in the commission of the crime. Consequently the account they give of it is in my view not altogether a fiction. Nevertheless it must be admitted that on several material points their evidence does not appear to be true. In representing themselves as practically innocent spectators they are stating what is palpably incredible. With reference to the part which they say the 3rd and 4th accused took, both my learned colleagues have, as already stated, refused to act upon their evidence. In another point also their testimony seems open to question. I refer to their allegation that they were entirely ignorant up to almost the very last moment that they had been

brought all the way down to commit an offence. Whilst I think that those who engaged the services of these men would not have divulged the real object before it was quite necessary to do so, I find it difficult to believe that no communication whatever was made to them until after they reached the place where the offence was to be committed and only a very short time before the actual attack was made. Such conduct on the part of those who planned this crime would have been extremely rash. For how could they have been certain that these men who had been kept in the dark till then would at once consent to co-operate in such a perilous affair? Nor is it explained what induced those who got the approvers down, to suppose that, when the criminal design came to be communicated at the last moment to the latter, they would not then act in such a way as to disconcert the whole plan and bring ruin upon the persons who had organised it. It seems to me that every one of the party that met that night near the deceased's house knew a considerable time before they got there what they were going for and that terms had, without doubt, been previously arranged between the approvers and the men who had brought them. The pretended ignorance of the approvers seems to be put forward to make their story that they were unwilling spectators look more consistent. With these clear indications of mendacity in addition to the tainted nature of their evidence as that of hired murderers, it is impossible to act upon their word except so far as it is corroborated by perfectly trustworthy evidence.

Is the case against the accused in question so corroborated?

After a most careful consideration, I am of opinion that as against the second accused such corroboration exists and is to be found in the evidence of Gouramma, Saraswati and Honnakka. I have repeatedly read their evidence and every time I did so I felt that they are truthful witnesses. Though the impression thus left by every one of them upon the mind is favourable to the prosecution, that made by Gouramma's evidence is particularly strong and I am unable to accede to the arguments urged on behalf of the defence against accepting the testimony of the above witnesses as reliable corroboration. It was first contended that none of them could have properly observed the features of the man that came on the night of 3rd August and stayed with Vencataramana. This contention is certainly untenable in my view. For the man undoubtedly spent considerable time in the house. He was not disguised and was quite close to the witnesses and spoke to one of them, viz., Saraswati. Moreover he had his supper with Vencataramana, the same Saraswati having served him with food. Then Gouramma saw him lying near Vencataramana. All this time there was a kerosine lamp burning which, though not of a superior sort, must have given plenty of light to enable the witnesses to see the stranger well. The very first moment the Police came, that man was described as a Brahman about 30 or 32 years of age, short in stature, moderately black with a thin face and short moustaches. This description clearly shows that the witnesses had a distinct impression of the man's appearance and it is impossible to doubt that, when on the morning of the 4th they found he had disappeared under suspicious circumstances, his image must have been recalled and indelibly fixed in their memory. That the statement in the Police report dated the 8th August to the effect that Gouramma said she cannot identify him if she saw him is an error as deposed to by the writer, is quite obvious from the context, since the statement immediately follows the minute description given of him by her and quoted above. Nor is there any thing in her evidence to shew that she did not at once readily recognise the 2nd accused when she was for the first time confronted with him after his arrest. On the contrary the account given by her before the Sessions Court of what took place when she was thus confronted goes only to establish in my mind the genuine character of her evidence.

The evidence called by the defence to prove that Gouramma must have known the 2nd accused previous to the night of the 3rd August is not, in my opinion, satisfactory. The relationship alleged, even if true, is so remote and the evidence as to the marriage which she and 2nd accused are said to have attended is so vague that I am not prepared to attach any weight to it. I believe her when she says that she had not met the 2nd accused before he came on the 3rd August to her house.

Next as to Saraswati's evidence, the defence has sought to impeach it on the ground that her statement that she met the 1st and 2nd accused in Venkappa's village on Thursday the 2nd August, was not made when she was first questioned by the Police and it must therefore be a later concoction. I am inclined to think that she did make the statement at the very first enquiry. Otherwise why was Venkappa questioned on the *7th August whether Saraswati had come to his house and whether the 1st accused also come there with a black Brahman*, as clearly appears from the passage at p. 228 of the manuscript record referred to by my learned Colleague Best J. in page 9 of his judgment.? That Saraswati had excellent opportunity for closely observing the man cannot be doubted, for as already stated it was she who spoke to him and served the meals that night.

As to Honnakka's evidence nothing special was urged. The girl's artless account of what she says she saw appears to me to be not that of a tutored witness.

Believing as I do that the above persons are honest witnesses, I cannot escape the conclusion that it was the 2nd accused who came to Vencataramana on the day of the murder and who was last seen with him. And when the falsity of the reason given by the man as to what brought him there is considered along with his disappearance, there can be no doubt he was one of those who perpetrated the crime. This is probably the conclusion that I ought to come to even without the testimony of the approvers; but with it I have no hesitation in saying that the case against the 2nd accused is clearly proved.

Now turning to the case of the 1st accused, I have arrived at the conclusion, though it should be added, not without some hesitation, that he ought to be acquitted, the reason being that I find it difficult to say, with that confidence which is necessary in a case like this, that the evidence of any of the witnesses corroborating the case as against him excepting that of Saraswati which, as I shall show hereafter, is susceptible of an interpretation different from that put upon it by the prosecution, is substantially good and free from reasonable doubt. I shall now refer to these witnesses, but under the circumstances, only briefly. As to Rayappa Shanbhag and Malikarjuna it is sufficient to observe that the Sessions Judge himself places no reliance upon them. Hamed Kunhi, whose evidence, if true, is most important, appeared to the Sessions Judge to be unshaken in cross-examination. At the same time the Judge remarks that the witness had the appearance of a desperate character. He had been twice convicted. It also appears that he was once before charged with murder, convicted by the Sessions Court but acquitted on appeal and in this very case he was suspected by the Police, arrested and then set at liberty. Further some of his answers shew he is ready to make any statement favorable to the prosecution. In these circumstances the man appears to me to be utterly unworthy of credit. Ammu is considered by the Sessions Judge as reliable. But he was examined only in January 1895. There is no satisfactory explanation why the Police authorities did not exert themselves to get at this man earlier. Moreover the witness never saw the 1st accused between August and January and assuming that he is an honest witness I doubt whether after the lapse of five months his recollections as to the face of a man who was not known to him before and who asked for torches at night time can be relied upon. Subunji is another witness whom the Judge seems to accept as reliable. The expedition to which this witness speaks does not appear to me to be likely. No doubt if the approvers had, as they assert, been kept up to the night of the murder in ignorance of the real purpose for which they had been brought down, this visit to Subunji by the 1st accused accompanied by the approvers and others for purchasing tobacco which it is said was originally given out as the ostensible object of the journey from Karopadi, would perhaps have taken place. But, as I stated when dealing with the testimony of the approvers, I am not inclined to believe that they were unaware of the plot as alleged by them. I agree therefore with the observation of my learned colleague Best J. that "this public parade of all the forces gathered together for the purpose of committing a murder seems anything but likely." Saraswati is the last witness to be referred to. From what I have said before with reference to this witness's statement about her seeing the 1st and 2nd accused in the village of Venkappa, it would be clear that I accept her said statement to be true. Nevertheless I am of opinion that the 1st accused meeting her there

was purely accidental. Her visit to Venkappa's house had not been prearranged and the evidence discloses nothing to shew that the 1st accused knew that she would be found there. On the other hand Saraswati's own statement that she thought the 1st accused *as soon as he saw her* beckoned to the man who came with him and whom she subsequently recognized as the 2nd accused, suggests that his meeting her there was unexpected. For, if as is urged for the prosecution, he went there for the express purpose of ferreting out information from her regarding her brother's movements in view to arranging for his murder shortly, the accused would surely not have taken with him the very man who was to be sent to keep company with the deceased under the false pretext referred to in a previous page. At all events the 1st accused would have taken care not to have given her the opportunity of having a look at the man even from a distance. The words addressed by the 1st accused to her at Venkappa's house are nothing more than what a relation of hers in the position of the 1st accused would under the circumstances have said to her. I am therefore of opinion that neither the meeting which thus took place between Saraswati and the 1st accused nor the conversation between them bears the construction sought to be put upon them on behalf of the prosecution. It is perhaps right to observe that the hesitation which I said I have felt in making up my mind that the 1st accused ought to be acquitted was due, not to any impression made on my mind by the evidence of any of the witnesses called to corroborate the approvers as against him, but to what to me looks like an attempt on his part to get up the very day after the murder evidence in support of a false *alibi*. The fact that the two stamp papers said to have been purchased by the 1st accused on the 3rd August were the two last said to have been sold that day coupled first with the circumstance that the bond written on one of them was registered only on the 4th and secondly with the circumstance that the application for a license written on the other did not reach the Tahsildar until the 5th whilst the same, had it been really posted on the 3rd as is alleged, would in the ordinary course have been delivered to him on the 4th, casts considerable doubt on these documents which purport to have come into existence on the day of the murder. But the conduct of nearly all the witnesses connected with these two Exhibits in asserting one thing to the Police and another at the trial has been so unsatisfactory that their evidence even when it is favourable to the prosecution can scarcely be made the basis of a judicial finding *that the documents were in fact got up on the 4th*. In this connection it only remains for me to add a few words with reference to the Police Inspector's report of the 12th August purporting to contain a statement of what the 1st accused told him when he surrendered himself that day and on which considerable stress was laid on behalf of the accused. The accused is there stated to have said that he left his village early on the morning of the 4th to go to Kassergode. This, it is argued, the accused would never have admitted, he having, according to the prosecution, previously fabricated evidence to shew that he was not in his village on the 3rd. This argument at first sight appears to have considerable force in it. But on the other hand it is highly improbable that the Inspector would make a false record as suggested for the defence. For in the first place the report can under no circumstances be adduced as evidence against the accused. Secondly, the Police had on the 8th informed the Magistrate that the 1st accused had been giving out that he was not in the country (on the date of the offence see p. 235 manuscript record). With such an explicit prior report from the Police to the effect that the 1st accused intended to set up an *alibi* already on the record of the Magistrate it is difficult to understand how the Inspector could have hoped to make any use of the statement which it is alleged he concocted as coming from the accused. I should think that an intellegible explanation on the point might possibly have been obtained had the Inspector been questioned about it when he was examined in the Sessions Court, but unfortunately that was not done. Consequently the prosecution could do nothing more than suggest an explanation which the learned Public Prosecutor did in the argument before me. And that was that in making the statement in question before the Inspector the object of the accused was to put the Police off the scent with respect to the documents which had been fabricated to prove the *alibi* he intended to put forward. This suggestion does not seem to me to be altogether devoid of probability. For if the bond and the application for

the license had been really concocted on the 4th, the accused would have been anxious to prevent as far as possible the immediate investigation by the police into the question when they really came into existence. In the absence however of any evidence on the point, it is not easy to arrive at a definite conclusion about it. I have alluded to it only to shew that I have not omitted to consider a circumstance so strongly urged as discrediting the evidence for the prosecution entirely.

The result isthat the conviction of the 2nd accused is upheld, the sentence passed upon him confirmed and his appeal rejected. The other Appellants are acquitted and directed to be released.

By the Court.

C. S. Srinivasa Rao
Dy. Registrar,
14-10- *Appellate Side.*

Exd. S. R. Subba Row.

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HIGH COURT OF JUDICATURE

AT

MADRAS.

JUDGMENTS

IN

REFERRED TRIAL No. 27 of 1895.

Criminal Appeals Nos. 177, 178, 179 and 180 of 1895.

(From Session Case No. 38 of 1894, South Canara).

Dated 23rd September 1895.

Sent

1895
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To 4992
C. No

SESSION OF THE SOUTH CANARA

Jud 22.3.95

JUDGMENT.

In the Court of Sessions, South Canara.

Session Case No. 38 of 1894.

Present: W. C. Holmes Esq.

Queen-Empress *Vs.* 1. Krishna Bhatta.
2. Naraina Bhatta.
3. Biranna.
4. Madana.

(Committed by Mr. T. Roberts, Stationary Magistrate, Kasaragod Taluk).

Charge: *Against all accused*—Murder Sec. 302 I. P. C.
Against 4th accused—Abduction Sec. 365 I. P. C.

Assessors: Messrs. 1. Santa Poi (Konkani Brahmin). 2. B. Subba Rau (Gowda Brahmin). 3. Doddamane Abdul Kadri (Mopla).

Opinion of the Assessors: 1st, 2nd, and 3rd accused guilty under Sec. 302 I. P. C. and 4th accused not guilty under Sec. 302, but guilty under Sec. 365 I. P. C.

Finding of the Judge: Concurred with Assessors.

Sentence: The 1st and 2nd accused are each sentenced to death, subject to confirmation of the sentence by the High Court. The 3rd accused is sentenced to transportation for life, and 4th accused to 7 (seven) years' rigorous imprisonment.

Judgment: The four accused are charged under Section 302 I. P. C. with having, at Enmakaje village in Kassergode Taluk, on the 3rd August last, murdered a young man named Venkatramana. There was also added in this Court a charge under Section 365 I. P. C. against the 4th accused of having abducted Venkatramana.

2. In dealing with this very long and very important case, I shall first state in outline what the averments of the prosecution are, and I shall then give an abstract of the evidence that has been laid before the Court, stating various interlocutory orders passed during the trial, and I shall after that discuss the evidence in the case generally and as it affects each accused.

3. In outline the prosecution case is as follows:—The deceased Venkatramana, a young man of 17 or so, claimed that he was entitled to a property called the Bolubyle property situated in the village of Katkukke in Kassergode Taluk. This property has been for many years in possession of the Bolubyle family to which the 1st accused Krishna Bhatta belongs. The property was the chief means of support of the Bolubyle family, and 1st accused was a leading member of the family. He (1st accused) brought from a village called Karopadi in Kassergode Taluk, some 18 miles from Bolubyle, to his house at Bolubyle a relation of his named Mapanna, and the 2nd accused Naraina Bhatta, a relation of Mapanna's, the 4th accused Madana, a washerman of Karopadi, and two others, a Brahmin Babu Kampti and a Mopla

Muse who have been admitted as approvers in this case; and with these and the 3rd accused Biranna, a Bant living in Enmakaje, he went to Venkatramana's house at Manjalkeri in Enmakaje on the evening of Friday, the 3rd August last. The 2nd accused, Mapanna and Biranna left the rest of the party and went in advance, and the 2nd accused entered the house and falsely represented that he had come to take Venkatramana's sister Sarasvati to her husband's house and had meals in the house, and lay down there and after Venkatramana had gone to sleep opened the door; and the others of the party except 4th accused, who kept watch in the yard outside, entered the house, and Venkatramana was strangled where he lay asleep on a pyal and his body was taken out of the house to the river near the house and thrown in. The whole party then went together except Biranna, who stopped on the way at his own house, to the house of a man named Hamed Kunhi; and from thence the 1st accused and 2nd accused and Mapanna went towards Kassergode, and the 4th accused and the two approvers returned to Karopadi being guided as far as the Kandel ferry by Hamed Kunhi.

4. For a clear understanding of the evidence in this case, reference is necessary to the maps that have been put on the record. One of these maps, Exhibit D, is a map of the Kassergode Taluk published by the Revenue Survey Department. It shows the relative positions of Karopadi, 51 on the map, where the approvers, Mapanna and 4th accused live, Enmakaje, 90 on the plan, where Venkatramana lived, Katkukke, 91 on the plan, where 1st accused lived, and of a number of other villages referred to in the evidence. Several places referred to in the evidence have also been entered on the map in manuscript by the 11th prosecution witness, Revenue Inspector, showing the path from Karopadi to Bolubyle *via* the Kandige ferry, and another path to Karopadi *via* the Kandel ferry. Another map, Exhibit B, which is also of great assistance in understanding the evidence is the Revenue Survey Map of the Enmakaje village. On it is shown the main road running through the village, and there are also shown in manuscript by the 11th prosecution witness, Revenue Inspector Martu Kini, a number of places referred to in the evidence (the houses of deceased, of the witnesses &c.). The 3rd map, Exhibit C, is a plan of the surroundings of Venkatramana's house up to the river and a plan of the house itself and of the yard on a larger scale. This is proved by the 11th prosecution witness Martu Kini.

5. The approver Babu Kampti was the first witness examined by the prosecution at this trial.

He described himself as a retail trader living at Karopadi, making beaten rice and carrying it and other articles for sale about the villages and to fairs. He lives close to the 2nd accused, Ettu Naraina Bhatta's house. He also knew Mapanna who lives in Karopadi. He deposed that one Tuesday the day before the Ati Amavase (*i. e.* Tuesday 31st July last) Mapanna and the 2nd accused came to his house and said they were going east for tobacco, wanted him to come with them and offered him ¼ maund of tobacco as cooly for carrying the tobacco they got and it was agreed to start after meals the next day.

The next day (Wednesday, 1st August) the 2nd accused, he deposed, came to his house at 1 o'clock or so, and he went with him to 2nd accused's house where Mapanna and 1st accused were. He had, he said, twice seen the 1st accused before. Krishna Bhatta (1st accused) asked him if he were coming for tobacco, and he said he was. At 1.30 or 2 they (all four) started and went a mile to Kodla where Muse's shop is, and Mapanna and 2nd accused called Muse who came to them and Mapanna said "We are going east for bullocks and for a she-buffalo, come with us."

Muse first said he could not go, but on being told he could be back the next day and that he would be paid cooly (or tobacco in place of cooly), he agreed to go, and after going to his house and getting a cloth, all five went on. After they had gone a mile farther, they met Madana the 4th accused. 2nd accused asked him where he had been, and asked him to accompany them to the east for bullocks and a buffalo, and after some objections he went for a cloth, presumably to his house, which was half a mile from the place they met him, and on his return they (now 6) started. Near a place called Berapadavu the witness (after some questioning) said they met Rayappa Shanbog, who asked him where he was going, and he said "I am going east for tobacco with these people." When it was evening (after sunset) they got to the Kandige river, and a Mopla whom he did not know ferried them over it and Krishna Bhatta (1st accused) paid him 2 annas. Some way farther on, Krishna Bhatta got cocoanut-leaf torches at some house from some man he did not know, and they went on to the public road. That public road is the road that passes through Enmakaje and goes from Kassergode to Vittal. They then went along the road; and in front of a house, Krishna Bhatta called out "Biranna, Biranna," and some one said from inside the house "He is not here"; and Krishna Bhatta and Mapanna went to the house to get torches, which they did, and then they all went to Krishna Bhatta's where (after cooking and having meals) they slept.

Next morning (Thursday, the 2nd August) it was raining, and Krishna Bhatta said he would put off going to see the bullocks &c. till the afternoon. In the afternoon the rain continued and Krishna Bhatta told them to stop where they were and he and Naraina Bhatta (2nd accused) would go and look about a she-buffalo and left, and returned when the lamp was lit.

The following day (Friday, the 3rd August) the rain ceased and Krishna Bhatta said they could see the bullocks, tobacco and all, and after meals they—the six—went and got to the public road, and as they were going along it, Krishna Bhatta (1st accused) said to Mapanna Bhatta with reference to some bullocks grazing near the road, "These are the bullocks, I bought them for Biranna "Banta", and Mapanna said "It's enough if they drag" and the party went on. They left the public road and went by a bye-path to a Byle (paddy land), where there were some people transplanting paddy, and Krishna Bhatta called "Subunji" "Subunji" and a man came and Krishna Bhatta asked for tobacco, and they went to his house, and after some bargaining some tobacco was bought for Rs. 8½ and Krishna Bhatta paid Rs. 4½ and promised to pay the rest in a few days, and they left with the tobacco which Muse carried. On the way Krishna Bhatta said to Mapanna "You take these people home, I'll go to Biranna about the bullocks," and Krishna Bhatta left them and they went to his (1st accused's) house, where they sorted and weighed the tobacco, and after that Krishna Bhatta returned, and he and Mapanna and Naraina Bhatta (2nd accused) went inside for meals and returned to the Chavadi where they chewed betel.

When they were doing so, a Bhatta of that place came and asked for a drum and invited Krishna Bhatta to a Talamadale (a kind of entertainment) at his house that day, and Krishna Bhatta first said he could not go as he had relations and people for trade, but also said if convenient he would go.

After that Biranna Banta (3rd accused) came, and Krishna Bhatta proposed to give his (Biranna's) bullocks to Mapanna and he agreed, and he (Biranna) went inside for meals and returned and betel was chewed.

At a galige or 2 to sunset Krishna Bhatta proposed to go to the Talamadale, and they—the 7—started and went across the hill to the public road,

and as they went Krishna Bhatta said to Mapanna "We'll go and see the milk of the buffalo;" and Krishna Bhatta, Biranna and Naraina Bhatta left the road by a bye-path, and the others led by Mapanna went by another bye-path till they came to a wall (Agalu, trench and dyke), where Mapanna made them sit. It was then dark and was raining. When it was 4 or 5 galiges of night Krishna Bhatta and Biranna came and they sat. Krishna Bhatta said he had a thing to tell, and proposed to catch a boy who had a suit against him, and after some objection on his (witness's) part they got up and left and went by a jungle-path to near a house, and Krishna Bhatta made them stand near a channel outside the yard, and Krishna Bhatta and Biranna went into the yard saying "We'll see if they have slept" and they came back, and Krishna Bhatta called them into the yard and they went in, and Krishna Bhatta said to Madana 4th accused "There is a Mahratti "house, you see no one comes out" and he was posted at the door of the house.

Then Krishna Bhatta asked Biranna for the *Pandavu* and *Badige* (pole), and Biranna brought a *Pandavu*.

They then went to the door of the house. The door was shut and Krishna Bhatta took a small stick from a vegetable pandal close by and rattled it a few times between two of the bars of the Dalli or veranda, and Naraina Bhatta opened the door and the five of them went in. Krisha Bhatta told him (1st witness) and Muse to stop at the door of the inner room (see plan of house), and Krishna Bhatta made a ball of a cloth and he and Biranna and Naraina and Mapanna—these four—all at once went to where the boy was sleeping on a pyal to the south of the veranda (see plan) and seized him—Krishna Bhatta catching his tuft and putting the cloth to his mouth, Mapanna and Naraina Bhatta catching each a leg, Biranna jumped on the pyal and sat on the boy's chest with his feet on his upper arms and tied the *Pandavu* round the neck and a noise came from the boy as if life were going out. After ¼ galige the boy was carried outside by his hands and feet and was put down near a drain outside the yard.

The body was taken again some distance and put down. It was then taken as far as an Agalu (wall), where the path takes a steep descent and put down again, and Krishna Bhatta told Biranna to throw away the '*Pandavu*,' which he did, and tied a cloth round the neck.

Krishna Bhatta and Biranna said they would put the body in the river but Biranna fell down into the field. Krishna Bhatta then got down and the body was dragged down the slope.

After a galige, Krishna Bhatta and Biranna returned to them, and they all went by a hill-path to the public road.

As they were going, Krishna Bhatta said "You stay here, I'll go and get "torches". He brought 7 or 8 torches—one of which was lighted—to where they were on the road and they sat there, and Krishna Bhatta said to Mapanna "Take out "the Rupees" and he took Rupees from his waist and Krishna Bhatta paid him (witness) Rs. 25 and Muse Rs. 25 and Madana Rs. 25.

They then got up and Krishna Bhatta said he would get someone to show them the way and they went on along the public road, and on the way Biranna said he would go home and left.

Krishna Bhatta, after they had gone some further distance, called from the road "Hamed Kunhi" 4 or 5 times, and a man came. As he was coming, Krishna Bhatta said "We go to Kassergode, there must be a record, and after 4 or 5 days "we'll come to Karopadi." Hamed Kunhi had by that time come to them, and Krishna Bhatta asked him why he had not come the previous day and Hamed Kunhi

said "I came, you were not at home." Krishna Bhatta said "Never mind, the "business is not finished; show them the way to Kandel ferry."

Krishna Bhatta, Mapanna and Naraina Bhatta left, and Muse, Madana and witness went to the Kandel ferry, Hamed showing them the way and ferrying them across the river. When they crossed the river the sun was up 2 fathoms. Hamed returned and they went to Karopadi.

6. The 2nd prosecution witness was Muse the other approver. He gave an account of what happened that was almost identical with that given by Babu Kampti. Muse is a young Mopla of 21 years of age.

7. The 3rd prosecution witness Rayappa Shanbog lives in Karopadi. He rents a small shop and house not far from the 1st witness Babu Kampti's house. He deposed that one day Babu Kampti came to his shop and at about 8 o'clock the same morning—the Amavase day or the 1st August—the 1st accused, whom he did not know, and Mapanna came to his shop, and Mapanna asked if Babu Kampti had come there and he said "He is not here. He went that way after "having supplied beaten rice." The two men then left and went by the way they had come. They did not apparently follow Babu Kampti.

He further deposed that on the same day (on the Amavase day he thought), at about 2 or 3 o'clock as he was on his way selling Pappadams and was going to Mitanadka, he met at Birapadavu six people, namely, Babu Kampti and Muse (the 1st and 2nd prosecution witnesses), Mapanna Bhatta, the 2nd accused Naraina Bhatta, and the 1st and 4th accused. He said he asked Babu Kampti "Where are you going?" and that he said "I am going to bring tobacco and to see "if the medicine will have effect," and they went on.

Before the Magistrate, the witness did not say that Babu Kampti had said that he was going for tobacco; and in explanation he here said that as Babu Kampti was a medicine-man, he only kept in mind about the medicine and that he was not asked particularly about tobacco. His evidence as to the alleged meeting was somewhat confused (see notes page 87); nor was his demeanour, especially at the earlier part of his examination, such as to make a favorable impression on me. He had accompanied Babu Kampti's wife to Kassergode and he said he met her by accident on the road near his house as he was himself going to Kassergode for things. On his way back, he said he again met Babu Kampti's wife at Mangalpadi, and she sat in the cart in which his things were and went to Karopadi and paid him Re. 1 for the use of the bandy.

The general impression left on my mind at the time of the examination of this witness was that, though what he said might be true, it would not be advisable to put much reliance on his evidence.

8. The first Court witness who was examined after the 3rd prosecution witness was a man named Ammu, and he was examined under the following circumstances. The approvers had stated that on their way from Karopadi to Bolubyle, shortly after they had crossed the Kandige ferry, the 1st accused had obtained torches at a house. After the approvers were examined, the Court adjourned for the Christmas vacation; and on the re-opening of the Court, the Public Prosecutor applied that Ammu who was alleged by the prosecution to be the person from whom the torches had been obtained should be examined as a Court-witness under Section 540, Criminal Procedure Code.

In a case at the November Sessions of 1894, the Court had ruled that the Public Prosecutor could only as of right examine witnesses who had been examined by the committing Magistrate, and it was in consequence of that ruling that the

Public Prosecutor applied that Ammu should be examined as a Court witness. The ruling passed at the November Sessions is an important one and so far as I know, the point has not been decided by any High Court; as for the reasons I had for taking the view I did, I have nothing to add to what I stated in my former judgment (see para 25 of judgment in Session Case 33 of 1894).

The examination of Ammu as a Court witness was opposed, but the Court ruled that he should be examined.

9. Ammu deposed that he lived in a house beyond a call from the Kandige ferry, and that one evening when it might have been 2 or 3 galiges of night, as he was in his house some one called out for torches. The man said "Who is at home? We want 4 torches" or "Who is the house-man; 4 torches are wanted. It is "not possible to go, being dark." The witness tied up four torches, lighted one and brought them outside, and then outside the yard he saw a man, and as he seemed a Brahmin he laid the torches down on the ground. The man took them and offered him some pice which he refused and asked where he was going and the man said "I am going to Katige Bolubyle" and left. The witness deposed that the man was the first accused. There were 6 or 7 others on the path above the house, but these he did not recognise. All the party went east.

The witness said that this took place on a Wednesday night, and the next morning he went to Kumbla to an Abkarry sale, and thence to Kassergode, where on Saturday at an Abkarry sale he purchased a toddy-shop at Kandige, and on the next day, Sunday, on his way home he heard of the murder of a young Brahmin at Manjalkeri. Thus, the night on which he says he saw the 1st accused corresponds with Wednesday the 1st August on which day, according to the approvers, the party passed the witness's house.

The witness is a Billawar, a toddy-drawer by caste, and his employment is cultivation and tapping trees. He deposed it was an ordinary thing for way-farers, if they wanted torches, to be given them at his house. He did not remember having himself given torches before or after that Wednesday night to others, but he said there were 10 or 13 people in his house and they probably gave torches. The torches he referred to are only dried cocoanut leaves which are commonly used as torches in this District.

The witness is a tenant of a man named Sanna Krishna Bhatta whose son is married to a daughter of one of Gauramma's late husband's brothers.

I thought the evidence reliable.

10. The 4th prosecution witness was Subunji. His house is shown on the village map of Enmakaje.

He recollected that one Saturday he heard of the death of Venkatramana, and he deposed that either the day before that or on the previous day, in the after-noon as he was working in a paddy-field near his house with 7 or 8 others, the 1st accused came alone to the ridge of the field and asked him "Is there any "tobacco for sale?" and he (Subunji) said there was, and he said "Show the tobacco," and he and the 1st accused went to his house and there in the outhouse five people whom he had not seen before were sitting. The 1st accused went to the five and he went to the house and brought the tobacco from there to the outhouse and undid the bundle and showed the tobacco. Krishna Bhatta, the 1st accused, asked the price of the tobacco a maund, and he said Rs. 8½; then Krishna Bhatta asked the price of the bundle and he said he wanted Rs. 10 and was offered Rs. 8½ and agreed, and he was paid Rs. 4½ by the 2nd accused to whom 1st accused gave the money and Krishna Bhatta agreed to pay the balance of Rs. 4 and they left,

the Beary who was there—whom he identified as Muse the 2nd prosecution witness—carrying the bundle.

He identified 4th accused as having come. The 3rd accused was not at his house. It appears this witness told the Inspector that the persons came on Thursday and to the Magistrate he said 2 days before Saturday. He now said he was not sure. He said he worked in the field on Thursday and on Friday. He denied that he saw accused from that day till he saw them before the Magistrate.

This witness was a young man of 21 and he did not seem quick. I should perhaps rather say that he seemed to be giving evidence on a matter in which he considered he had little interest or concern. It seemed to me to be clear that he was not tutored.

11. The 5th prosecution witness Malikarjuna was at the time of the occurrence a Head Cooly on the public road that runs through Enmakaje. He heard of the murder on a Saturday and he deposed that on the previous evening (Friday) he was repairing a culvert on the road, a mile from his house, and saw Krishna Bhatta, 1st accused, and another going north along a bye-path that passes near the culvert and which leads to Neroli and to Manjalkeri. It was then about sunset. The witness could not identify the person who accompanied Krishna Bhatta, but said that from his dress he appeared a Brahmin. The witness had known Biranna the 3rd accused for 8 or 9 years.

This witness was only temporarily employed as Head Cooly, that is for 3 months during the monsoon, and he has since been acting Ugrani under Potail Bynki Banta, the 19th prosecution witness, on a pay of Rs. 3 and his wife's house is on his land. He had previously cultivated land under Kunchinadka Sham Bhatta the 13th prosecution witness, the father-in-law of the deceased Venkatramana. He had no land of his own.

This witness's story is one the truth of which it is difficult to test. He is not a man of means. His demeanour did not make a particularly favorable impression. I did not think that much reliance can be placed on his evidence.

12. The 6th prosecution witness was Sarasvati the elder sister of the deceased Venkatramana. She lived along with her mother and brother in their house at Manjalkeri. Venkatramana's wife, a girl of 10 or 11, occasionally lived there. On the Tuesday before the Ati Amavase, that is on Tuesday the 31st July, this witness Sarasvati went to the Kudukoli house 1½ miles from the Manjalkeri house. The witness's mother's mother Sarsamma lives in the Kudukoli house with her brother's son Shenkara Bhatta, the 12th prosecution witness. Near the Kudukoli house, ½ mile east of it, is the Mailengi house where a relation, that is to say, Sarsamma's sister's daughter's husband Venkappa Bhatta lives.

Sarasvati deposed that on Thursday (that is, Thursday the 2nd August) she went alone to the Mailengi house with no particular object. She sat on the Chavadi with the house-people—Venkappa Bhatta, his brother Krishna Bhatta and the females of the house—and at about 2 or 3 galiges to sunset, she deposed, she saw the 1st accused Krishna Bhatta and another man in the yard coming towards the house. She deposed that "as soon as he saw me," Krishna Bhatta said something to the man with him and made a sign to him with his hand and the man went to one side, and Krishna Bhatta came to the house and said to her "Who is there in your house?" and sat down on a plank in the Chavadi. She said "There is no one." He said "Where did you came from?" She said "From "Kudukoli." He said "Are your mother and brother not at home?" She said

"There is no one." He said "When are you going home?" She said "I must go "to-morrow." He said "At what time do you go to-morrow?" She said "In the "morning." He said "What is it to you if there is no one in the house? There are "no vessels for thieves to steal. Is it not only a lodging?" and she said "Yes." Then Venkappa Bhatta asked him "Who is it that went there?" and he said "He is a man of Koliyur. He came for tobacco. He is waiting for me sitting "there. I am going now, I cannot delay" and went away and after that she went to Kudukoli.

She identified the strange man as the 2nd accused.

The next day (that is, Friday the 3rd August) she said her mother and her brother and the latter's wife, whom they had gone to bring to their house from her parent's came to the Kudukoli house, and they and the witness went to the Manjalkeri house.

That evening after sunset, as the witness, her mother, Venkatramana and Honnakka, Venkatramana's wife, were sitting in the Chavadi—the lamp being lit—a Brahmin came to the Chavadi and sat and asked for water. Venkatramana said "Where do you come from?" and he said "I live in Nujibyle," and when he said so Venkatramana brought a mat for him and a Chambu of water. He asked him "Why did you come from Nujibyle?" He said "I have come to call your sister." Her brother asked her (witness) if she knew the man and she said she did not, and Venkatramana asked the Brahmin "Where do you live in Nujibyle?" He replied that he was in Puttanna's house, and that he was in the house of his (Venkatramana's) younger brother-in-law and elder brother-in-law. Venkatramana then asked him as to how he found his way to the house, and he told him he had been to Kassergode and on Venkatramana questioning him further he said a person in a house higher up had directed him. Venkatramana and the strange Brahmin had meals and then lay down in the Chavadi, her brother on the Mannu Chitte, a pyal, and the Brahmin near it on the floor—and they talked together, and her mother shut the outer door and she, Honnakka and the witness went inside and her mother shut the door and they slept.

The witness identified the 2nd accused as the Brahmin who came to her house.

During the night the witness heard nothing.

Next morning her mother went out and called to her from outside. "The man who came is not to be seen nor the boy" and she went out to the veranda.

The witness described how she found the bedding. The Brahmin's bedding had not been disturbed. Her brother's bedding, which consisted of a plaited mat and on it a Cumbly and over that (according to her) a cloth, was on the floor near the pyal folded in the way she showed, that is, folded over and over from one end two or three times to about half way down the mat and then folded across and had apparently been trodden on. The witness deposed she unfolded the bedding and found the upper fold of the cloth covered with foot-marks. After that she saw a long pole produced in Court in the yard near the door.

Some days afterwards (the date was the 9th August) she went to Kandel and there saw a body which she deposes was the body of her brother. The body was much decomposed. The witness said she identified the body to be her brother's by the form of the chest which, she said, was broad and by his hand and legs. The nail of the right-hand little finger was long and this was another mark of identification.

13. Gauramma, Venkatramana's mother, was the 7th prosecution witness. She deposed that the Brahmin who came to her house the evening before Venkatramana, her son, was missing was the 2nd accused. She deposed that he said to her son that he lived in Nujibyle and that he said to him "Your brothers-in-law Putukunyi and Ramappa sent me to take your sister."

She deposed that she shut the outer door of the Dalli and fastened it with its two bolts, slept in the inner room, and that the next morning she opened the door of her room and found the outer door of the Dalli open and the Brahmin and her son not there. She went to the pyal where her son had lain and she found on it his pillow and a fresh *Pandavu*. She also found on the floor near the pyal her son's bedding. She in Court arranged the bedding consisting of a mat, a Cumbly and a cloth in the way she said she found it. According to her, the Cumbly was under the mat and the cloth over it and the mat was *not folded* but crumpled and apparently trampled on. Earth from footsteps was on the cloth and the cloth was, she said, covered with the footprints. It will be seen that her description of the state in which Venkatramana's bedding was materially differed from her daughter's account. Gauramma said she did not interfere with the bedding, but called her daughter saying "Akku! your brother is not to be seen and the Brahmin is "not to be seen" and she deposed her daughter came crying and saying "Where is he "gone? What has become of him? I served rice to a Brahmin. Both are missing. "What did he do?"

Gauramma deposed that in the yard she saw a pole and then went with Honnakka making enquiries in the neighbourhood. After enquiring at one or two houses near hers, she went by the path that leads to the river. On the way, she deposed, she found a Langoti (produced in Court) which she identified as her son's. In cross-examination she stated at length how she was able to identify the Langoti (notes, page 136). She then went to Mahratti Myla's house (No. 19 on Exhibit C) and thence to the river and along the river-bank, and in a field called Dasanna Gadde (No. 20 on Exhibit C), where there is a waterfall, she saw the track of something having been dragged across the field and as far as the river. In cross-examination she stated that she also saw foot-prints and the paddy was about 1 foot high; she said she went into the field and saw and then got on the bank again. She then went to another house Muttu Bhatta's (No. 15 on Exhibit C) and thence home and afterwards to her mother's, the Kudukoli house.

After 5 days (it was on the 9th August 1894) she said she was taken to Kandel and there saw a body. She positively deposed the body was the body of her son. She was almost contemptuous at the suggestion that she could not recognize the body of her son otherwise than by his face. The face was much decomposed.

In cross-examination she admitted she had not got the body burned and so far as she knew the obsequies had not been performed. She admitted that Honnakka's hair had not been shaved and stated that it was a matter of choice in the case of a widow, and in re-examination she said it was not done as her daughter-in-law was young and did not put on a forehead mark.

In cross-examination she was shown a cloth which had not been shown to her in examination-in-chief. This cloth was taken by the Police from the river near where, it is alleged, the body was thrown into the river. It was taken from the river on the 26th September. The witness deposed that it was the cloth 1st accused wore when he came on one or two occasions to her house. She said he left his cloth outside in the veranda and when she was arranging the beds, she took it up

and saw it. She said she got information about the cloth being in the river from Kudukoli Shankara Bhatta and told the Police. It appears from Exhibit VI that the information given to the Police was that the cloth appears to be Venkatramana's.

This part of Gauramma's evidence is relied on by the defence as showing that there must be some one behind the scenes who got up evidence.

She deposed that she had sued to recover the Bolubyle land which had belonged to her father and which she as his only child claimed. The suit was disposed of she said against her, but a compromise was come to and she was paid she said Rs. 999 by her father's brother Subraya Bhatta. Exhibit A, dated 24th June 1879, is a copy of the document by which she sold her rights to Subraya Bhatta and his two brothers. Of that sum Rs. 800 were invested. It appeared that there was a suit recently about that investment. The judgment in the suit which was O. S. 77 of 1894 on the file of the Kassergode Munsif's Court was filed as a defence exhibit (Exhibit IV). It appeared that the witness's husband's brother Naraina Bhatta sued for the interest on the Rs. 800, the bond for which stood in his brother's, the witness's husband's, name. The defence was that the money was really Gauramma's money, that is, her Stridhana. The Munsif held that the suit as brought was unsustainable but that the then Plaintiff, if he came in as representative of his nephew Venkatramana, would be entitled to a decree for the amount claimed and because the money had never come into Gauramma's hands as Stridhana.

This witness in cross-examination gave the names of the members of her husband's family.

Her son, according to her, was entitled to $\frac{1}{3}$th of the family property of the witness's late husband's family.

After her husband's death in 1884, Gauramma lived at his family house. But in consequence of differences, she left it some 3 or 4 years ago and went to her mother's, that is, to the Kudukoli house where she was for a year or two, and then went to the Manjalkeri house. She deposed that her son Venkatramana had generally lived from an early age in the Kudukoli house. The witness got no maintenance from her husband's family, but had brought a suit to obtain it. (The suit was O. S. 447 of 1893 on the file of the Puttur District Munsif's Court). She also claimed some jewels.

14. Honakka, a girl of 10 or 11, was the 8th prosecution witness. She deposed to Venkatramana being her husband, to his coming to her father's house and to Gauramma's also coming there and to all three of them going to Kudukoli and thence along with Sarasvati with them to Manjalkeri.

She deposed that after lamp-light that evening, they got to their house, as they four were in the Chavadi, a Brahmin came and sat and asked for something to drink which was given to him, and that he said "I came from Nujibyle to take "your sister." The witness went in and heard no more of the conversation. She then gave an account of what happened that evening similar to that given by Gauramma and Sarasvati. She identified the 2nd accused as the Brahmin who came to the house.

She deposed that when her mother-in-law called out the next morning, she went out to the veranda. According to her, her husband's mat was lying by the mat on which the Brahmin had lain, and was in a heap.

She deposed that she accompanied her mother-in-law towards the river, and on the way saw a Langoti. They went along the river and in the Dasanna Gadde, she deposed, there was the mark of something having been dragged across

the field to the river. She also deposed she saw foot-prints. She showed the breadth of the mark, showing it as nearly a yard. She showed the direction of the track—straight across the field to the ridge, then at right angles and then up the ridge. In cross-examination she was unable to tell the name of any other fields about her house. In re-examination she said the Kudukoli people owned the Dasanna field and said she knew its name as she had gone there before.

This witness wore certain ornaments.

15. Sarasvati's husband Ramappa and her husband's brother Shankara Bhatta were examined as Court witnesses. They deposed they lived undivided at Nujibyle in Kelnad in Kassergode Taluk and they denied that they sent for Sarasvati about Ati or that they knew of any proposal to send for her at that time. Sarasvati had left her husband 15 months ago and had not since returned. Her husband had married a second time, and though he says Sarasvati consented to the second marriage, she gave that as her reason for not returning to her husband. About a year ago she was sent for they said, but not since. Each of them said he was not acquainted with the 2nd accused.

There seems no reason not to accept this evidence of these witnesses.

16. Hamed Kunhi was the 9th prosecution witness. He has a house and shop by the side of the public road leading through Enmakaje. He deposed that one day Krishna Bhatta (1st accused) came to the road close to his house and called him and told him to go to his (1st accused's) house that evening, as he had something to tell him and he (witness) agreed, and 1st accused left. He deposed that he went to 1st accused's house the same evening and got there at 2 galiges to sundown, but the 1st accused was not there, and after waiting some time he left and went home and slept.

During the night, he deposed, he was wakened by some one calling out "Hamed Kunhi" and he recognized the 1st accused's voice and went outside to the road where he found some men. The 1st accused had a torch. The 1st accused said "I told you to come in the evening, why did you not come?" and he said "I went but you were not present." The 1st accused said he had something for him to do and told him to take 3 of the persons with him to Kandel and that he and the others were going to Kassergode. He accordingly, he deposed, went with three persons, namely, Babu Kampti, Muse and the 4th accused to Kandel ferry, and the other three, Krishna Bhatta and Naraina Bhatta, the 1st and 2nd accused, and Mapanna left for Kassergode. At Kandel ferry, the witness deposed, he ferried the party over the river and returned.

This witness stated in cross-examination that he had been convicted of murder in this Court of Sessions but had been acquitted in appeal. He had been twice convicted by a Magistrate. He also stated in cross-examination that he had gone with the 1st accused for rioting. The man had the appearance of being a desperate character.

The witness is not a man on whom much reliance could be placed, but it would be only a man of the stamp that the witness appeared to be who would be employed on the errand he and the 1st two witnesses say he was. He was cross-examined at great length and his evidence appeared to me to remain unshaken.

17. The 10th prosecution witness, Mohidin Sahib, deposed that on the evening before the murder, he saw 1st accused on a hill $\frac{3}{4}$ mile from his, 1st accused's, house and that early the next morning he went to Biranna's, 3rd accused's, house and found him limping and with an injury on his side below the waist—he did not know on which side.

18. The prosecution 11th witness, Revenue Inspector Martu Kini, proved some maps and some measurements.

19. The 12th prosecution witness Shankara Bhatta is one of the Kudukoli family living in the Kudukoli house. He deposed that on Saturday in Ati, Sarasvati came to his house at about 4 galiges in the morning, she was alone and was crying and stated to him that a Brahmin had come to her house and had taken meals and he and her brother had lain down to sleep and that in the morning they were both missing, and the mat too as it was spread. The witness went to Venkatramana's wife's father Kanchinadka Sham Bhatta's house, a mile from his, and he and Sham Bhatta came together to Kudukoli and found Gauramma and her daughter-in-law Honnakka, Sham Bhatta's daughter, there lying on the floor and crying, and they left to give information to the village authorities. The Potail had a report written and they took it to the Perdal Police Station (some 6 miles off) and returned, and after sleeping at Pallatadka reached the Kudukoli house the next morning.

After meals, the witness deposed Constable Aitu came, and they all went to Manjalkeri, being joined on the way by the Potail. After inspecting the house, he deposed, they went to the river—on the way finding the Langóti—and saw in the Dasanna field a mark as of something having been dragged across it. They then returned to the house.

He deposed that he got orders from Constable Aitu and the Potail, in consequence of which he and others went and searched the river that evening (Sunday). Nothing was found. He also, he deposed, searched on Monday and Tuesday unsuccessfully, but on Wednesday near sunset as he and Balimulu Keshava Shastri (the 18th prosecution witness) were searching, when they were near Kandel 8 miles from Manjalkeri, they saw a body floating in a whirlpool and pulled it with a stick tied to a bamboo to the bank and found it was Venkatramana's body and took it to a garden and watched it all night, and the next morning Keshava Shastri started for Manjalkeri and he (witness) remained with the body.

Venkatramana had lived in the same house as the witness says for 7 or 8 years. He deposed that when they took the body from the water, the eyes had decomposed, but the rest of the face was intact as far as he recollected, except that the ear and lips were a little decomposed. He deposed he saw two holes in the right ear and that Venkatramana had two holes in that way. The right fore-arm was gone and so were parts of the flesh.

A Constable arrived in the morning and the Inspector and Gauramma and Sarasvati arrived in the evening and an inquest was held.

Next morning he returned to Manjalkeri.

He deposed that the Bolubyle property was worth Rs. 20,000 and that Venkatramana had intimated to him his intention of suing for it and had told him of a Panchayet between him and the Bolubyle people.

In cross-examination he said he found the women Gauramma and Honakka lying and crying "Where he is gone we don't know" and he said they were beside themselves.

The report that the Potail got written that Saturday (Exhibit F) after stating that a Brahmin had come to the house and that that Brahmin and Venkatramana were missing, added that as the mat which had been spread out to sleep on had not been rolled, Gauramma and others searched for Venkatramana and he was not found. Nothing is said in the report about a fresh *Pandavu* having been found on the pyal, nothing about the state in which Venkatramana's mat was found, nothing

about the piece of wood in the yard, and nothing about the Langoti being found nor about the marks of something having been dragged across the Dasanna field.

20. The 13th prosecution witness was Kunchinadka Sham Bhatta, the father of Honnakka. He corroborated the evidence of the last witness Kudukoli Shankara Bhatta as to what they did on Saturday, the 4th August, and on the next day, Sunday, the 5th. The Potail's report was not delivered at the Perdal Station till shortly after dark on the 4th August. The witness was questioned at some length in cross-examination and in re-examination as to the delay in delivering the report. He gave approximately the distances between the places he went to and he gave approximately the hours he got to each. Considering the nature of the country he had to traverse and the state of the weather at the time, his account of the time appeared, I thought, satisfactory.

This witness like the last deposed to the women crying at the Kudukoli house, especially, Gauramma and Honnakka. In cross-examination on this point he said Gauramma was crying "The boy was not to be seen," "Someone killed him." He also said that Gauramma said "Someone of our enemies killed him. He was "not a boy to go anywhere" and was uttering woeful cries. He said that he was more grieved than Gauramma was, and this is probable as the witness at part of his examination could hardly restrain himself from crying.

The witness deposed that on Sunday after he got to Kudukoli, he sent a tenant Mahalinga Banta to search for Venkatramana. He also deposed to seeing the various things, the mat &c. in the Manjalkeri house, and to their having gone to the river, and to finding the Langoti on the way, and to seeing the mark as of something having been dragged across the Dasanna field. He deposed to his having sent his tenant to search the river as far as Kumbla (on the sea-coast) and he deposed to others having gone to search the river.

He deposed that he went to Kandel and identified Venkatramana's body.

After the examination-in-chief, cross-examination and re-examination of this witness had been finished, it occurred to me that the witness might know something about his son-in-law Venkatramana's affairs, about which he had not been questioned by the Magistrate or by the Public Prosecutor or by the defence Vakils. I accordingly questioned him on the subject, and he gave important evidence about them. The witness deposed that after Venkatramana married his daughter (1 year and 5 months ago about), he had gone to Kadangodlu to Venkatramana's father's house about his son-in-law's $\frac{1}{5}$ share in the Kadangodlu family property. He said the family expressed themselves ready to give the share but required security as Venkatramana had not attained age. He did not ask for any maintenance for the boy. The witness said he informed Venkatramana about it, and Venkatramana said it was better to wait till he attained age and which would be in Phalguna (*i. e.* February-March 1895) and the witness went, he deposed, again to Kadangodlu and told the family what Venkatramana said, and said that Venkatramana's share should be separated and given with 3 years' produce when Venkatramana attained majority. The witness deposed the Kadangodlu family agreed to this, but that he got no writing about it. This was, witness deposed, immediately after Venkatramana's marriage. He said he made no enquiry about Gauramma's jewels or her maintenance because it was no concern of his.

This witness further deposed that about 2 months before the boy Venkatramana was missed, he and Sayada Krishna Bhatta went on behalf of Venkatramana to the Bolubyle house about the Bolubyle property—Venkatramana accompanying them.

There were at the Bolubyle house the 1st accused's uncle Shenkanna Bhatta, the 1st accused and Sanna Krishna Bhatta, a cousin of the 1st accused and, the 1st accused's father Naraina and others. There was a discussion as to how much cash should be paid for the Bolubyle property. The Bolubyle people offered Rs. 4,000, but Venkatramana wanted Rs. 10,000. The matter was not settled.

The witness further deposed that about 15 days before Venkatramana was murdered, the 1st accused came to the house close to his—of his younger brother who had married 1st accused's sister—and thence to his (witness's) house and said to him (witness) "You broke the Razi and came away. It is better to settle the matter "amicably. Don't wish for more money. Don't proceed" and he replied "What "am I to do? The boy wants Rs. 10,000." The 1st accused then left. Venkatramana was not living in the house at the time.

The witness deposed that an anxious purchaser would give Rs. 20,000 for the Bolubyle property.

21. The 14th prosecution witness was the Potail of Enmakaje, Kinhanna Banta. He proved his report Exhibit F already referred to. He also deposed to going to the Manjalkeri house on Sunday, to what was found in the house, and to the finding of the Langoti and to seeing the track across the Dasanna field. He also deposed that he gave orders to the Brahmins to search the river.

The Public Prosecutor then proposed to ask the Potail about certain things Biranna the 3rd accused did and said when he was brought to the Manjalkeri house after his arrest by the Police. This evidence was objected to and I admitted it for the reasons given in the following order:—

"The fact that anything the 3rd accused said would not be admissible in "evidence against the other accused cannot be allowed as a sufficient reason for "excluding evidence of a fact, if the fact could be proved against the 3rd accused. "Suppose the 3rd accused were being tried alone, would what the Public Prose-"cutor proposes to prove be admissible in evidence? It is said the 3rd accused gave "information which led to the discovery of the cudgel before the Court, in a bush "near the Manjalkeri house. So much of the information as led to the discovery "can, I think, be proved under Section 27, Evidence Act. The fact that 3rd accused "went to the Manjalkeri house to kill Venkatramana some time before Venkat-"ramana was murdered, but could not then carry out his intention is, I think, part "of the transaction which led to Venkatramana's death, within the meaning of "Section 6 of the Evidence Act."

It, however, turned out that this witness—the Potail—knew personally nothing of any information given by the 3rd accused regarding the cudgel, and that nothing *new* was discovered in consequence of anything the 3rd accused said at the place near the path from the Manjalkeri house to the river, where there were marks of someone having fallen into the field. With regard to the discovery of the tree from which it is said the *Pandavu* had been taken, the witness said the 3rd accused Biranna showed a cocoanut tree 10 or 18 fathoms from the Manjalkeri house and showed the mark of a *Pandavu* having been taken from one of the leaf-stalks. The witness also said "He (*i. e.* Biranna) showed the *Pandavu* saying it "was taken from this tree." In cross-examination he said the *Pandavu* that was found on the "pyal" was not with them at the time.

In cross-examination the witness said that after he got the report written at the Shanbog's, he went back to his house, and he explained that the reason he did not go at once to Manjalkeri was that he had not proper dress on. He stated that the same day he went as far as Nalka (see village map) on his way to Manjalkeri,

but as it was getting dark he stopped there for the night, and the next morning after washing and taking Conjee he went to the Kudukoli house, a little over a mile from Nalka, and when he got near the house, he saw the Constable and others coming from it and waited for them and went with them to Manjalkeri.

As to what was found at Manjalkeri the witness gave evidence similar to that given by the other witnesses on the point.

22. The 15th prosecution witness was Constable Aitu. He is a young Constable enlisted in 1887, and happened to be temporarily in charge of the Perdal Station on the 4th August when he got the report of this case. He left the Station at 6 A. M. on the 5th and got to Kudukoli, he said, at 12.30 P. M. and thence went to Manjalkeri. He described the state of the bedding &c. They then went to the river and on the way found, he deposed, a Langoti and a mark of something having fallen in a field, and in the Dasanna field, he deposed, he saw the mark of something having been dragged across the field up to the river.

In a list of property that this witness prepared on the 5th August nothing was said about the Langoti. This, the witness said, was by mistake. On the 8th August, this witness wrote a report about the case to the Magistrate at Kassergode, and in it he said that Gauramma had stated that she could not identify the Brahmin who had come to the house. This he also said was a mistake, and he deposed she said she could. In the report a full description of the man as given by Gauramma is recorded, and it seems to me to have been obviously a mere error on this witness's part to have reported that Gauramma said she could not identify the man. His note-book shows that she said she could identify the man.

This witness said he did not notice any marks of foot-prints on the white cloth that formed part of Venkatramana's bedding and he said that if he had, he would have kept the cloth. I think that his not keeping the cloth or possibly his not noticing that there were foot-prints on it was probably due to his inexperience.

In re-examination of this witness, the Public Prosecutor tendered in evidence a report written by this witness on the morning of the 6th August to the Inspector. The witness had been cross-examined with a view to showing that he had not seen the mark of something having been dragged across the Dasanna field, and as the report of the 6th contained a statement that he had, the report was tendered in evidence under Section 157 Evidence Act to corroborate the witness. I allowed the report to be filed as new matter under Sec. 138 of the Evidence Act. In the report it is stated (though not in so many words) that he saw the marks of dragging in the Dasanna field. The report was marked Exhibit G.

The witness was then asked whether any statement was made to him on the 5th, giving him a clue as to who the Brahmin who had come to the house was, and if so, what the statement was. This question was objected to. I allowed this question to be put under Section 138 of the Evidence Act although introducing new matter. The witness then stated what Sarasvati had told him at his enquiry into this case, and said he had recorded the statement in his note-book. His note-book was then tendered. It was objected to, and Sec. 162 of the Criminal Procedure Code was quoted.

Sec. 161 of the Criminal Procedure Code authorizes a Police Officer when holding an investigation into a cognizable offence, to examine orally any persons supposed to be acquainted with the facts and circumstances of the case and to reduce to writing any "statement" made by the person so examined; and Sec. 162 provides that, except as a dying declaration, no "statement" so made "shall, if reduced to writing, be "signed by the person making it, or shall be used as evidence against the accused."

This Section was not brought to my notice when I allowed the question, as to what Sarasvati said to this witness in the course of his investigation, to be put. What she said would, as I considered, be relevant under Sec. 157 of the Evidence Act to corroborate her on what is an important point in this case; but as what she said was stated to a Police Constable in the course of an investigation, Sec. 162 prohibits the proof of the statement against the accused. At a late stage of the trial the same question was again argued and 15 All. 25 was quoted. This decision clearly supports the view I have taken. The point raised is an important one, and the ruling I have made is not consistent, I am told, with the practice that has hitherto prevailed in this Court. I regret being obliged to adopt the view I have taken, for it is better to let in all facts bearing on the case and to take them for what they are worth, but I must of course abide by the Code. The result seems to be that statements to Police Constables can be proved to contradict witnesses but not to corroborate them, and that part can be used to contradict a witness and another part cannot be used to corroborate the witness.

23. The 16th witness, Keshava Shastri, on Wednesday the 8th August accompanied the 12th prosecution witness, Kudukoli Shankara Bhatta, down the Manjalkeri river and found a body in the river near Kandel.

He deposed there was no difficulty in identifying the body as Venkatramana Bhatta's. He corroborated Shankara Bhatta as to what they did.

The next morning he went to Manjalkeri and informed the Police Inspector, but did not go himself back to the body that day as he was tired. The following day, as he had been requested by the Inspector and by Kudukoli Krishna Bhatta, he followed the party, and learning that Krishna Bhatta and others had gone to the Badur Potail's house, he went there and from thence he accompanied Kudukoli Krishna Bhatta to Kumbla and when they reached Kumbla they found the body in a boat there. The body was then examined by the Civil Apothecary of Kassergode, but neither he nor Kudukoli Krishna Bhatta after the examination of the body took charge of it or got it burnt.

This witness who seemed to have considerable knowledge of the Hindu Shastras deposed that if a Brahmin of his sect were murdered, the "Santanagars," that is, the paternal relations of the murdered man, should perform certain purificatory ceremonies on the body of the murdered man which would cost not less than Rs. 100 or Rs. 200, and only after that could the body be burnt and the ceremonies connected with burning the body performed.

The witness was not a Santanagar of Venkatramana. They were connected, as his wife was Gauramma's, Venkatramana's mother's, sister's daughter, but as he was not a Santanagar, he deposed, he could not perform the purificatory ceremony and burn the body. Venkatramana's Santanagars lived at Kadangodlu several leagues from Kumbla.

24. The 17th prosecution witness Sayada Krishna Bhatta and Gauramma are the children of two sisters. He lives in Enmakaje village. He deposed that at Venkatramana's request about 2 month's before Venkatramana's death, he went along with Venkatramana's father-in-law Kunchinadka Sham Bhatta to the Bolubyle house, where there was a Punchayet held about the Bolubyle land which Venkatramana claimed. He said a compromise by a cash payment was proposed by the Bolubyle people and for whom the 1st accused acted as spokesman. The Punchayetdars then estimated the value of the property at Rs. 20,000 and Venkatramana asked for that sum. The Bolubyle people refused this; after that Venkatramana said he would take Rs. 10,000 and not less, and the Bolubyle people consulted among themselves and 1st accused said that no more than Rs. 4,000 would be

paid and the other Bolubyle people said they agreed to what Krishna Bhatta said. Then Venkatramana said "Let us see in a suit. This won't do" and the Panchayet broke up.

In cross-examination he stated in detail how the value Rs. 20,000 put on the Bolubyle property would be arrived at. He also proved that Venkatramana was aware of the decree in a suit, A. S. 202 of 1867, where the net produce of the property was estimated at much less than it would appear to be at the present time. It also appeared that the witness had advanced Rs. 100 of the money of a temple he is trustee of on a mortgage of the Bolubyle land executed by Sarasvati.

25. The 18th prosecution witness Aitu has a toddy-shop at Katkukke and deposed that on Friday and Saturday, the 3rd and 4th August, he was at Kassergode, attending auctions of toddy-shops, and that on Saturday the 1st accused at about noon called him from the Cutchery and got him to attest a document in a shop at Kassergode. He also deposed that the following Thursday Biranna came to his toddy-shop and that he noticed that he had an injury on his hip.

26. The 19th prosecution witness, Bynki Banta, is the Potail of Katkukke, and he deposed that he too attended the auction at Kassergode and that on Saturday (he first said after 12, but afterwards said at 3) he was called from the Registration Office and went to a shop where a Brahmin whom he did not know executed a bond. He said Krishna Bhatta, 1st accused, told him that the document was a simple bond and that "this was the Brahmin" and so he attested it.

It appears that some 10 years ago 1st accused gave evidence in a criminal case against him.

27. The 20th witness, a Constable, gave some formal evidence and deposed that Venkatramana's body was buried by Holeyas (Pariahs).

28. Mr. A. F. Mathias, the 21st prosecution witness, the Civil Apothecary examined at Kumbla at about noon on the 11th August the body that had been brought from Kandel. When he examined it, it was in an advanced state of decomposition. There was disproportionately advanced decomposition about the neck and upper centre of the chest and this indicated that violence had been used to that part of the body and that possibly death was due to strangulation. The front teeth were all wanting. This was probably due to violence having been used to the mouth which caused earlier decomposition. On dissecting the windpipe, Mr. Mathias found the hyoid bone separated from its cornua, and this detachment of the cornua, he considered to be due partly to decomposition and probably partly to violence. The fact that there were only eight molars and the general development suggested to the Apothecary 17 years as the probable age of deceased.

29. The Public Prosecutor after the examination of his 20th witness, proposed to examine the Police Inspector who had conducted the investigation into the case, and to whom, it was alleged, 3rd accused had made a statement which would be admissible under Section 27, Evidence Act. This was stremuously opposed, and the Court ordered that a formal written application should be made and that, if possible, the application should be supported by an affidavit. The Public Prosecutor accordingly put in a written application though without an affidavit, and after the question had been argued, the Court after taking time to consider the matter passed the following order:—

"In 14 Cal. 245, Mr. Justice Trevelyan after having perused the deposition of a Police Inspector, refused to examine him as he did not consider that he could place implicit reliance on his evidence. In the case now before me, I do not know what the precise information was that, it is said, the 3rd accused gave to the

Inspector. How much of what was said would be admissible in evidence under Section 27 of the Evidence Act is a question open to much argument.

"Besides this, no evidence is so unsatisfactory as a person's memory of what another said. It is within the experience of every one that frequently what a man says has an interpretation put on it that is different from what he meant to convey, and what almost always happens is that what is deposed to is not the words actually used but certain inferences that the hearer drew as to what the speaker meant, and which is afterwards often stated in language quite different from what the speaker actually used, and frequently the speaker is represented to have made a statement altogether different from what he did make. This is my experience and is no doubt the experience of every observant person. I, therefore, say that oral evidence of what a man is supposed to have said is of all evidence the least reliable. It is especially unreliable when the person who heard the evidence was a person with a bias, and every Police Officer has naturally and almost necessarily a bias in the case of a man whom he believes to be guilty of an offence. These are distinct objections in my mind to my calling the Police Inspector as a witness in this case. In addition to these objections, the application to examine him is made only at the very end of the prosecution case. I have examined three Court witnesses in this case, but I did so many days ago, and I stated in Court that if it were necessary I would allow their cross-examination to be postponed so that the defence should not be taken by surprise. In addition to this, the Inspector has been in Court and he heard the Potail's evidence on the point, it is now proposed that he should depose to. These are all very strong reasons for rejecting this application. But on the other hand, if Government had been represented before the Committing Magistrate by competent professional advisers, the Inspector would no doubt have been examined and this application would have been unnecessary. In my opinion in a case like the present, Government should be represented in the investigation before the Committing Magistrate by some competent legal adviser, but this has not been the practice in this District and until it is, applications like the present are sure to be made. After much consideration and while much regretting that an application like the present should have been necessary, I allow the application and will call the Inspector as a Court witness."

30. The Inspector J. M. Pais was then examined as the 4th Court witness. He deposed that he got information of this offence at Bela on the morning of the 7th August from a report (Exhibit G) from Constable Aitu of Perdal Station, and after sending an express, Exhibit L, to the Superintendent of Police left for Enmakaje and arrived there at 10 A. M. the same day, the 7th August. He entered the house and saw the mats &c., and at about 12 noon Gauramma, Sarasvati and Honnakka who had been sent for arrived and were examined by the Inspector. He then went with Gauramma and Honnakka to the river. He saw in the field 16 on Exhibit C the mark as of something having fallen from the path to the field and the foot-prints of someone having gone from the corner of the field, where the mark of something having fallen was, for some little distance to join the path a little further on. The level of field 16 is about 12½ feet below the level of the path at the place from which something seemed to have fallen; from that place, the path makes a rather sudden descent along a very narrow ramp. The Inspector measured with a stick the length of the foot-prints, and then went on to the Dasanna field where he saw the track of something having been dragged across the field as far as the river and the foot-prints (apparently of one person) either in or on either side of the track. The track went nearly to the bund of the field next the river and there

turned east and went east for 30 yards or so, and then up to the river bund. The bund was hard and no mark appeared on the bund, but on the slope to the river there were marks as if of something having slid into the river.

On the 18th August, the 3rd accused Biranna was produced before the Inspector at Nalka, where he was camped about a mile from the Manjalkeri house. Nalka is marked on the village map. The Inspector examined the 3rd accused at Nalka. After that, the Inspector deposed, he and the Potail *followed* the 3rd accused to Manjalkeri, where he showed a cocoanut plant saying that the *Pandavu* was removed from it as he had said before going to Manjalkeri. The Inspector noticed on the 18th that the 3rd accused had an injury on the left hip.

On the authority of the dictum in 11 Bombay 657, the defence was allowed to examine the Inspector as to statements made to him by Sarasvati with a view to *contradicting* Sarasvati. It will be recollected that I had ruled that statements made to a Police Officer could not be proved to *corroborate* Sarasvati. Sarasvati said on the 10th that she forgot to tell the Inspector of her having seen the 2nd accused at Mylangi Venkappa Bhatta's. This is, however, really no contradiction.

In cross-examination the Inspector stated that he did not see, so far as he remembered, any white cloth on Venkatramana's mat. There was a white cloth on the other mat, and he observed no foot-marks on it. The bedding was not, it is to be remembered, produced before the Magistrate, but was called for by this Court.

31. Before the Committing Magistrate the 1st accused stated that he went on the afternoon of the 3rd August from Kudalmerkal to Kassergode. He said he went to Kassergode to execute a personal bond for Rs. 200 in favor of Anekal Krishna Bhatta, and that as soon as he arrived at Kassergode, he bought a stamp paper from the Court Stamp Vendor, and as it was late when the document was written and closed, he got the document registered the next day.

In this Court in answer to the question "Do you wish now to make any "statement about this case," the 1st accused replied "I have nothing more to say."

32. The 2nd accused Naraina Bhatta before the Magistrate denied that he went to Venkatramana's house, and in this Court he said he had nothing to say.

33. The 3rd accused Biranna stated to the Magistrate that the injury he had was caused as he slipped and fell when he was driving cattle. He denied that he pointed out a cocoanut tree near deceased's house from which a *Pandavu* had been taken. He denied that he owed anything to Mohideen Saib.

In this Court he said he had nothing more to say.

34. The 4th accused Madana before the Magistrate made some denials, and before this Court stated that he did not want to make a statement.

35. The defence was then opened under Section 280 Cr. P. C. at considerable length.

36. The 1st defence witness was Anekal Krishna Bhatta. I have recorded in my notes from page 237 in the form of question and answer most of this witness's examination and to understand the way his evidence was given, my notes should be referred to.

He said that on a Thursday 5 or 6 months ago—the Thursday following the Ati Amavase—he paid Rs. 100 to 1st accused Krishna Bhatta and gave Rs. 100 to Mapanna (who had come along with Krishna Bhatta to his house the previous day) instructing Mapanna to give the Rs. 100 to Krishna Bhatta and to take a registered bond from him. They left his house on Thursday morning he said.

He said that 15 days before that the 1st accused came and asked him for a loan of Rs. 200.

He said that 4 or 5 days after that Mapanna gave him a document which he produced (Exhibit VIII).

He said that about a year and ten months ago he attended the Upanayana ceremony of 1st accused's son and he said he knew Gauramma and that she came to the Upanayana. He also said that the 2nd accused's mother's brother's wife came from the Kadangodlu family—the family of Gauramma's husband.

This witness Anekal Krishna Bhatta's wife and the 1st accused are children of two sisters. His wife is Mapanna's sister and the 1st accused is the son of Mapanna's mother's sister. Mapanna is married to his (witness's) uncle's daughter. The 2nd accused's sister is married to the witness's father's brother.

He admitted that he had never lent any money before on a document whether on a plain bond or on a mortgage bond. He stated that he had lent some small sums before, but his answers as to the persons to whom he said he gave the money were not satisfactory.

He stated that 15 days before, when Krishna Bhatta 1st accused came about the loan, he told Krishna Bhatta that he would require a document.

He pays an assessment of Rs. 14 and odd, and he purchased 3 years ago for Rs. 400 a $\frac{1}{8}$th share of certain property but he never got possession of it, and did not know the name of the village in which it was situated.

He said he only once before saw Gauramma and that she was then among more than 50 females, but he said 2nd accused's mother was speaking to her and he asked 2nd accused's mother who the woman was.

In reply to a question asked by the Assessors the witness stated that 1st accused said he wanted the Rs. 200 to give to Mylangi Venkappa Bhatta.

It was manifest from this witness's demeanour that he was much interested in the accused's case.

37. The 2nd defence witness Ramakrishnaya is a Stamp Vendor attached to the Kassergode Munsif's Court. He deposed that the stamp paper on which Exhibit VIII is written was sold by him at 4 or 4. 30 P. M. on the 3rd August to a man who gave his name and address as "Krishna Bhatta of Bolubyle residing "in Sheni," but he could not identify the man to whom it was sold. The paper was the last paper sold on the 3rd August. He knew the hour of sale because two or three days after the sale certain rumors called his attention to the matter. The witness saw the accused some days after the sale. Even then he could not recognize him.

The witness seemed a respectable man. He has been for many years Stamp Vendor and gets Rs. 30 or 32 a month and has some ancestral property and seemed a person who could be relied on.

38. Exhibit VIII is a simple bond for Rs. 200 purporting to have been executed by Krishna Bhatta (1st accused) on the 3rd August 1894. It is in favor of Anekal Krishna Bhatta *i. e.* the 1st defence witness. It recites that "yesterday" Rs. 100 were paid in cash, and that Rs. 100 "which you got paid to "me in the presence of the Sub-Registrar through your brother-in-law Mapanna "Bhatta"—in all Rs. 200 were received. Rs. 8 per cent. is the rate of interest, and the term of the bond was one year. The two attesting witnesses are Bekal Subraya and Aitu Baidya. The document purports to have been written by Stanik Narayana. The document was registered on the 4th August.

39. The 3rd defence witness, Stanik Narayana, is the man who wrote Exhibit VIII.

He almost at once turned out to be a hostile witness, and stated that he wrote the document Exhibit VIII on the day it was registered. He was then cross-examined as a hostile witness at great length—see my notes, pages 264-284. He stated that he wrote the document in the afternoon, that he could not tell at what hour, and that it was on Saturday and that he did not know the date. He stated that he was simply a writer to Subraya and that he only wrote as dictated to him, and that he knew very little about English date (see notes, page 277).

In cross-examination by the Public Prosecutor, the witness gave a clear chronological statement of what he said happened on the 3rd and 4th August. He said that on Friday, a Brahmin came and gave a draft and two stamp papers to Subraya, and said "a document must be written as here," *i. e.* according to a draft, and that Krishna Bhatta who was in his lodging "would come now," and that he had sent him with the papers, and the document and application (for gun-license) should be written. Subraya corrected the draft and gave it to witness to copy, and he said he could not read it and Subraya dictated it and he wrote on, he thought, plain paper. Subraya then dictated a draft application and witness wrote, and the Brahmin left with the two drafts and the two stamp papers, saying he would show them and come back. That day the Brahmin did not return. The next day (Saturday) the 1st accused Krishna Bhatta came in the afternoon to the shop with the papers. Two men, the Brahmin who came on Friday and another man, accompanied him. Krishna Bhatta (1st accused) said "This draft is all right, why could you not have written it yesterday? Write it now." Subraya gave the papers to the witness and left the shop, and witness wrote the document, Exhibit VIII, by which time Subraya had returned, and told him to read the document, which he did, and Krishna Bhatta signed it and asked Subraya to attest it—which Subraya did. Another witness was necessary, and Krishna Bhatta went out and brought back a man, a Billavar, whom the witness had seen in Court, and he attested the document, Exhibit VIII, which witness then closed, and wrote the application for gun-license and gave both to Krishna Bhatta and he left with the papers. Witness thought that the two men who came with Krishna Bhatta left with him, but he was not sure. After that, Subraya began to get another document written by witness and said to date it the 4th. The original draft was lying near witness, and witness seeing it said "Is it not the 3rd?" and Subraya said "If that was dated the 3rd it could be corrected," and left the shop and returned with Krishna Bhatta, who said "By its being dated the 3rd it does not "matter; yesterday I sent the draft and stamp papers, you could have written it yes-"terday. Now it is not possible to get it altered as it is already registered" and after some time Krishna Bhatta left. When asked "What became of the 1st draft?" the witness said "He (*i. e.* Krishna Bhatta) took it away with him."

This witness was a young man of 23 or so, seemed a very simple person, and was evidently uneasy in the witness-box.

40. The 4th defence witness Krishna Bhatta deposed that he saw Krishna Bhatta, 1st accused, on Friday, the 3rd August, purchase two stamp papers from the Munsif's Court Stamp Vendor at Kassergode and that he went with him to Subraya's shop, where Subraya dictated to Narayana who wrote a document. The witness said he was asked to stay to be an identifying witness at registration, but had to go to Mangalore and left at 1 or 2 galiges to sunset and got to Mangalore on Sunday.

He said he was present at the Upanayana of 1st accused's son. He said both 2nd accused and Gauramma attended the Upanayana. He also said that there was no Panchayet about the Bolubyle property.

In cross-examination it appeared that on Wednesday afternoon he gave evidence at the Munsif's Court, and he stated that he remained on Thursday and Friday at Kassergode to get some documents from his Vakil, and that he only got them on Friday at 6 or 7 galiges before sunset. He had been at Kassergode since the previous Sunday and he had seen his Vakil on Monday and he said the copies would be ready in 2 or 3 days but he should pay the fees and he, witness, said he would borrow the money. He contradicted himself as to the day on which he said he borrowed; on Friday he said he paid the fees, Rs. 15, and got the documents. When he was waiting after having got his documents, the 1st accused, he said, came. The witness went to Kavu that evening, and Kavu is only a league from Subraya's shop, and on Sunday he got to Mangalore and he went that day, he said, to a Vakil. The case he was interested in only came on the next Wednesday. He left Mangalore on Saturday and got to his village on Sunday, and heard of the murder and of 1st accused's arrest, but he did not go and tell the Police that he had seen the 1st accused at Kassergode. The witness was divided from his brother and usufructuarily mortgaged his property to him, and his brother had usufructuarily mortgaged his share and the witness's to another man, and he and his brother were jointly tenants of the property. The witness's brother had some function to perform in the Katkukke temple of which 1st accused is one of the Moktessors. He lives near 1st accused's house, and the 1st accused is married to his brother's daughter.

This witness's name was not in the list of witnesses given to the Magistrate. The witness seemed to me to be totally unreliable.

41. The 5th defence witness Shankara Bhatta deposed that a partition deed between him and his brother was made on Wednesday, the Ati Amavase, and registered on that day, and that after registration he went to his sister's house in Edanad (village No. 84 on the Kassergode Taluk map), and on Friday he started to return to Kassergode and at the Madur river he met the 1st accused, and crossed the river with him and went with him to Kassergode, and was there told by Subraya that the deed could be got in 4 days more. It seems authority to get the document from the Registration Office had been given to Subraya. When he was at Subraya's, the 1st accused, the witness said, came to the shop, and he left saying he would go home and he went home but not till the next day Saturday. He lives at Katkukke near the 1st accused's house. On Sunday he heard of the murder and in 7 or 8 days he heard of 1st accused's arrest.

In cross-examination he admitted that though the Inspector was at Nalka, a mile or a mile and a half from his house, he did not go and tell him of what he had seen and he admitted he did not tell the Potail. The reason he gave for going to Edanad was not satisfactory. He said he went there, because he heard his divided paternal uncle's daughter had fever. The distance from Kassergode to Edanad was, he said, 2 leagues, but from the Taluk Map it would appear to be somewhat more. He had no satisfactory reason for going back to Kassergode. He did not want the document for any particular purpose that Friday, and he has not yet got it back. In re-examination he said he went to Kassergode that Friday as it was near Edanad, but it is a considerable distance away. The witness is related to 1st accused being his Santanagar.

I thought this man's evidence was unreliable.

42. The 6th defence witness Shankara Narayana Bhatta, an old man, deposed to various relationships. He had two daughters who were married more than 15 years ago. He stated that Gauramma and 2nd accused were present at the marriages. His grand-daughter was married 5 or 6 years ago and he said Gauramma was present, but he could not remember if 2nd accused was.

At the marriages he said there were 200 or 250 persons present. The witness gave no particular reason for recollecting Gauramma and 2nd accused's presence. It is obvious that the witness could not really recollect whether they were present or not. It may be they are persons who would have been invited, but, as the witness himself said, of those who are invited some come and some do not. The 2nd accused is the witness's nephew.

In re-examination it was thought to be shown that there were circumstances which would have specially drawn the witness to the presence of Gauramma and the 2nd accused at the marriages, and I admitted further evidence on the point under Section 138, Evidence Act, though I considered it new matter. No important facts were however elicited.

43. The 7th defence witness, Rama Bhatta, is a divided nephew of the last witness. He deposed to various relationships. The object of his evidence was to show that probably Gauramma knew the 2nd accused. His evidence was, I thought, unsatisfactory, and I do not think that it could be relied on on any point.

44. The 8th defence witness, Shankanna Bhatta, is the uncle (father's brother) of 1st accused. He deposed that his elder brother Subraya Bhatta and after him *he* was the manager of the family, and he produced a large number of receipts for payment of assessment and Genichits to corroborate his evidence on these points. He further denied—though in a way that made me doubt from his mere denial if he were telling the truth—that there was any Punchayet between his family and Venkatramana about the Bolubyle property. He also deposed that Gauramma and 2nd accused were present at various ceremonial occasions.

I formed a very unfavorable opinion of this witness. I thought that he was altogether unreliable.

45. The 9th defence witness Krishna Bhatta, 1st cousin of the 2nd accused and undivided from him, also left an unfavorable impression on my mind. His willingness to say *anything* that would help the accused deprived his evidence of any value.

46. The 10th defence witness was the first accused's son, Narayana, a boy of 12 years of age. He stated that the 2nd accused and Gauramma were together at their house on one occasion, but it was clear from his manner he could not be relied on. He denied that the approvers came to his house.

47. The 11th defence witness, Timanna Shastri, did not make the slightest impression on my mind as a witness who could be trusted. He said that on four occasions he saw the 2nd accused and Gauramma together. These occasions were ceremonies attended by two to three hundred people. This story is in itself highly improbable. He is the father-in-law of the 9th defence witness.

48. The 12th defence witness was Pertaji Krishna Bhatta. From the moment he stepped into the witness-box, his demeanour was suspicious and remained so till he left. He spoke to six occasions on which he saw 2nd accused and Gauramma together at various ceremonies. It seemed to me that it would be idle to hear what this man deposed as worthy of serious discussion.

49. The 13th defence witness, Kajihitlu Krishna Bhatta, appeared more unreliable than the others.

50. After the examination of the 13th defence witness, the defence Vakil applied to examine the 1st Assessor as a defence witness on the ground that he was acquainted with certain ceremonies. Meantime, the 1st Assessor intimated to the Court that he would like Subraya the petition-writer called. This was done and Subraya was examined as the 5th Court witness after the examination of the 13th defence witness.

51. The 5th Court witness, Subraya, deposed that he had been a petition writer at Kassergode since 1872. He was shown Exhibit VIII, and he said he had got it written by his writer Stanik Narayana and that he attested it. He gave an account of the circumstances under which it was written—which was almost identical with the account given by Stanik Narayana as the 2nd defence witness. He said that the 1st accused used to come to him to get documents written, and so he knew him. He said that the Brahmin who came on Friday to his shop had, before that, come 3 or 4 times with Krishna Bhatta to his shop, and he said he thought his name was Sham Bhatta or Shankra Bhatta, and that he had not seen him since Saturday, the 4th August. He said that Krishna Bhatta had called the 3rd man, who came to his shop on Saturday, Mapanna Bhatta. He did not, he said, see the 2nd accused at his shop. With regard to the time when the Brahmin came to his shop on Friday, Subraya said that after he had given the papers to Narayana he went to the Dy. Collector's Cutchery as he had to produce money of some Billavers, and he went there at a little after 5 P. M. He said he was confused when examined by the Police, as he thought Krishna Bhatta had got him into a trap. In reply to a question put by Court as to why, after discovering the mistake in the date, he took any trouble in the matter, the witness said "several such mistakes formerly had been made and "were corrected at foot of the document. Sometimes a too early and sometimes a "too late date is entered and they are afterwards corrected."

I was much puzzled by this man's manner. He was not at his ease in the witness box. Was the cause of his uneasiness that he was now telling lies, or was it that he was frightened lest he should somehow get into trouble for the part he had taken in connection with Exhibit VIII?

52. The next witness examined was Venkatramana (6th Court witness), a Constable of Kassergode Station, who, on the 12th August 1894, examined Stanik Narayana and Subraya. This witness said that Narayana told him that on Friday, 3rd August, at 5 P. M. Krishna Bhatta (1st accused), Mapanna and a Brahmin whom he did not know came, and Krishna Bhatta gave a stamp paper of Re. 1 and another of 4 annas, and said he wanted a bond for Rs. 200 and a license-petition written and he wrote them at Subraya's dictation and they were closed at 5.30 P. M. and the bond was registered the next day, and on that day (the 4th), Krishna Bhatta (1st accused), Mapanna Bhatta and Karopadi Naraina Bhatta came, and Mapanna Bhatta had a gun-license petition written, and Naraina Bhatta had a document written. Subraya's story the witness could not recollect in detail, but it was to the same effect. Both said that they could not say anything positively unless they saw the bond, and both seemed in great anxiety.

53. The 18th prosecution witness Billa Aita was then recalled, and identified his signature to Exhibit VIII. This document was produced by the 1st defence witness, and so, after this witness Aita had been examined for the prosecution.

54. The question was then argued whether Section 291, Criminal Procedure Code, entitled the defence to examine an Assessor as a witness. The Public Prosecutor argued that it did not, but, I allowed the Assessor to be examined on the ground that the Section did not explicitly prohibit his examination.

55. The 1st Assessor, Mr. Santa Poi, was then examined as the 14th defence witness. He deposed to certain customs at marriages and other ceremonies among Brahmins, but he had not much personal knowledge of the practices among Havik Brahmins.

56. Gauramma, the 7th prosecution witness, was next recalled under Section 540, Criminal Procedure Code. A very urgent representation that she should be recalled was made to the Court by the defence, and she was sent for from her village. I regretted having to do this, but this was not a case in which I was prepared not to allow considerable latitude to the defence, especially considering the use that had been made of Section 540, Criminal Procedure Code, in examining Court witnesses at the instance of the prosecution.

Gauramma deposed to various relationships in her husband's family and to a number of marriages in the family. She deposed that the Deranta Majalu house was 1¼ miles from her husband's family's house, but she had not, she deposed, been there for many years. Deranta Majalu Shankara Narayana had married her husband's sister Laxumi, but she died long ago.

Gauramma again positively stated that she did not know the Brahmin who came that Friday to her house, and she positively stated that there was no doubt 2nd accused was the man. So far as weight can be added to a deposition by demeanour, weight was added to this witness's. Her manner of answering was, I thought, convincing.

57. At the instance of the defence, Stanik Narayana was allowed to be recalled. He proved Exhibit XLVII to be the gun-license petition he wrote. He also proved Exhibit XLVIII to be a document he wrote, and that it was attested by Potail Bynki Banta, prosecution 19th witness, and by Aitu Baidya prosecution 18th witness and dated 4th August.

58. The 15th defence witness was the 1st Defendant's father Naraina. He deposed that he went to Kassergode with Gauramma, and gave evidence before the Munsif. A copy of his deposition dated 21st June 1894 was filed as Exhibit XLIX. The deposition was in O. S. 77 of 1894 on the file of the Kassergode District Munsif. It appears in cross-examination that he met Gauramma on a hill 3 miles from his house and went from there with her and some others to Kassergode, and that at Kassergode he did not speak to Gauramma. The witness also deposed on other points, but like many of the defence witnesses it was very difficult to say whether what he said was true on any particular point.

59. The 16th defence witness's examination extended over a whole day, but he did not add to my knowledge of the case by a single material fact. As in the case of many of the defence witnesses, it was very necessary to see him giving his evidence to distrust him. He gave vague evidence about some distances, about certain marriage ceremonies and about the 1st accused's character.

60. On the motion of the Public Prosecutor which was supported in by the defence, Mr. Sequeira, who was the Tahsildar of Kassergode in August last, was then examined as the 7th Court witness. He proved that he received the gun-license application of the 1st accused dated the 3rd August, Exhibit XLVII, by post on the 5th August. He deposed that letters are delivered at Kassergode in the morning and that sometimes when by accident a letter is not then delivered, it would be delivered by a Post Office peon in the course of the day. The 4th August was a day on which sales of toddy shops were held at Kassergode and he attended it. If a letter had been delivered to him during this day, he deposed he would have opened it at once or in the evening.

61. The case for the 1st and 2nd accused was then summed up at great length. The Vakil for the 2nd and 3rd accused then addressed the Court. During his address, the charge against the 4th accused under Sec. 365 was drawn up, as it was considered that as against him the charge under Sec. 302 could not be supported on the evidence, and it was considered advisable that there should be a formal charge under Sec. 365 I. P. C. The Public Prosecutor then replied and the Court summed up the evidence (see notes, pages 403-406), and the Assessors after a short consultation stated that each of them considered the first three accused guilty of murder and the 4th accused guilty under Sec. 365 I. P. C.

62. Taking up the important questions that arise in this case chronologically, the first question for decision is whether it is true that Venkatramana was claiming the Bolubyle property from the Bolubyle family. The two chief witnesses on the point are Sayada Krishna Bhatta, the 17th prosecution witness, and the 13th prosecution witness Kunchinadka Sham Bhatta, the father-in-law of Venkatramana. The evidence of these men I have already stated. They said they went to the Bolubyle house along with, and on behalf of, Venkatramana, and that a claim for the Bolubyle property was made, and that an offer of Rs. 4,000 was made by the 1st accused on behalf of the family and was refused by Venkatramana. The evidence of the 13th prosecution witness on this point is perhaps the more important as it came out quite by accident and in reply to questions put by the Court after the close of the re-examination.

To set against the evidence of these two men, there are the statements of the defence witnesses that no Panchayet took place. I could give no weight to the denial of these witnesses, for it seemed to me apparent that they were ready to say anything to support the defence. With a view to discrediting the evidence of S. Krishna Bhatta and of K. Sham Bhatta that an offer of Rs. 4,000 was made, it has been attempted to be shown that the property was worth only some Rs. 5,000 or so, but I do not think that has been established. The evidence that the property was worth some Rs. 20,000 seemed to me to be more probable, and probably with an unexceptional title it might be sold for that or for nearly that figure to a willing buyer.

That Venkatramana did claim the property is rendered by the previous history of the property in a very high degree probable. The prosecution case is that the property was the self-acquired property of Bolubyle Sham Bhatta. This man died in 1856 leaving a widow Sarasamma. This woman, who is still alive, soon after her husband's death claimed the property as her husband's self-acquired property, and her husband's family bought her off for a sum of Rs. 1,200. Later on, her daughter Gauramma—the deceased Venkatramana's mother—sued for and got a decree for possession of the property in the Munsif's Court at Kassergode (Exhibit VII); but on appeal to the Principal Sader Amin, the Munsif's decree was modified and *possession* was not decreed, but Gauramma's right to succeed on Sarasamma's death was declared (Exhibit H). An arrangement was come to between her and the Bolubyle family and Sarasamma sold her rights for a sum of Rs. 999 (Exhibit A). If under such circumstances Venkatramana did not set up his claim as soon as he reached or approached maturity, he would not have been acting as he ordinarily might be expected to have acted. It was sought to be shown that he was not born when Gauramma sold her rights by Exhibit A, dated 14th June 1879, but this was not made out.

I am of opinion that there is no reasonable doubt that Venkatramana was claiming the Bolubyle property from the Bolubyle family, and that probably the Punchayet was held as deposed to by the 13th and 17th prosecution witnesses.

To minimise the effect of this evidence, which of course is only important against the 1st accused, the defence laid stress on the fact that the 1st accused is entitled to only $\frac{1}{12}$ of the Bolubyle property. It is no doubt the case that if the 1st accused were now to separate himself from his family, he would be entitled only to $\frac{1}{12}$ of the Bolubyle property. But that fact standing by itself would give a very imperfect notion of the position the 1st accused holds—and held in July and August 1894—in the Bolubyle family. His father and all his father's family except the 1st accused separated from the rest of the Bolubyle family and their share in the Bolubyle property was given to them. The first accused and the rest of the family, so far as the Bolubyle property is concerned (for movables were, it appears, divided), remained and still remain joint. The first accused has a son, about 12 years of age. His uncle Sankanna Bhatta's only son had died about May 1894 after a long illness. Sanna Krishna Bhatta, the only male representative of the eldest branch of the family, has no son. It is true he is not old—only 28 it is said—and his wife is young, 18 according to some evidence. They have no children. These facts show that although if he now separated from the family the 1st accused would be entitled to only $\frac{1}{12}$ of the Bolubyle property, he was a very important member of the family in July and August 1894 and likely to become more so.

To diminish in another way the force of the evidence against the first accused, with which I have been dealing, the defence laid stress on the fact that Venkatramana was a claimant to a share in the property of his father's, the Kadangodlu family. This is no doubt true. His father-in-law 13th prosecution deposed that after Venkatramana married his daughter, he went with him to the Kadangodlu family house to see about his rights. He also deposed that the Kadangodlu people were willing to give Venkatramana his share, and would have done so at once, but required an indemnity as Venkatramana was a minor. There is no doubt there were differences between Gauramma, Venkatramana's mother, and her late husband's family. She left her husband's family house some 4 years ago or was turned out of it, and went to live with her mother Sarasamma at the Kudukoli house, and she sued her late husband's family for maintenance and about jewels. But so far as we are at present concerned, what we have to ask ourselves is—Is there any reason to suppose that Venkatramana's father's family wanted to do away with Venkatramana so as to keep his share to themselves? If we believe the 13th prosecution witness's evidence, there is no doubt that was not so. The only fact proved in the case that gives any colour to the contention is that no member of Venkatramana's father's family went to Kumbla to see to Venkatramana's body being burnt and to perform the necessary funeral ceremonies after the body had been examined by the Civil Apothecary. But as to this, Venkatramana had lived for many years—in fact, from childhood—with his grand-mother Sarasamma at the Kudukoli house, his mother had left her late husband's house and was suing that family; so that, though none of his Santangars, that is, relations through his father, went to Kumbla to get his body after the Medical Officer had examined it and to have it burnt, it cannot be said I think to throw suspicion on them. There is no evidence indeed when they came to know of Venkatramana's death. Whether they performed any funeral ceremonies or not we do not know. All we know is that Gauramma did not know of their having been performed.

The result is that the evidence of motive remains in my opinion unshaken as evidence against the 1st accused.

63. I do not think that there can be the slightest doubt about the substantial truth of the story told by the approvers of their journey from Katkukke to the Bolubyle house and their residence there.

These two men were examined at very great length, and if the story were a mere invention, or if these men were not really speaking of facts of which they had personal knowledge, it is impossible that their evidence would not have been broken down. So far from its being broken down, the more minutely the details of what happened were gone into, the more minutely did the accounts of the two men agree. It might have been within the limits of possibility to drill the 1st approver, the Brahmin Babu Kampti, to tell a story like what he told and in the way he told it; but it would have been impossible I think in the case of the young Mopla Muse. This part of their evidence is not uncorroborated. Rayappa Shanbhog the 3rd prosecution witness, Ammu the 1st Court witness, and Subunji the 4th prosecution witness corroborate them, and the latter two, at any rate, could, I think, be relied on.

It is said that this expedition to get tobacco and bullocks was a perfectly innocent affair. But the facts of this case show that this going for tobacco and bullocks was a mere pretence, because the tobacco and bullocks were never brought back to Karopadi; and viewed in that light, the expedition on a pretence of getting tobacco and bullocks cannot, I think, be said to have been an innocent affair.

64. For the sake of convenience I am dealing, as I said, with the important averments of the prosecution chronologically, and in this order I now come to the question 'Is it true that the 2nd accused is the Brahmin who went to Venkatramana's house after dark on the evening of Friday the 3rd August?' This is one of the most important questions in this case. If the prosecution could not establish that he is, their case must fail. Three prosecution witnesses Gauramma, and Sarasvati and Honnakka positively depose he is. It is quite impossible they could be mistaken as to identity. The man had been talking to them or in their presence for a considerable time and he had meals at the house. They had no lack of opportunity of becoming thoroughly acquainted with the man's features. They did not show the remotest sign of perjuring themselves when they deposed that the 2nd accused was the man who came to their house. Gauramma, it is true, was stated in a report to the Magistrate by Constable Aitu to have said that she could not identify the Brahmin, but Aitu has explained that that was a mistake and there is not the slightest doubt I think that it was. The evidence that Gauramma knew the 2nd accused before that Friday was I thought worthless, and that she did, receives no corroboration from the inquest-report, in which though the 2nd accused's name is mentioned it is said he has to be identified as the man who went to the house. Gauramma has no reason for falsely charging the 2nd accused, nor have Sarasvati or Honnakka. If he were not the man, there seems no reason for their saying or ever having said he was. I think the evidence of the 2nd accused's identity with the strange Brahmin who came to the house establishes the point beyond doubt.

65. In connection with the question dealt with in the foregoing paragraph, there is the almost equally important question whether the 2nd accused represented that he had come from Sarasvati's husband's house and whether that representation was false. On these points also I think there can be no doubt. There is no reason to doubt the evidence of Gauramma, Sarasvati and Honnakka that he made that representation and he must have made some such excuse as that to be allowed to remain in the house and to be given meals and to sleep near Venkatramana as if he were a friend. I examined as Court witnesses Sarasvati's husband and her husband's brother and they denied that they sent the accused for Sarasvati or that they knew of him or anyone else having been sent or that they even knew the accused. There is no reason not to accept their evidence. It is, I think, beyond

doubt that the 2nd accused did make the representation in question and that it was false.

66. With regard to the alleged circumstances of the actual murder itself, there is only, as direct evidence, the evidence of the approvers, and whether it is to be believed or how far it is to be believed rests on the inherent probability of the various parts of the story taken in conjunction with certain surrounding circumstances. The evidence of the approvers was given in several points with extraordinary vividness, in fact with a vividness that left on my mind at the time the impression—rather a conviction—that they, or the 1st approver at any rate, took a more active part in the murder than they represented. I shall subsequently have to recur to this point in the case. I would now point out how various circumstances in the case almost conclusively show that Venkatramana must have been murdered in some such way as the approvers have deposed to. I have already discussed the treachery of the 2nd accused. That clearly points to foul play. The last thing that was seen of Venkataramana by an independent witness was by his mother Gauramma when she was bolting the outer door of the house. He was then lying on a pyal at the end of the veranda and was talking to the 2nd accused who was lying on the floor near him. Gauramma then went to the room where Sarasvati and Honnakka were and all slept. During the night *they heard nothing*. The fact that they heard nothing during the night taken in connection with other circumstances which show that Venkatramana was probably strangled where he lay, shows that he must have been completely and suddenly overpowered, and that could only have been done by a number of men. He must have been suddenly pounced on, gagged, overpowered and strangled; for, if he had called out or struggled, he would probably have been heard by his mother, sister or wife in their room. The fact that a *Pandavu* was found on the pyal where he lay, and the fact that his bedding was found on the floor close to the pyal, where he slept, apparently trampled on, point to Venkatramana's having met a violent death; and the fact that there were no marks of blood on the pyal point to his death having been probably caused by strangulation. This is corroborated by the fact that Venkataramana's body bore no marks of having been stabbed or of death having been caused in any such way, but the state of the body indicated that he had been strangled. Therefore, even apart from the approvers' evidence, the surrounding facts clearly indicate strangulation as the cause of death, and it is equally clear that there must have been a sufficient number of men engaged in the murder to have at once completely overcome Venkatramana. Before leaving this part of the case, namely the consideration of the probable, actual circumstances of the murder, there is a matter of great importance in connection with the part the approvers say the 3rd accused took in the actual murder, that I had better at once deal with. According to the approvers, there were besides the 1st accused, who was holding a cloth to Venkatramana's mouth and nose, three men holding Venkatramana. It is hardly possible that less than 3 could have overpowered him so completely as he evidently was overpowered. He was so completely overpowered that he could neither call out nor struggle to any extent. If he had called out he would probably have been heard by his mother, sister and wife in their room. If he had made a violent struggle he would have been heard too probably, and the state of the bedding as found next morning showed that there was no violent struggle and probably none at all. The bedding seemed to have been dragged off the pyal and trampled on on the floor. It is clear that Venkatramana was pounced on, gagged and completely overpowered. I doubt if he could have been so completely overpowered by 3 men. The strong probability

is that there were more than 3 men holding him, because one or two men would be wanted to hold his hands. These considerations lead to the same opinion that I formed from the vividness of the evidence of the approvers, namely, that they were not passive spectators of the murder. There is another point in the case that would tend to the same conclusion. According to the approvers, Venkatramana's arms were secured by Biranna's feet being placed on the upper arms. This is in itself highly improbable and is in conflict with the medical evidence; for, when great violence is used to any part of the flesh, there is, it seems, disproportionate decomposition at that place, but there was no disproportionate decomposition in the case of the upper arms of Venkatramana. The conclusion I draw is that the approvers in all probability took an active part in the murder, and there seems to me to be a possibility that the part they assign to Biranna was either not played at all or was played by one of the approvers themselves.

67. In defence it was contended that it cannot be believed that the party or the part of the party that had to get to Karopadi would have gone by the way the approvers say they did. A reference to the map of the Kassergode Taluk that has been filed in this case will show that the route the approvers say they and the 4th accused took to get to Karopadi—namely, from Manjalkeri to the main road and thence to the south along it for some distance and then to the Kandel ferry—was not so much longer than *via* the Kandige ferry by which it was argued they would naturally have returned. Besides, part of the party were, according to the prosecution, making for Kassergode, and the only person who could have known the way to Kandige was Biranna the 3rd accused, and probably he wanted to get home as soon as he could himself; so that, there does not appear to me to be anything improbable in the approvers' evidence that they all (except Biranna who stopped at his own house adjoining the road) went together to Hamed Kunhi's house and then separated. This man, Hamed Kunhi, the 9th prosecution witness, is probably a desperate character, but that would have been exactly the man whose assistance the 1st accused would have sought and his evidence in this case was I thought unshaken. His story is, as I have already stated, that he took the two approvers and 4th accused to the Kandel ferry and ferried them over the river shortly after sunrise on Saturday the 4th August.

68. Early in the morning of Saturday the 4th August, Gauramma rose, opened the room-door and found the outer door of the 'Dalli Chavadi' (enclosed veranda) which she had bolted over-night open. She went to the pyal where her son had slept and the state of his bedding at once aroused her suspicions. She called out to her daughter, and Sarasvati then came out and she too was alarmed, and their alarm was increased by seeing a long pole lying in the yard.

69. During the course of this trial, I sent for the bedding that had been used by Venkatramana and the bedding that had been used by the 2nd accused. My object in doing so was to see how far the state of the bedding as found the next morning corroborated or conflicted with the account the approvers gave of the way the murder was committed. Gauramma and Sarasvati arranged in Court the bedding in the way so far as they recollected that they found it. The 2nd accused's bedding had not been disturbed, but Venkatramana's, in place of being on the pyal, was just below the pyal in a way that suggested its having been pulled off the pyal. There was some difference in the way the witnesses arranged the bedding as to represent the way they thought they found it. According to Gauramma, it was crumpled up and apparently trampled on. Sarasvati represented

the mat as having been folded and trampled on. The only possible reason for the discrepancy is that either one or other forgot exactly how she found the bedding, or that one of them, Gauramma probably, turned over the mat and then gave it an appearance of having been folded over.

70. Gauramma and Sarasvati at once commenced to search for Venkatramana. Sarasvati went to one or two huts near their house and afterwards on the advice of a neighbour, she went to her grand-mother Sarasamma's at the Kudukoli house and there gave an alarm, in consequence of which one of the men of the Kudukoli house,—Kudukoli Shenkara Bhatta, the 13th prosecution witness—at once went for Venkatramana's father-in-law.

71. Meantime, Gauramma and Venkatramana's wife Honnakka after failing to get any information near their house went, as they deposed, towards the river, and on the way they say they found deceased's Langoti. A reference to the plan Exhibit C is necessary to understand this part of the case. They went as far, it would appear, as the place marked 17 on the plan and then went south going to the houses shown as 19 and 23 on the plan. They then went to the river and along the river bank, and, as they depose, they saw in the Dasanna field (No. 20 in the plan Exhibit C) the track of something having been dragged across the field. Gauramma deposes that she went into the field and examined the track. On the way back to the Manjalkeri house, the marks of something having fallen into another field were seen. From their house they went to the Kudukoli house. After they got there, Kudukoli Shankara Bhatta returned with Venkatramana's father-in-law Kunchinadka Sham Bhatta. Both of these men set out for the Potail's and got a report written for him and signed by him at the Kurnam's house to which the Potail was brought. This report, Exhibit F, they took to the Perdal Police Station, reaching the Station at about 6 or 7 P. M., and got back to their house the next morning, having slept for the night at a village on the way back.

It is contended in defence that Gauramma did not really find the deceased's Langoti on the way to the river, and that she did not really see the track across the Dasanna field. In the 1st report, Exhibit F, sent by the Potail to the Police which Kudukoli Shankara Bhatta and Venkatramana's father-in-law took to the Perdal Station on the 4th August, nothing is said about the Langoti or about the track across the Dasanna field, and it is most probable that Gauramma said nothing about these matters to Shankara Bhatta or Kunchindka Sham Bhatta. Gauramma's evidence on these points is thus not corroborated by a statement made shortly after the time she says she found the Langoti and saw the track. But in the circumstances of this case little weight can be given to such an omission. By the time she got to Kudukoli house, she was probably physically much exhausted and was in a state of intense alarm and grief. She lay on the floor, according to the evidence, sobbing. It is to be noted that nothing is said in the first report even about the pole which Sarasvati and Gauramma undoubtedly saw in the yard.

Another omission that is relied on by the defence is that the Langoti is not shown in the list of property prepared on the 4th August by Constable Aitu. Constable Aitu deposed that he forgot it. I think this is probably the case.

That Gauramma went to the river is, however, corroborated by the fact, about which there is no doubt, that she did not go to the Kudukoli house along with Sarasvati, but only arrived at the Kudukoli house after Sarasvati got there.

The Potail deposes he saw the track on the 5th August and so does Constable Aitu, and that the track was really seen there is borne out by the fact that persons were sent to search the river. Indeed, the conduct of every one shows they had no doubt the body was to be found in the river.

The defence suggestion is that the track across the Dasanna field is part of false evidence of this case. But why should any one have made the track as false evidence? Venkatramana's friends could not have foreseen that the body would be found in the river. If it had not been for the track across the Dasanna field, it is not likely that the river would have been *the one* place that was searched to find the body.

In this connection I must refer to the delay there was in Kudukoli Shankara Bhatta and Kunchinadka Sham Bhatta getting to the Perdal Police Station and to the delay there was in the Potail arriving at the Manjalkeri house. Kunchinadka Sham Bhatta and Kudukoli Shankara Bhatta only got to the Perdal Station at 6 or 7 P. M., on the 4th August. The distance from Manjalkeri to Perdal is said to be only some 6 miles, but it must be recollected that the country about there is very hilly and the rivers were in flood. Constable Aitu, though he left the Perdal Station early on the morning of the 5th, did not get to Kudukoli, he deposes, on his way to Manjalkeri till about 12.30 P. M. The Potail explains that after he got the report written at the Karnam's, he went back to his house and dressed and then started for Manjalkeri but only got as far as Nalka, where he stopped for the night and next morning after taking Conjee he went to Kudukoli. I do not think that any unfavorable inferences can be drawn from these delays. The Potail is an oldish and slow-moving man, and probably he was not anxious to take any responsibility on himself or to be at the Manjalkeri house before the Police arrived. After Sarasvati's arrival at the Kudukoli house, Kudukoli Shankara Bhatta went to Kunchinadka Sham Bhatta's house and then back again and it was probably not far from noon when he started for the Potail's. He had to bring the Potail to the Karnam's and he then had to get the report written and then to go to Perdal. It is not to be surprised at that he did not get there till about 6 or 7. I see no reason to suppose that there was intentional delay to allow evidence to be concocted.

I consider that it is put beyond reasonable doubt that Gauramma and Honnakka saw the track across the Dasanna field in the morning of the 4th August, and that they found Venkatramana's Langoti on the way to the river.

72. There is not the least doubt that on the evening of the 8th August almost at sunset, Kudukoli Shankra Bhatta and Keshava Shastri found a body in the river near Kandel about 8 or 9 miles down the river from Manjalkeri. These two men depose that it was Venkatramana's body. Both knew him well and Kudukoli Shankra Bhatta intimately, for he had long lived at the Kudukoli house. It is not only that these men depose that the body was Venkatramana's, and that Keshava Shastri deposed that as soon as they had by the aid of a bamboo dragged the body towards them, he recognised that it was Venkatramana's, and that there could be no doubt about it, but their depositions receive corroboration of the strongest possible description from their conduct. They took the body from the river, carried it up the bank and sat watching it all that monsoon night till next morning, when as soon as it was light one of them, Keshava Shastri, went off to Enmakaje. It is impossible, I think, for a moment to suppose that if these two young Brahmins had not been certain that the body was Venkatramana's, they would have acted in that way.

Besides these two witnesses Gauramma and Sarasvati, Venkatramana's mother and sister, depose that the body was Venkatramana's. They saw the body 24 or almost 24 hours after Kudukoli Shankra Bhatta and Keshava Shastri first saw it, and in these 24 hours the body had extensively decomposed. As long as the body was in the water of the river decomposition would have been comparatively slow, but as soon as it was put on the bank and was exposed to the air decomposition would have been rapid. Notwithstanding the state of decomposition the body was in, these women say they identified the body. I do not think there is any reason to discredit them. Sarasvati identified the body chiefly by the form of the chest. His mother treated with unintentional scorn the suggestion that she could not recognise the son she had brought up, and no doubt she knew the form of every limb.

The body was taken down the river in a boat to Kumbla on the coast and after examination by the Civil Apothecary of Kassergode, who had been sent for to Kumbla, the body was buried not burnt. Keshava Shastri who had gone to Kumbla explained why this was done. His explanation was that as Venkatramana had been murdered and before the body could be burnt certain ceremonies should, according to their customs, be performed and should be performed by the 'Santanagars'. Venkatramana's 'Santanagars' were not at Kumbla and were many miles away and therefore the body was buried. This explanation is, I think, correct. It is true that this explanation was not given in the lower Court; and in the arguments in this case, much stress was laid on the fact that Keshava Shastri was only examined as the 16th prosecution witness. He was, however, examined in the ordinary course in which he would be examined in the way the evidence in this case was laid before the Court. Each witness was, as a rule examined in the order in which he first appeared on the scene. It is to be regretted that the explanation was not brought out in the lower Court, but I think the explanation given in this Court is correct. I should here say that the prosecution in this case was, I think, conducted with a fairness and straightforwardness that reflects much credit on those responsible for the conduct of the prosecution in this Court, and I have no doubt that if any application had been made to have the evidence on this point put before the Court at once the request would have been complied with.

The evidence of the identification of the body is in my opinion overwhelming.

73. The medical evidence in this case to which reference has already been made is not important. It appears that when violence is used to any part of the flesh, that part decomposes more rapidly than it otherwise would. There was disproportionate decomposition on the neck and centre part of the chest when the Civil Apothecary examined Venkatramana's body at Kumbla on the 11th August, and this indicated strangulation as the cause of death. There were no indications of violence of any other kind. No bones were fractured.

74. As I have already said, the evidence that 1st accused was in Kassergode on Friday the 3rd August, I can only characterize as worthless. Undoubtedly, the stamp paper on which Exhibit VIII was written was bought in his name at Kassergode on Friday evening, but the Stamp Vendor, the 2nd defence witness, cannot say who it was who bought it.

75. Exhibit VIII was undoubtedly presented for registration by 1st accused Krishna Bhatta at Kassergode at about 2 P. M. on Saturday the 4th August. The document sets out in the opening words of the body of the document that it was "executed on 3rd August 1894." There is no evidence that it was executed on that date. The attesting witness Bekal Subraya denies it, so does the writer of the document Stanik Naraina, and Aitu Baidya the 18th prosecution witness says he

attested a bond for 1st accused (no doubt Exhibit VIII is the bond he alludes to) on Saturday and not on Friday. Thus, the two attesting witnesses and the writer of Exhibit VIII deny that it was executed on the 3rd August. Can the evidence of these three persons be false? Have all three of them turned traitors to the 1st accused? Subraya and Naraina made a statement to the Police on the 12th August, which totally differs from what they say now. If that story were true, why did they not adhere to it? It was a very simple story, and if true, it would have been much easier for them to have adhered to it than to have invented their present story, if that be an invention. In the case of a deliberately planned murder such as Venkatramana's undoubtedly was, it is not in the least surprising to find preparations made to try to establish an *alibi*. That is exactly what was to be expected. It may be that the attesting witnesses of Exhibit VIII and possibly the writer knew that a document with a false date was being got up. But if there is anything in the supposition, it is probable that they were not prepared to support a false *alibi* in a case so serious as this. On the 12th August when the writer and Subraya were examined by the Constable they were in a state of anxiety, and they were in a state of anxiety when they were examined here. If, as I think, these men are to be trusted when they say that the 1st accused did not execute the document on Friday, there are two possibilities—either that a third person executed the document forging 1st accused's name, or that the story the attesting witnesses and the writer depose to is true. Which of these may be true it is not necessary to decide. What is important is to decide whether it can be believed that 1st accused did *not* execute the document on Friday. This is, I think, one of the most difficult points to decide in this case. My opinion is that it *cannot* be that, if 1st accused had executed the document on Friday, these three witnesses would not be ready to depose he did. I do not know what reason they could possibly have in giving false evidence against the 1st accused on the point. The story that Narayana and Subraya and Aitu tell that Exhibit VIII and Exhibit XLVII, the gun-license application of the 1st accused, were signed on the 4th and not on the 3rd is corroborated by the evidence of Mr. Sequeira, the then Tahsildar of Kassergode, the 7th Court witness; for, he received the gun-license petition, Exhibit XLVII, by post on the 5th August. His initials and the date and the letters "B. P.", meaning "by post", appear on the petition. In the ordinary course of business the petition must have been posted in Kassergode on the 4th. If it had been posted on the 3rd, the Tahsildar would in the ordinary course of business have received it on the 4th.

76. The line of defence that Venkatramana's murder (if he were murdered at all) was the work of some of his father's family or of some one on their behalf, I have already referred to. It is not supported by any evidence. There is, so far as I saw, no ground even for in any way *suspecting* that any member of that family had anything to say to the murder. If Venkatramana's father-in-law is to be believed—and I think he is to be relied on in that matter—Venkatramana's father's family were willing to give up to Venkatramana his property. There is no reason to suppose that the family would have denied Venkatramana his clear and undoubted rights.

77. There was some evidence that the 1st accused was of good character but it was, I thought, of a worthless kind.

78. In the protracted trial that there has been in this case, extraordinary and, I may add, very able and very persistent efforts were made to shake the prosecution case, but I do not think that in any important point was the attack successful. The prosecution case remained, I considered, unshaken in every essential point. No part

of the case—from whether there was a murder at all down to the minutest detail—was left unassailed. But the result in my opinion was that the more the case was investigated, the clearer it appeared that the prosecution case as presented to this Court was in all essential parts perfectly reliable.

79. The case against the first accused is woven all through the evidence. It no doubt chiefly rests on the evidence of the two approvers. Their evidence, even standing alone, is I think very strong. It is, I think, as strong as the evidence of approvers can be. As I have already said, it is hardly, I think, within the limits of possibility that their story was invented or that they were merely telling a story that was taught to them. In point after point it is corroborated in its bearing against the 1st accused by evidence that there is no reason to set aside. Raya Shanbagha, Ammu, Subunji, Mohidin Sahib, Malikarjuna, and Hammed Kunhi all corroborate the approvers and implicate the 1st accused. It may be that some of these witnesses are not men on whom one would be inclined to put over-much confidence. But the general result of the whole evidence makes the case against 1st accused in my opinion very strong.

And apart from and in addition to the evidence that merely corroborates the approvers' evidence, the prosecution has in my opinion satisfactorily proved a strong motive against the 1st accused, namely, that Venkatramana was claiming the Bolubyle property. And in addition to that there is the evidence that centres round Exhibit VIII. There, there is a document dated the 3rd August and purporting to have been executed on that day by the 1st accused. The two attesting witnesses and the writer deny that it was executed on that day, and I think their evidence denying that is true. If so, the fact is important evidence against the 1st accused.

In my opinion the 1st accused is guilty of the offence of murder with which he is charged.

80. As to the 2nd accused that he was the man who went on Friday after dark to Venkatramana's house, I do not think is open to any doubt. I also consider that it is put beyond any doubt that he made a false representation as to the reason of his going to the house, and that owing to that false representation he was allowed to stop in the house. What stronger evidence to corroborate the approvers' evidence than this could there possibly be? There is also against him the evidence of Subunji and Hamed Kunhi, both of whose evidence was, I thought, unshaken.

I do not think there can be any doubt about the 2nd accused's guilt.

81. With regard to the 3rd accused Biranna, there is not the same amount of corroborating evidence that there is against the 1st and 2nd accused. The corroborating evidence in his case consists in his having a wound on his side, which could have been caused in the way the approvers say it was, and in his having shown a cocoanut tree near the Manjalkeri house from a green leaf-stalk, of which a *Pandavu* had been taken, and thus practically making a confession. These facts put it, I think, beyond any reasonable doubt that the approvers have not substituted Biranna for someone else. It may be said that this is not much to act on. It is, I think, technically sufficient and in my opinion there is not the least doubt he took part in the murder.

With regard to the injury that Birmanna had, it was argued that the injury would in all probability have been on the right and not on the left side of the man who fell, because he would probably have slipped as he was advancing along the path and so would have had his right side injured. But what the approvers

say is that the body was put down and Biranna put a cloth round the neck and as he was about to pull the body down the slope, he slipped and fell; so that, under these circumstances, the injury would naturally have been on the left side. It should be here explained that the slope down which, according to the approvers, the body was about to be pulled when Biranna slipped, and down which it was eventually pulled, was very narrow. The Inspector described it was so narrow that a man could hardly stand with his two feet together on the slope. This fact will explain why the body was pulled and not carried down the slope. It would have been impossible almost to have carried the body down that narrow slope.

According to the 10th prosecution witness Mohidin Sahib, the 3rd accused was limping on the morning after the murder. It is argued that this witness cannot be believed, for if Biranna had taken part in the murder, he would have had money to pay the witness's account. The approvers did not say he was paid money, though why he got none does not appear. It seems to me that it may be accounted for by the supposition that he did not take the prominent part in the affairs that the approvers say he did, and possibly he was already under some obligation to 1st accused.

Biranna was undoubtedly not a prime mover in this murder. This must be admitted fully, and while I can have no doubt that he was engaged in the murder, I discredit the story that he took the prominent part in the murder that the approvers say he did. That particular part of their story is, I must point out, absolutely uncorroborated. I feel certain that the approvers had more to say to the actual murder than they admit. This was the opinion I formed at the time of their examination, chiefly from the vividness of part of their account of what happened, and the view is confirmed by a number of other considerations to which I have already alluded. If I am right in my surmise, it may be that it was Biranna—and not they—who was taking a minor part in the commission of the crime; at any rate it would, be the safer course I think to assume so. Looking at the case as a whole, we would say that his being there was probably due to his local knowledge of the place rather than to his being wanted to help in the actual murder, for which men were brought all the way from Karopadi.

82. As to the *exact* part the 4th accused took in the affair, there is only the evidence of the approvers and they say he was outside in the yard. They also say that they, and presumably the 4th accused, were under the impression that the boy was only to be abducted. There can hardly be a doubt that the approvers have in this matter suppressed part of the truth, and that both they and the 4th accused knew very well what was intended. But there is no evidence of it and the only offence with which the 4th accused is chargeable is an offence under Section 365 I. P. C.

In his case Raya Shanbhaga, Subunji and Hamed Kunhi are the three witnesses that corroborate the approvers. I think, at any rate, the evidence of the two last may be relied on, and I do not on a full consideration of the case entertain any doubt about his guilt.

83. The first accused Krishna Bhatta is convicted under Section 302 I. P. C. of the offence with which he is charged, and is sentenced (subject to the approval of the High Court) to death and it is directed that he be hanged by the neck till he be dead.

84. The 2nd accused Naraina Bhatta is convicted under Section 302 I. P. C. of the offence with which he is charged and is sentenced (subject to the approval of the High Court) to death and it is directed that he be hanged by the neck till he be dead.

85. The 3rd accused Biranna is convicted under Section 302 I. P. C. of the offence with which he is charged and he is sentenced to transportation for life.

86. The 4th accused Madana is acquitted of murder and is convicted under Section 365 I. P. C. of the offence with which he is charged, and he is sentenced to 7 years' rigorous imprisonment.

Mangalore,
14th March 1895.

(Signed) **W. C. Holmes,**

Sessions Judge.

Note.—The 1st and 2nd accused were informed that 7 days was the time allowed for appeal.

Mangalore,
14th March 1895.

(Signed) **W. C. Holmes,**

Sessions Judge.

Exd. U. Narasinga Rau.

(True copy).

Abdul Rahiman Sarishtedar

To,
The keeper of the District Jail for delivery to the 2nd prisoner Naraina Bhatta 22. 3. 95

IN THE COURT OF SESSIONS, SOUTH CANARA.

SESSION CASE No. 38 OF 1894.

QUEEN-EMPRESS *Vs.* 1. Krishna Bhatta.
2. Naraina Bhatta.
3. Biranna.
4. Madana.

Copy of Judgment.

5
2
4992

No. 366

District Jail Office
Mangalore 21st October 1895

From

Surgeon Captain C. Donovan
Superintendent of Dt. Jail
Mangalore

To

The Chief Secretary to Government
Fort Saint George.

Sir,

With reference to Rule 1018 c of the Jail code, I have the honor to forward herewith an appeal for mercy (with the marginal papers) on behalf of Naraina Batta Sentenced to suffer Death in Session case No. 38/94

1. Judgment in Session case No. 38/94 dated 14.3.95
2. High courts judgment in ref trial No. 27/95 d/23.7.95
3. Nominal roll dated 21.10.95.

With reference to Rule 1020 Jail code I have the honor to state that the prisoner will not be executed until a definite reply is received from Government.

I have the honor to be,

Sir,

Your most obdt Servt

C. Donovan

Surg. Capt. C.C.
Superintendent of Jail

Appeal for mercy.

CURRENT NO. 4992

From

Jud

The Superintendent of Jail

Mangalore

To

The Chief Secy to Govt

Fort St George

Dated 21st
Desp'd 21st
Rec'd 24th } October 1895

No. 306

Encls: 4.

Ref: Jail Code Rule 1018 C

SECRETARIAT
24 OCT. 1895
GOVERNMENT OF MADRAS

Forwards appeal for mercy on behalf of convict No. 9992 Narayana Batta sentenced to death in S. Canara Sessions case No. 38/94.

MR 3.24/10

Forwarded

883: 29. 4. 95
861: 26. 4. 95
G01259: 24-5-95 to G

Current Number. 4992/95

I feel no doubt that Venkatramana was murdered & that the body found in the river was his body. The only question is Who murdered him? The 1st 3rd & 4th Pws have been let off by the M.J. I am not necessary to consider their case — As to the latter, I consider that the approvers' story is substantially true & has been sufficiently corroborated. I would dismiss the petition —

JM
25/10/95

FOR ORDERS.

APPEAL for mercy from Convict No. 9992 Narayana Shatta under sentence of death in South Canara Sessions Case No. 38 of 1894, which sentence has been confirmed by the High Court.

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

J
24-10-95

The case is full of uncertainties because of the tainted character of the evidence of the approvers who certainly shared in a premeditated murder, & the probability that they are not telling the truth in all respects, but there is enough to justify a decision in the case of appellant. There can be no doubt, I think, as to some facts. The body, recognized positively as it was within 5 days by a mother, sister, wife and two friends was undoubtedly the body of Venkatramana, & the circumstances show (apart from the evidence of the approvers) that he was probably

MR 24-10-95

glad in his hd. I see no
s ar for disturbing the evidence
of the mother wife & sister that
appellant was the last person
seen with the deceased & was in
a position to do the deed. The
disappearance after the deed
& his disappearance has not
been accounted for. There
is thus ample corroboration
of the direct evidence of
the approver in his case at
all events. There was no
possible motive (though it
was not a strong one) in his
co-labourership to the 1st prisr,
& through justice has failed in
the case of the 1st prisr, that
motive is none the less proved.
The work of the police is taken up
with a recapitulation of the
I. B's evidence, but although
there doubts and careful
consideration, I think they
did be overruled in the case
of appellant. After a most
careful inquiry the Dt. Judge,
& Messrs Shepherd and
Subramania Iyer are all
satisfied of his guilt.

JG
26/10/95

PETITION FOR MERCY.

VERY EMERGENT.

Hon'ble Member and Circulation.

(FOR ORDERS.)

The case is undoubtedly one which presents elements of uncertainty — but if we are to believe the evidence of the murdered man's sister as to the presence of the petitioner on the fatal night of the house on the fatal night: there can be no doubt of his guilt. I believe it to be true, and would therefore dismiss the petition —

W
27 Oct.

C 24/10

[J. 16.]
1,000—5-2-94.

Judicial Department.

CHIEF SECRETARIAT MADRAS.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following letter, dated 21 Oct. 95, No 306, from the Superintendent of the S. Jail at Cannanore, forwarding petition from Convict 9992 Narayana Bhatta under sentence of death in S. Canara Session Case No. 38 of 1894, 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, 28th October 1895, No. 2185

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 9992 Narayana Bhatta

2. The law will take its course.

~~(True Extract.)~~ (From notes)

D
28/10/95
Chief Secretary.

28/10/95

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

Sent 28/10/95 Copies sent 28/10.

FORM No. 53.

Nominal Roll of Convict No. 9992 Narayana Batta

Crime.	Sentence.	Date of Sentence.	Adjudicating Court.	Present Age.	State of Health.	Conduct in Jail.	Result of the Appeal to Appellate Court	Number of previous convictions if any and remarks.
Murder	Transp. for Death	14th March 1895	Session Court South Canara	45 yrs	Good	Good	Sentence confirmed by the High Court in Cr. trial No. 27/95	Nil

Jail Office,
Mangalore
25th Octr 1895.

Donovan Supt. ca[illegible]
Superintendent of District Jail.

Rules 701 and 704.

5,000—9-94.

Nominal Roll
of convict N. 9992
Naraina Batta

5
Jun
1
4992

given for copying ——
copied ——
examined ——
signed ——
189.

GAIN G.O., No. DATED
189

ENT No.

ENCE TO G. No.

ORDER OF GOVERNMENT	A	A	A	A	A	A	A	
LETTER OF GOVERNMENT.								
DITTO WITH DITTO.								
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.								

N.B.—
A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.