

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 2285.

Dated 7th Nov 1895.

INDEXED.

[Despatch Abstract.]

CASE OF CONCURRENT SENTENCE OF TRANSPORTATION FOR LIFE.
Remitting the sentence of transportation for life passed
on convict Sengan in Calendar Case No.9 of 1895 on the file
of the Sessions Court of Salem for murdering his female child
Venkati.

mut

BACK PAPERS.

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

FURTHER PAPERS.

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

Judicial Dept
CURRENT NO. 3985

1260 & 8-6-95 reg.
+ papers marked in it

From

THE GOVERNMENT PLRADER,
Madras.

From Trans N. 1976
24-8-95
The Govt Pleader is requested
to return the warrant forwarded
with S.O. 8. June 95, No. 1210.
Jnd.

Dated

19-8-95

Recd.

21-8-95

CHIEF SECRETARY
24/8/1895
GOVERNMENT OF MADRAS

ENCLOSURE.

nil

Reporting the result in
C.R. Case No 265 of
1895 on the file of the
High Court.

(Has the file appeared to
you?)
22/8/95.
To the Govt Pleader. Dec 24/8/95

Please send the same
appearing
22/8/95

Written to Dico
579
No petition seems to
have been received
from the Committee of the
2579

Government Pleader's Office,

High Court,

MADRAS, 19th August 1895.

No. 761.

From

E. B. POWELL, Esq.,

GOVERNMENT PLEADER,

Madras,

To

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

SIR,

With reference to the Proceedings of Government dated 8th June 1895, N^o 1210 Judicial, I have the honor to state that Criminal Revision Case N^o 250 of 1895, on the file of the High Court, came on for hearing on the 15th instant. The High Court refused to interfere as the Prisoners' appeal has already been disposed of and the objection was not then taken.

I have the honor to be,

Sir,

Yours most obedt Servt.,

W. Brown

Government Pleader.

CURRENT NO. 4440

Just Dyke

12-1976-95
+ papers marked
therein.

From
THE GOVERNMENT PLEADER,
Madras.

Date 16 9. 95
Recd 18 SEP 1895
Ref
GOVERNMENT OF MADRAS
No. 895

ENCLOSURE. /

Returning the exorant
in Taluk Sess. Case No 9
of 1895.

*received
30/9/95*

Ref
Please see whether any
appeal has been received
from this Criminal (Sessan)
sentenced to transportation
for life in Taluk Sessan case
No 9 of 95) & put up to S.S.

Ref 550/95
therein 2649/95

Toarra. Kura.

To,

The Superintendent of the Central Jail
at Salem.

Whereas at the Sessions held before me
on the 17th and 18th day of January 1895, Seupan
Prisoner in case No. 9 of the Calendar for the
said year was found guilty of the offences specified
in the Charge, namely, (1) that he murdered his wife
by cutting her with a bill-hook and (2) that he
murdered his female child, Venkati, by cutting
her with a bill-hook and that he has there-
committed offences punishable under Sect.
302 of the Indian Penal Code, and was sen-
tenced to be punished with transportation for
the term of his life for each murder, the sen-
tences to run concurrently.

This is to authorize and require you to re-
ceive the said prisoners into your custody in the
said Jail, together with this Warrant, and him to
keep as by law is required, until he shall be
delivered over by you to the proper authority
and custody for the purpose of his undergoing
the punishment of transportation under the
aforesaid sentences.

Given under my hand and the Seal of
Court at Salem, this 21st day of January 1895.

(Signed) T. M. Horsfall
J. Session Judge

(True Copy)

Salem Court
1895

Wm Standen
Supt. of Jail



Government Pleader's Office,

HIGH COURT,

Madras, 16th September 1895.

No. 295

From

E. B. POWELL, Esq.,

GOVERNMENT PLEADER,

Madras,

To

THE Chief Secretary of Government,
Colacammund.

SIR,

In response to your memorandum
No. 1976 just dated the 24th August 1895,
I have the honor to return the warrant
in Salem Session Case No. 9 1895 as desired
therein.

I have the honor to be
Sir
Your most obedt. Servt.

W. B. Powell

Govt. Pleader

HIGH COURT

8th 1895

APPELLATE SIDE

Salem Court Bail

Copy of Warrant in

Salem Session Case

No. 9 of 1895

2 to 196

19/8

19/8

IN THE COURT OF SESSION OF THE
SALEM DIVISION.

The Twenty-first day of January,
One thousand eight hundred and ninety-five.

PRESENT :—

T. M. HORSFALL ESQUIRE, Barrister-at-law, Ag. Sessions Judge.

JUDGMENT IN SESSIONS CASE No.9 OF 1895.

P. R. C. No.2 of 1894,

Committed by the 2nd class Magistrate of Krishnagiri.

The Queen-Empress of india v. { Sengan.
Defended by Mr. D. B. Tirumala Row,
Pleader appointed by Court.

Offence 2 counts. Murders, sec. 302, I. P. C.

Opinion of Assessors { On the first count.
1st a Brahmin. Guilty of culpable homicide not
2nd a Chetti. amounting to murder.
On the second count.
Guilty of murder.

Finding of Judge Guilty of murder on both counts.

Sentence Transportation for life for each murder, the sentences to run concurrently.

The prosecution makes out the following story. In the village of Maharajakadai *alias* Anganamalai, 10 miles from Krishnagiri, there lived a low caste family consisting of husband (prisoner) wife, their children (a boy of 8 and a girl of 8 or 9 months) and the wife's brother (1st Prosecution witness). Latter has for some years past been under the protection of prisoner and generally sleeps in prisoner's cook room which is separated by a lane from prisoner's house proper (vide sketch E). The wife has for some time past been unfaithful to her husband, having certainly one and possibly two paramours, of whom the certain one is called Kuppasari. Prisoner had reprimanded and reproached his wife, but to no purpose.

2. On the evening of the 9th December last the toty of another village (4th Prosecution witness) happened to go to Prisoner's village, and begged food in various houses, lastly in prisoner's house. While he was there with 1st Prosecution witness, prisoner, and the latter's wife, the abovesaid Kuppasari came up and said to prisoner that a certain Munisami wanted prisoner. [The prosecution theory is that this was merely a pretence to get prisoner out of the way]. But prisoner angrily refused to go at Kuppasari's beck and call.

3. That night when 1st Prosecution witness was fast asleep with prisoner's boy of 8 in the cook room he was waked by his brother-in-law the prisoner, who handed a small bundle of jewels to him and said: "Live on these". 1st Prosecution witness asked him what he meant. Prisoner said "I have killed my wife and the baby". 1st Prosecution witness was so much horrified and alarmed that he took up the boy and lay down in another house; and at dawn he fled with the boy into the fields two miles away.

4. Early in the morning prisoner made a bundle of the two cloths he was wearing and threw it down in front of a neighbour (3rd Prosecution witness) who was sweeping her house. Prisoner's father (2nd Prosecution witness) shortly after passed by his son's house and noticing that it was chained up and unswept he peeped in and saw just inside the doorway the mangled corpse of his little grand child lying on the leg of its mother and blood all about. Terrified at this spectacle he shut the door again and came away and passed 3rd Prosecution witness' house. 3rd Prosecution witness said: "Your son has left cloths here and has run away". Then the 2nd Prosecution witness took up the bundle and put it in the prisoner's cook room and went away—as he says—to ease himself. His other object was probably to get away from the spot anyhow.

5. That morning at 6/30 when the Station House Officer (6th Prosecution witness) was at the Station (which is in the same village) he heard that there has been a murder in prisoner's house. The Station House Officer at once went to the place and on his way met the Village Munsif (5th Prosecution witness). They both went to the house. Outside the door, which was chained, was a bloody foot print pointing North (the door faces East). Inside the door lay the corpse of prisoner's baby, lying on the right leg of its mother (vide sketch E). Her left leg was bent, and her head was nearly cut off. Just then prisoner passed among the crowd. He was called and admitted having "cut" his wife and child. He gave various details, which I did not allow in evidence. Then the Station House Officer asked him where the knife was. Prisoner said it was still in the house. Search was made and inside an inner partition were found two shanar knives of prisoner, one bloody and one not bloody.

6. Prisoner was then taken to the station and searched, the house being left shut and guarded. His langoti, nose, back and chest hair were found to be blood stained and a mazar (B) was drawn up to certify to these facts. This was attested by the Village Munsif, who had meantime been writing his report (A) at home. Prisoner was locked up; and the Station House Officer and Village Munsif (6th and 5th Prosecution witnesses) returned to the scene of offence. A mazar (C) was there prepared describing the bodies and their surroundings. The Station House Officer heard that prisoner had left his cloths in 3rd Prosecution witness' house. She was sent for and told her story. Prisoner's father (2nd Prosecution witness) was then sent for and examined and he showed where the cloths were in the cook-room, and

blood stains were found on both. By this time it was midday. Then 1st Prosecution witness appeared and told his story and said he would produce the jewels.

7. Then all sat and waited for the Tahsildar and Inspector to arrive from Krishnagiri. These Officers came in the evening at 5 or 5/30. They saw the place; and then the Tahsildar went off to a Local Fund School to examine the prisoner. He refused to allow any Police to come with him and examined prisoner inside the school, those present being some ryots and the Village Munsif (5th Prosecution witness) and prisoner's father (2nd Prosecution witness). Meantime the Police took another mazar (D) which described certain jewels on the corpses, facts which had been omitted in the earlier mazar. This was the 10th December about 7 or 8 hours after the murders. The 1st Prosecution witness produced the jewels to the Tahsildar. They are silver ornaments and belonged to his dead sister. The prisoner made a full confession to the Tahsildar Magistrate, which is not only in the form prescribed by law, but is prefaced by a record of the precautions additionally prescribed by the Government in this Presidency and always insisted upon by myself. The purport of this confession is this. He suspected his wife of intriguing with Kuppasari. Kuppasari the evening before had tried to inveigle prisoner out of the house (vide evidence of 1st and 4th Prosecution witnesses). At night prisoner lay down first in his cook room. At midnight he got up again and went to his house proper and found that his wife was whispering with a man. Prisoner went inside and got a knife, the man escaping, but being in the moonlight outside recognised as Kuppasari. Then prisoner held his wife by her hair and killed her and then cut away at her neck till he had nearly cut her head off in his rage. He had heard that Kuppasari had boasted that the baby was his and not prisoner's. Prisoner therefore in his rage then turned on the infant, the result (he imagined) of his wife's infidelity and cut it nearly to pieces, slashing, as he explains "at random" in the dark. Then he lay down for the rest of the night in the Southern partition and then surrendered himself.

8. That night the two corpses were sent in charge of a constable (7th Prosecution witness) to the Krishnagiri Hospital and were examined by the Apothecary. His evidence as taken in the Lower Court was simply read in this Court there being no question in the case that death was due to great violence with a cutting instrument. And his evidence shows, as above indicated, that the chief injury to the woman was a cut severing the spine and nearly cutting off the head, there being also other deep gashes. And the baby had been terribly gashed in various places. On the 26th December after the close of the prosecution evidence prisoner repeated his confession with some slight additional detail, and he said he had no witnesses and pleaded guilty.

9. In this Court prisoner has pleaded not guilty and has retracted his confessions. Before dealing with this defence I will discuss the prosecution evidence.

10. It is perhaps noteworthy that no one, not even prisoner, describes the deceased woman as having uttered any sound. The Magistrate did not question prisoner on the point. The explanation, it is to be supposed, is either that she was too much surprised and terrified to scream, or that the witnesses did not hear, or possibly that screaming was heard and deliberately ignored through fear. The 1st and 2nd Prosecution witnesses certainly gave me the impression that their chief care in the case was for themselves and their main emotion a fear lest they should be implicated. This kind of cowardice, as is well known, is of the commonest in the villages. In any case the absence of sound does not further the present defence theory, which is murder by one of deceased's paramours.

11. Then as regards the positive statements in the case there are no doubt a few discrepancies. Thus the old man (2nd Prosecution witness) will have it that the Police were present at the first confession to the Magistrate. This is explicitly denied by the Station House Officer and the Village Munsif, who both gave their evidence in a very satisfactory manner, and is opposed to the record made by the Magistrate and I do not believe it. The old man struck me as a rather stupid and confused witness and I made a note to that effect at the foot of his evidence. Thus again 3rd prosecution witness Muni says that she stayed in her house and was there when the Police came, whereas the better evidence is that she had to be fetched from the fields. Again the prisoner's first confession omits the matter of his handing the jewels in the night to 1st Prosecution witness; and it mentions another man as having been also present the evening before besides those mentioned by the witnesses. And it says he surrendered himself at the Station, whereas the prosecution evidence is that he was arrested near his own house.

12. It does not seem to me that these discrepancies are under the circumstances of importance, and the prisoner's present version seems to me wholly untenable. His case now is that he does not know who killed his wife and baby; that he came from the fields and found them lying dead; that he fondled the baby and went to the Station and complained to the Police and then to the Village Munsif; and that the Police beat him and tutored him, saying that if he implicated Kuppasari he would be let off. Now in the first place this version conflicts with the evidence of nearly all the prosecution witnesses, of whom the Village Munsif at any rate is admittedly a wholly disinterested person. It conflicts with the positive and quite uncontradicted testimony that it was prisoner himself who explained where his knife was. It conflicts with the version of 1st Prosecution witness as to the jewels, which is so specific and peculiar that it bears the impress of truth. It is practically irreconcilable with the murder of the baby. There is no reason why a paramour should slash it all over with a knife, whereas the prisoner has given clear and good reasons why he should have done so. It conflicts with the evidence of Station House Officer who was not even asked by the defence whether prisoner complained to him.

13. And it carries its own contradiction on its face. For let us pose for a moment that a man could be so easily tutored to accuse himself of nothing less than murder of his own wife and child, under the idea that in some mysterious way his confession would result in himself being let off and his rival prosecuted. How are we to understand prisoner repeating the confession 16 days later, after all the prosecution evidence had been recorded against him and not against any one else, and after the inducement had been thus shown to be wholly illusory? If there were any truth in prisoner's present story, then, or never, was the time for him to put it forward. The truth of course is that it is a hard and great matter for a man deliberately to accuse himself of murder before a Magistrate, and a very easy and simple matter to retract such confessions. In 38 days with low caste villagers of the type of prisoner the murder itself, and the remorse and hopelessness have had time to grow faint; and in their stead come advice to make a fight, hopefulness and forgetfulness of the victims.

14. I feel no doubt that prisoner's confessions contain a substantially true story. He is charged with two murders; first of his wife, and secondly of the child. As to the first charge the Assessors find there was grave provocation. With this I agree. But I cannot say it was sudden. According to his own account he strongly suspected his wife and practically laid a trap in order to catch her in the act. The killing of the child was also undoubtedly murder. The Law allows an alternative sentence, and I think the death sentence should accordingly be reserved for murders without any redeeming circumstances. In the present case there can be no question that prisoner was acting under a feeling of bitter resentment against his faithless wife, and it is possible that he really then believed the child was the result of her faithlessness and a further disgrace to himself. I sentence him to transportation for life for each murder, the sentences to run concurrently.

(Signed) T. M. HORSFALL,
Ag. Sessions Judge.

(True Copy)

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

Sessions Judge.

No. 783

Sessions Court,
15th October 1895.

4876

From,

W. J. Tate Esquire,
Sessions Judge,
Salem.

To,

The Ag. Under Secretary
to the Government of
Madras.

Sir,

As requested in your Official
Memorandum No. 2440 Judicial dated
12th Instant, I have the honor to forward
herewith a copy of the printed judgment
in Session Case No. 9 of 1895 on the file
of this Court.

I have the honor to be,

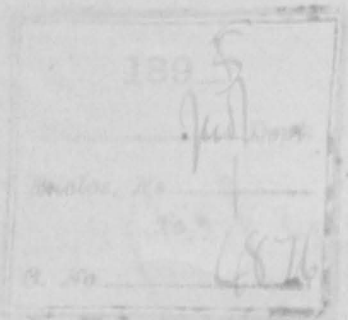
Sir,

Your most obedient servant,

W. J. Tate

Sessions Judge.

17.



C. No. 3985 & 4443 of 95

From,

The Sessions Judge,
Salem.

To,

The Ag. Under Secretary
to the Government
of Madras.

Dated 15th October 1895.

Despatched 15th 95

Received 16th Oct
Recd 18th Oct

No. 783

Enclosure - One.

16 OCT. 95

Subject.

Forwarding a copy of the
Judgment in Sessions Case
No. 9 of 1895.

MR 322/10
W. 3

(For order)

FOR ORDERS.

I should like to see the
judgment in the Sessions
Case before interfering in the
Convicts' behalf

RS
7/10/95

RS
9/10/95

In Salem Sessions Case No
9 of 95 the Sessions Judge
convicted the accused,

Guilty of double murder
and ^{withdrew upon} sentenced him to two
separate sentences of

transportation for life and
with a direction that
they should run concurrently

In April last the Super-
tend. of Prisons reported the
case for the views of Govt.
as the Sessions Judge's direction

appeared to be conflict with
the opinion of the Advocate
General recorded in S.O. of
2 April 95, No 677. The Govt.

thereupon instructed the
Govt. Pleader to move the
High Court to revise the ^{sentences}

* viz. That sentences of trans-
portation, like those of impris-
onment, cannot be
concurrent.

* S.O. of 8 June 95
No 1210

22.W

Sessims Judge's order. The High Court however has refused to interfere in the matter on the ground that this objection was not taken at the time the convict's appeal was disposed of. As the Sessions Judge from the copy of the warrant in (No 4443 it would appear that it was not the intention of the presiding Judge that the sentences should run consecutively and it is therefore for consideration whether the case is not one in which the prerogative of the Crown should be exercised and one of the sentences of transportation remitted under the provisions of Sec 401 C.C.P. The convict does not appear to have appealed to Court for mercy. - The reason assigned by the High Court for refusal to interfere is, it is submitted, a most extraordinary one; but for the power which Court can exercise one; but for the power which Court can exercise the prisoner would be condemned to 40 years transportation, whereas the Sessions Judge clearly intended toward only 20 years, the equivalent of one life sentence.

The a case of
Criminal Sentence
of transportation
for life

FOR ORDERS.

H. M. J. C.

H.
Memo No. 2440
of 12-10-95
The Sessions Judge of Salem is requested to forward, for reference ~~to the~~, a copy of the judgment in Sessions case No 3 of 95.

(7.0)
8
10.20.95

H.
10/10/95
To the Sessions Judge, Salem.
Dec/95
12/10

c. 7/10
12/10

Bright with the remission
be in a specific
case - one convict
trans back to
L. H.
30/10
CS.
The two murders were tried as
a case & the double sentence
was imposed in the words "I sentence
them to transp. for life for each
murder. the sentences to run con-
currently" - It is submitted that
the draft order may stand, but that
H.C. be so bound inasmuch as the
P.T.V.

DEPARTMENT

C. No. 3985, 4443 + 4876/95.

Sentence imposed on him "for murdering
his female ches. *terkati*," the
less heinous crime perhaps
Shes. this he done 2
2.11.81

44. Δ $\frac{1}{2}$ $\frac{57}{100} / 95^\circ$

One sentence of transparen
for life is enough for the
man, I think

24/10/95

Jayne 29
25/10/95

w
~
28 Oct

Copy of the judgment in Salem
Sess. case no. 9 of 1895 is submitted
for perusal with reference to Hon's
orders of the 7th inst.

23/10/95

MR 22.10.95

Re a case of concurrent
Sentence of transportation
for life

FOR ORDERS.

Read again 5.08.8. June 95, No 12
+ (Nos 3985, 4443 & 487)

2047 Nov 195 No 2285
This

Under Sec 401 C.C.P. H.E. M.
S. in C. is pleased to remit
~~the~~ ^{the} sentence of trans-
portation for life passed on
convict Sengar C.C. No 9 of
1895 in the file of the Sessions
Court of Salem for murdering his
female child. Venkati.

W. B. (For order)
29/10/55

To the J. of Prison (R)
Am. Sec. J. with C.C. (R)
J. of Prison (R)
29/10/55

C24/10 | C26/10
R26/10 | R28/10

Given for copying _____
Copied _____
Examined _____
Signed _____

189

MAIN G.O., No.
189

DATED

RENT No.

ENCLOSURE TO G. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT

STATEMENT WITH DITTO

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IN ORIGINAL

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