# Judicial (1895) Department.

ORDINARY MS.

**G.O., No.** 2316.

**Dated** 13th Nov. 1895.

INDEXED.

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[Despatch Abstract.]

SENTENCE OF DEATH.

Declining to interfere with the -- passed on convict No. 223 Pothaya Tevan in Madura Sessions case No.46 of 1895 and directing that the law shall take its course and requesting ~~that~~ the District Magistrate to disburse or propose suitable rewards to the neighbours of the first prosecution witness in the case for the assistance they rendered him.

## BACK PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
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## FURTHER PAPERS.

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223

# IN THE SESSIONS CURT OF MADURA.

## SESSION CASE LVI OF 1895.

(JULY SEONS).

Committed by the Stationary 2nd Class Mtrate of Dindigul (R. C. 3 of 1895).

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*Prisoners* :—
1. Periyasami *alias*ayar Tevan ...
2. Mayandi Tevan ... ...
3. Pothaya Tevan ... ...
4. Peruma Tevan ... ...
5. Karuppaya Gount ... ...

3rd prisoner is defended by Mr. M. Madhu Iyer, High Court Vakil, the rest, by vakil, Mr. A. Visvanatha Iyer.

*Charges* :—
1. Against all the poners—Dacoity, Section 395 I. P. C.
2. Against D —Dacoity with murder, Section 396 I. P. C.
3. Against the 1st, 2 and 3rd prisoners—Using deadly weapons in comming dacoity, Section 397 I. P. C.
4. Against the 1st poner—Voluntarily causing grievous hurt by a cutting itrument, Section 326 I. P. C.
5. Against the 2ndrisoner—Voluntarily causing hurt by means of a kne, Section 324 I. P. C.
6. Against the 5th psoner—Voluntarily causing hurt, Section 323 I. P. C.
7. Against the 3rd psoner—Murder, Section 302 I. P. C.

Against the 2nd and 3d prisoners, Section 75 I. P. C. also.

*Caste of* :—
1st Assessor—Brahmin.
2nd do —Naidu.
3rd do —Mahomedan.
4th do —Vellala.
5th do — do.

*Unanimous verdict of the Jury as regards the 1st and 3rd counts.* } Guilty.

*Opinion of do. as Assessors as regards the other counts.* } Guilty.

*Finding of the Judge as regards do.* } Guilty.

*Sentence :—*
- The 3rd pr thaya Tevan, to be hanged by the neck until he is der Section 302 I. P. C. (subject to confirmation igh Court).
- 1st prison ransported for life under Section 396 I. P. C.
- 2nd and ers, rigorous imprisonment for ten (10) years eac ection 396 I. P. C.
- 4th pris ous imprisonment for seven (7) years, under Se . P. C.

## CHARGE TO THE JUR

e prisoners are charged, in the first instance, under Section 395 I. P. C. with the dacoity. In the second place they are all charged under Section 396 I. P. C. g committed murder in the commission of the said dacoity. Thirdly the 1st, 2 rd prisoners, Periasami alias Udayar Tevan, Mayandi Tevan and Pothaya Te arged, under Section 397 I. P. C, with having committed dacoity being armed wi weapons. The 1st prisoner is also charged under Section 326 I. P. C. with having y caused grievous hurt by means of a dangerous weapon to one Arunachalam Pil d witness for the prosecution. The 2nd prisoner, Mayandi Tevan is separately cha er Section 324 with having voluntarily caused hurt by means of a dangerous weapon andasami Pillai, the 3rd witness for the prosecution. Then the 5th prisoner Ka oundan is separately charged under Section 323 I. P. C. with having voluntarily c to the 1st witness for the prosecution Vellaya Goundan. Lastly, and independe other offence, the 3rd prisoner Pothaya Tevan is charged under Section 302 I. P aving murdered Chinna Goundan the younger brother of the 1st witness for the on Vellaya Goundan.

2. The offence of dacoit tted when robbery is committed or attempted to be committed conjointly by persons in number. Robbery is committed if a person, in carrying away or attempting way any property which has been obtained by theft voluntarily causes to any person hurt. Theft is the dishonest removal of any property from the possession of an without that person's consent. The offence of grievous hurt in committed whe inflicted is such that the sufferer is, for a space of at least 20 days, in severe bodil unable to follow his ordinary avocations. The

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offence of murder is committed whenever a person causes death by an act done with the intention of causing death or with the knowledge that death is the most likely consequence of his act. The last point in law which I need explain to you is that if murder is committed by one of a gang of dacoits in the commission of the dacoity then every one of that gang is liable for that murder.

3 In this case there are certain facts which are beyond dispute. The first is that Chinna Goundan, the younger brother of Vellaya Goundan (P. W. 1) was taken to the hospital at Kannivadi on the evening of the 4th April last suffering from a punctured wound in the chest. That wound had been inflicted by a knife which had penetrated the lung and which had broken one of the ribs in its passage. Chinna Goundan was treated in the hospital, but he died on the 7th April in consequence of the wound which he had received. At the same time that Chinna Goundan was taken to the hospital at Kannivadi, the 2nd and 3rd witnesses for the prosecution, Arunachallam Pillai and Kandasami Pillai, were also taken there. Arunachallam Pillai (P. W. 2) had been wounded by a bill-hook on the back of the neck and on the upper part of the left arm and at the back of the left elbow. A part of the bone near the elbow had been sliced off by the bill-hook and Arunachallam Pillai (P. W. 2) was under treatment in hospital for a space of 43 days. You have seen the scars on his arm and his neck and you see that he is still unable to bend his elbow. Kandasami Pillai (P. W. 3 when admitted into the dispensary at Kannivadi at the same time, was suffering from cuts on the right side of the head and of the face. You saw the scars of those wounds when he was examined. Besides these witnesses and the deceased Chinna Goundan, the dresser in charge of the hospital examined, on the 5th April last, two of the prisoners. Those two were the 3rd prisoner Pothaya Tevan and the 4th prisoner Peruma Tevan. Pothaya Tevan had sustained two contused wounds on the head and one on the right leg above the ankle and Peruma Tevan was suffering from a contused wound on the head and from a swelling on the right hip. With regard to these facts the case for the prosecution is as follows :—

4. On the 3rd April last Vellaya Goundan (P. W. 1) was sleeping in his house which is to the west of Alagupatti. That house stands by itself there being no other house in its vicinity. His brother Chinna Goundan was sleeping in the cattle-shed, which is about 35 feet from the pial of the house on which Vellaya Goundan (P. W. 1) was sleeping. About 16 or 17 naligais in the night, Chinna Goundan roused Vellaya Goundan and said that two bullocks, which had been tied up in the cattle-shed with other cattle, had been stolen. Vellaya Goundan (P. W. 1) and Chinna Goundan then went to the path which is to the west of their house and runs north to south. There are cholam fields on both sides of this path. The cholam crops in some of the fields were in ear and were being watched by the owners. Vellaya Goundan and Chinna Goundan heard dogs barking in the south near a Kuravan's hut and suspecting that their cattle had been taken in that direction, ran thither. When they passed the Teppakolam they saw, at a distance of about 113 feet, 5 men and two bullocks. They shouted to the men in the cholam fields that their bullocks were being stolen and taken southward and asked the men to come to their help. Shouting out thus, they

rushed at the thieves and Chinna Goundan, who preceded his brother Vellaya Goundan (P. W. 1), caught hold of the hindmost man of the thieves. That man was Pothaya Tevan the 3rd prisoner. In front of him was Peruma Tevan the 4th prisoner leading the bullocks; and in front of Peruma Tevan were the other 3 prisoners, that is to say Periasami the 1st prisoner, Mayandi Tevan the 2nd prisoner and Karuppaya Goundan the 5th prisoner. The 1st, 2nd and 3rd prisoners are brothers and the 4th prisoner is the son of the 2nd prisoner. They and the 5th prisoner, Karuppaya Goundan, live in Timmanampatti, near Alagupatti. As soon as Pothaya Tevan was seized by Chinna Goundan, he turned round and stabbed Chinna Goundan on the right side of the chest with the knife which has been shown to you in this court. Chinna Goundan cried out that he had been stabbed by Pothaya Tevan and fell down. Vellaya Goundan, who had a stick in his hand, ran to strike Pothayan. As he did so, the 5th prisoner Karuppaya Goundan struck him with a stick on his right shin bone. On receiving the blow, Vellaya Goundan fell down. He showed you yesterday the scar on his shin bone which was caused by the blow which he received from Karuppaya Goundan the 5th prisoner. Meanwhile, the shouts of Vellaya Goundan and Chinna Goundan had been heard in the adjacent fields and Arunachallam Pillai and Kandasami Pillai, the 2nd and 3rd witnesses for the prosecution, came to the spot from the east, while the 4th, 5th and 6th witnesses for the prosecution Sikkaya Goundan, Kuppa Goundan and Kandaya Goundan, came from the west. They came in time to hear Chinna Goundan cry out that he had been stabbed by Pothaya Tevan and to see Chinna Goundan fall down. After Chinna Goundan had fallen down Arunachallam Pillai (P. W. 2) found Peruma Tevan the 4th prisoner still leading the bullocks towards the south and attempted to seize him. When he did this, Periasami Tevan the 1st prisoner struck him on the left side of his neck with the bill-hook which is now before the Court. Arunachallam Pillai struck Periasami Tevan with the stick with which he had armed himself to guard his cholam field. Periasami Tevan again used the bill-hook and inflicted a wound on the upper part of Arunachallam Pillai's left arm. Arunachallam Pillai retaliated by another blow of the stick and Periasami Tevan then struck him with his bill-hook at the back of the elbow. But Arunachallam Pillai gave Periasami Tevan yet another blow and Periasami Tevan then dropped his bill-hook and ran away. While this was happening, Kandasami Pillai (P. W. 3) had struck the 2nd prisoner Mayandi Tevan. When he did so, Mayandi Tevan cut him on the head and face with some sharp instrument. You doubtless observed yesterday that Kandasami Pillai is an exceptionally powerful man and he says that he lifted Mayandi Tevan up in his arms, threw him down and then sat upon his body. Sikkaya Goundan, Kuppa Goundan and Kandaya Goundan are the men who, you will remember, came from the west. They arrived at the spot from the west at the same time that Arunachallam Pillai (P. W. 2) and Kandasami Pillai (P. W. 3) arrived from the east. They heard Chinna Goundan cry out that Pothayan had stabbed him and Sikkaya Goundan (P. W. 4) suddenly saw Pothayan coming towards him. Thinking that Pothayan would stab him too, he struck him with a stick on the head, knocked him down and stunned him. Then he took the knife, which is before the Court, from Pothaya Tevan's hand. The 4th prisoner, Peruma Tevan, had escaped from Arunachallam Pillai

(P. W. 2) when the latter was attacked by the 1st prisoner, Periasami Tevan, with a bill-hook. But he encountered the 5th and the 6th prosecution witnesses Kuppa Goundan and Kandaya Goundan These witnesses, like the others were armed with sticks which they had taken with them when they went to their cholam fields. Peruma Tevan the 4th prisoner struck Kuppa Goundan one blow with a stick. Kuppa Goundan returned it and knocked Peruma Tevan down and, with the assistance of the 6th witness for the prosecution, Kandaya Goundan, secured him. On this, Periasami the 1st prisoner and Karuppaya Goundan the 5th prisoner ran away towards the north. The other 3 prisoners Mayandi Tevan, Pothaya Tevan and Peruma Tevan were secured by the witnesses for the prosecution whom I have already named and their hands were tied behind their backs with their cloths. In this operation the witnesses were assisted by two men named Suppa Goundan and Nallaperumal Chetti, who came after the fight was over. Vellaya Goundan (P. W. 1) who is corroborated by some of the other witnesses swears that the bullocks which stood there were his and that they had been tied up in his cattle shed. You have seen those bullocks before the Court.

5. Having tied the prisoners, the witnesses for the prosecution took them and the bullocks and Chinna Goundan to Vellaya Goundan's house. Arunachallam Pillai, who was suffering great pain from the wounds he had sustained, followed them slowly, carrying the bill-hook which the 1st prisoner Periasami had dropped, and Sikkaya Goundan carried the knife with which Pothaya Tevan had stabbed Chinna Goundan. On passing the village *mandai* of Alagupatti, the witnesses met the 7th witness for the prosecution, who is also called Arunachallam Pillai, and told him to go and inform the village munsif, who lives in Teppakulathupatti. But the village munsif did not arrive at Alagupatti by day-break and the party then went to the Palakanoothu Police Station, carrying Chinna Goundan in a cot and conveying Arunachallam Pillai (P. W. 2) and Kandasami Pillai (P. W. 3) in a cart. The Station House Officer of Palakanoothu was examined yesterday in this Court The statement made by Chinna Goundan (exhibit B) was recorded by him and it has been read out to you at length. The Station House Officer, seeing that the wounds which had been inflicted on Chinna Goundan, Arunachallam Pillai and Kandasami Pillai were very serious, sent those 3 men in charge of a constable named Muniyandi Servai (P. W. 11) to the dispensary at Kannivadi. I have told you that the village munsif did not arrive at Alagupatti by day-break, but he either overtook the witnesses on their way to Palakanoothu or found them at the police station when they were being examined by the Head Constable. The report which he says he sent on receipt of information from the 7th witness for the prosecution, Arunachallam Pillai, was given to the Head Constable at Palakanoothu only after the village munsif himself arrived there. That report (exhibit A) was read out to you yesterday and now I have laid before you all the material facts in the case for the prosecution If you believe the evidence of the witnesses for the prosecution there is no doubt that the prisoners are guilty of the offences with which they are charged. But before making up your mind to convict the prisoners or before arriving at any decision you must consider whether there is any reason for mistrusting the evidence and must also consider the defence which has been made by the prisoners.

6. One of the points which has been suggested by the defence in the cross-examination of the witnesses for the prosecution is that these witnesses are related to each other. No doubt some of them are related to each other. But this is invariably the case in every small village and on the other hand, you see that the 2nd, 3rd and 7th witnesses are Vellalas, while the 1st, 4th, 5th and 6th witnesses are Goundans who, as one of the defence witnesses has said, have nothing whatever to do with Vellalas. Then in the cross-examination of the witnesses for the prosecution yesterday, the defence attempted to show that they contradicted their statements made before the committing Magistrate. I am unable to see any material contradiction at all but you heard the evidence yourselves yesterday and if you are of a different opinion you may give due weight to any discrepancy which you think really exists. The main line of the defence, however, is that the complaint has been made against the prisoners owing to malice and some of the witnesses for the prosecution have been asked if they have not brought complaints or given evidence against the 2nd and 4th prisoners, Mayandi Tevan and Peruma Tevan, for house-breaking and theft of cattle. The only witnesses who say that such complaints were ever brought are the Station House Officer and the village munsif. But I must point out to you that if those complaints had really been made the defence ought to have produced documentary evidence to prove the contention. They have not done so and in the absence of such documentary evidence I cannot advise you to place any reliance on the bare statement of the Station House Officer and the village munsif. Then, as a further development of this theory that the prosecution has arisen from malice, much stress has been laid upon a counter-complaint which was presented by the 1st prisoner Periasami Tevan at the police station at Palakanoothu and which is supported by the statement made by the 5th prisoner, Karuppaya Goundan, before the Magistrate. According to these statements, the counter-complaint and the 5th prisoner's statement before the Magistrate, the house of Arunachallam Pillai (P. W. 2) was set on fire on Tuesday evening *i. e.* the 2nd April last. Thereupon the witnesses for the prosecution joined together and said that the Kallars must have done the mischief and that they must be suppressed. In consequence of this conspiracy, they are said to have mobbed and beaten the 2nd, 3rd and 4th prisoners Mayandi Tevan, Pothaya Tevan and Peruma Tevan, to have brought some bullocks, to have foisted them on the prisoners and to have brought this false charge. In support of this counter-complaint 4 witnesses have been examined to-day in this Court. The 1st and 2nd Moyya Tevan and Thirumaya Goundan are boys. They say that they were sleeping in the 2nd prisoner's, Mayandi Tevan's, fold and that Peruma Tevan the 4th prisoner came with food for Moyya Tevan. Then they depose that the witnesses for the prosecution and a number of others, in all about 20 or 30 men, came to the fold, said that Peruma Tevan was the Kalla fellow that set fire the previous night and beat him and dragged him away. As regards this portion of the evidence, it must be observed that the 1st witness says that he never told any one of what had happened and that the event took place several months ago. He is unable to read and write and no one has ever refreshed his memory and he is still able to enumerate 9 or 10 names of those who came. This however is not all, because he omits to make any mention of a circumstance which he is not likely to have omitted if his

statement had been true. This circumstance is the one testified to by the 2nd and 3rd witnesses for the defence, Tirumaya Goundan and Mutha Goundan. These witnesses say that after the abduction of Peruma Tevan from the sheep fold, Mutha Goundan (D. W. 3) ran to it and took his son Tirumaya Goundan (D. W. 2) and Moyya Tevan (D. W. 1) to his house. If this really had happened, Moyya Tevan (D. W. 1) would surely have mentioned it in his evidence. Apart from this circumstance, you must ask yourselves whether the conduct of Mutha Goundan (D. W. 3) and Tirumaya Goundan (D. W. 2) his son is consistent with ordinary experience. They had seen serious offences committed. Mutha Goundan (D. W 3) saw, as he says, 20 or 30 men beating Peruma Tevan (4th prisoner), Mayandi Tevan (2nd prisoner) and Pothaya Tevan (3rd prisoner), and instead of giving any alarm in the village went to his house and quietly went to sleep. The 4th witness for the defence is a cooly. His evidence is that there was a noise of rioting at the sheep fold, that he ran into the street and then ran to the place where he says the rioting had been committed. When he was asked what that place was, he did not say that it was the sheep fold but said that it was the very place mentioned by the witnesses for the prosecution, *i. e.*, the spot south of the Teppakulam. When he got there, he says that he saw Periasami Tevan the 1st prisoner, Mayandi Tevan the 2nd prisoner and Pothaya Tevan the 3rd prisoner lying down wounded. He also saw Arunachallam Pillai (P. W. 2) and Kandasami Pillai (P. W. 3) and some other witnesses for the prosecution there. When questioned further as to what happened, he apparently forgot at first all about Periasami Tevan the 1st prisoner, and said that Mayandi Tevan the 2nd prisoner, Pothaya Tevan the 3rd prisoner and Peruma Tevan the 4th prisoner were taken away towards Alagupatti by the men who came there with Arunachallam Pillai (P. W. 2) and Kandasami Pillai (P. W. 3). He then attempted to explain his omission to mention Periasamy Tevan by saying that Periasamy Tevan was not carried towards Alagupatti because he was more unconscious than any of the others. You will decide whether any reasonable man can accept this explanation and I must point out to you that both as to the locality and as to the details of the men who were injured the evidence of this 4th witness for the defence corresponds with the evidence for the prosecution.

7. Another point which you must consider in relation to the defence is the statement made by the Station House Officer of Palakanoothu with regard to the counter-complaint (exhibit D) which has been read out to you. The Station House Officer swears that the counter-complaint was presented to him by Periasami Tevan (1st prisoner) an hour before Chinna Goundan, Vellaya Goundan, Arunachallam Pillai, Kandasami Pillai and others came to Palakanoothu. But in connection with this evidence of the Station House Officer and the complaint which he recorded, there are certain suspicious circumstances. There is no doubt that the complaint made by Chinna Goundan was made about 11 o'clock. The question is whether the 1st prisoner's complaint was made before or after Chinna Goundan's complaint was made. The hour entered by the Station House Officer in the counter-complaint is 10 A. M. and the Station House Officer has also noted in the village munsif's report that the hour of receipt was 11 A. M. He says that he thought it a very essential matter to note the hour. But when he was shown the statement which he had taken from Chinna Goundan it was found

that he had not noted any hour at all on it. If it was essential to note the hour in one case, it was quite as essential in the other case. Then you must take into consideration the circumstances under which the village munsif's report was given to the Station House Officer. I have already mentioned that it was given to the Station House Officer only after the village munsif himself went to Palakanoothu Police Station. The village munsif declares that he had given it some time before, to his Thandalkaran and that when he arrived at Palakanoothu he saw his Thandalkaran standing there with the report undelivered. I must leave it to you to decide whether it is a credible statement. If you think it is not credible, then the village munsif's report was not written at the time he says he wrote it but only after he reached the police station. And if you do not believe that the 1st prisoner's counter-complaint was received at 10 A. M., then you may conclude that it was simply intended to provide a defence against the charge which the prisoners anticipated. In this connection you will also remember that the 2nd, 3rd and 4th prisoners Mayandi Tevan, Pothaya Tevan and Peruma Tevan, were taken to Palakanoothu by Arunachallam Pillai (P. W. 2), Vellaya Goundan (P. W. 1) and others. The Station House Officer admits that he knew that the 3rd prisoner Pothaya Tevan was accused of having inflicted deadly injury on Chinna Goundan, that he knew that the 1st prisoner Periasami Tevan was accused of having severely wounded Arunachallam Pillai, the 2nd prosecution witness, with a bill-hook, that he knew that the 2nd prisoner, Mayandi, was accused of having wounded Kandasami Pillai the 3rd Prosecution Witness and that he actually saw the injuries sustained by Chinna Goundan, Arunachallam Pillai and Kandasami Pillai. Nevertheless he did not put any of the prisoners under arrest but simply told Periasami Tevan, the 1st prisoner, to go to the hospital. Periasami Tevan never went to the hospital at all. Another noticeable circumstance is this. The Station House Officer swears that Periasami Tevan was present when Chinna Goundan and the other eye-witnesses were examined, but not one of those witnesses for the prosecution was cross-examined as to the presence or absence of Periasami Tevan (1st prisoner) on the occasion. Considering how strongly the defence has insisted on the theory that the 1st prisoner's complaint was earlier than the complaint made by Chinna Goundan, this omission to cross-examine cannot, in my opinion, have been unintentional. If you think it was intentional, then you are at liberty to presume that the answers which would have been given would have been unfavourable to the defence and would have shown that Periasami Tevan (1st prisoner) was not present. If you reject the evidence of the Station House Officer and if you do not believe that the 1st prisoner Periasami Tevan presented his complaint before Chinna Goundan's complaint was recorded, then your conclusion will go a long way towards discrediting the evidence for the defence. You must not however base your decision on the weakness of the defence, but you must be satisfied with the evidence for the prosecution which has been given against the prisoners collectively and individually. In brief, if you believe that the prisoners took away the two bullocks from Chinna Goundan's cattle-shed, if you believe that Chinna Goundan, in trying to prevent the theft of his property and to recover his property, was stabbed to death by Pothaya Tevan the 3rd prisoner, if you believe that after Chinna Goundan had been stabbed, the 4th prisoner Peruma Tevan continued to take away the cattle, if you believe that Vellaya Goundan was struck by the 5th prisoner Karup-

paya Goundan, that Arunachallam Pillai was wounded by the 1st prisoner Periasami Tevan and that Kandasami Pillai was wounded by the 2nd prisoner Mayandi Tevan, then there is no doubt that the prisoners are guilty of dacoity and murder and the minor offences with which they are charged. The prisoners are accused of the most heinous crimes and you must give the case your best consideration. If you believe the evidence, you must then convict the prisoners but if you have any reasonable doubts, you must give the benefit of it to the prisoners and acquit them. You will have to give your verdict as Jurors on the charge of dacoity made against all the prisoners and on the charge of committing dacoity armed with deadly weapons made against the 1st, 2nd and 3rd prisoners. On the other charges each of you will have to give your individual opinion as assessors.

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After the verdict of Jury and the opinion of assessors were taken, the 2nd prisoner, Mayandi Tevan, was charged with, and admitted the following two previous convictions, viz,

(1) A conviction of theft under Section 379 I. P. C. on 17th March 1874 and a sentence of one (1) year's rigorous imprisonment in C. C. 5 of 1874 on the file of the Madura District Magistrate's Court.

and (2) A conviction of house-breaking by night and theft in a building under Sections 457 and 380 I. P. C. and a sentence of seven (7) years' rigorous imprisonment on the 5th November 1879 in Session Case 168 of 1879 on the file of the Madura Sessions Court.

The 3rd prisoner Pothaya Tevan was then charged with and admitted a conviction of house-breaking by night and theft in a building under Sections 457 and 380 I. P. C. and a sentence of (4) four years' rigorous imprisonment in Session Case 168 of 1879 on the file of the Madura Sessions Court.

26th July 1895.

W. DUMERGUE,
Sessions Judge.

JUDGMENT :—The Jury have convicted all the prisoners of dacoity and the 1st, 2nd and 3rd prisoners of committing dacoity armed with deadly weapons. As assessors they have expressed their individual opinion that the prisoners are guilty of the other offences with which they are charged. The facts of the case have been fully set out in my charge to the Jury and I think that the conclusion which has been arrived at is the only reasonable conclusion. The discrepancies in the evidence for the prosecution which the defence endeavoured to establish and to which I drew the attention of the Jury relate to the 1st and 5th prisoners and are merely apparent. Before the committing Magistrate, the 4th witness said he did not see the 1st and 5th prisoners and the 1st witness said he did not see the 1st prisoner, at the place of the deed. They adhere to these statements now and say they did not see

Enclosure III

To

The Appeal for mercy of Pothaya Tevan 1223, prisoner sentenced to death in Madura Session Case No. 46 of 1895, forwarded with this office No. 2078 / 9-11-95

5291

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Enclosure I

8.

DISTRICT COURT NOV 95 MADURA

# IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Tues day, the twenty second day of October

One thousand eight hundred and ninety- five

PRESENT:—

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

and

The Honourable Mr. Justice Parker.

Referred Trial No. 54 of 1895.

Pothaya Tevan ——— 3d Prisoner.

Trial referred by the Court of Session of the Madura — Division for confirmation of the sentence of death passed upon the said Prisoner in Case No. 46 of the Calendar for 1895. Criminal Appeals Nos 416 and 417 of 1895

Pothaya Tevan ——— appellant in Crl. A. No. 416 (3. Prisoner)

~~CRIMINAL APPEAL No. OF 189~~ :

1. Periyasami alias Udayar Tevan, 2 Mayandy Tevan, 3' Peruma Tevan & 4 Karuppaya Gowndan } appellants in No. 417 (Prisoners 1, 2, 4 & 5)

Appeals by the 3d Prisoner against the said Sentence, of death and by the others against the Sentences of transportation and imprisonment passed upon them by the Court of Session of the Madura Division in Session Case No. 46 of the Calendar for 1895.

These cases coming on for hearing, on Wednesday the 16th Instant, and having stood over for consideration till this day, the Court delivered the following

Judgment:— The Contention in these appeals practically is that the defence

defence account of the occurrences of the night of April 3rd is the true one, and that the charge of cattle lifting has been falsely concocted by the prosecution witnesses against the accused. In this view of the case we are not able to agree.

The defect of the defence story is that it leaves the death of Chinna Goundan absolutely unexplained, — nor does it account for the serious wounds inflicted upon Arunachellam Pillay and Kandasami Pillay. We are, however, not able to concur with the Sessions Judge in his strictures upon the conduct of the Station-House officer and village Moonsiff.

We

We do not see sufficient reason to doubt that 1st prisoner, Periyasami, really did present the complaint D at the police station at 10 a.m. on April 4th before the prosecution party arrived there. But we are not able to infer from that fact that the defence story was the true one. It will be remembered that prisoners 2 & 4 had been captured and carried off by the prosecution witnesses. They were the two brothers and the nephew of Periyasami, and Periyasami could have no doubt that he too had been identified. The only possible way therefore to help his relatives and himself was to set up a counter-story, and

as

as 1st prisoner was not — like the prosecution party — encumbered with wounded men and captives, he arrived at the police station first.

With the exception of the 4th defence witness, the only riot spoken of by the defence witnesses was at the sheepfold of ——— Mayandi Tevan at Thimmanampatti; whereas (as pointed out by the Sessions Judge) the 4th witness admitted that the place where prisoners 2 to 4 were captured was south of the Teppakulam. We have no doubt that this is the truth and the same inference may be drawn from the language of 1st prisoner's complaint (Exhibit D). In Exhibit D nothing was said about the

the fire on the previous day which is now supposed to have led to the prosecution attack, so that this appears a subsequent addition. It is also noticeable that Exhibit D makes mention of 5th prisoner (a Timmanampatti man) as one of the Kallars' party, and that of the other four witnesses mentioned in that complaint only one (Kuppa Goundan), 4th defence witness, has been called. The defence witnesses 1 to 3 were not named at all.

We see therefore no reason to doubt that the prosecution account of the matter is the true one. It is urged that there was insufficient

insufficient light to identify the thieves and that it is not likely that 5th prisoner a Goundan, would have joined with four Kallars in a cattle-theft. But the moon only set at 12-35 a.m. and all the accused were well known to the prosecution witnesses. That 5th prisoner was one of the 1st prisoner's party is apparent from Exhibit D.

The offence was a most heinous one, - but, notwithstanding that murder was probably not premeditated - we do not think we should be justified in remitting the capital sentence. Chinna Gounden in seizing hold of 3rd prisoner was acting within his

his legal rights in endeavouring to prevent the theft of his own property, and he does not appear to have acted with unnecessary violence. We must confirm the conviction and sentence of death passed upon the 3rd prisoner Pothaya Tevan, and dismiss his and the other prisoners' appeals.

By the Court

C G Todhunter
Deputy Registrar,
4.11 Appellate Side

(True Copy)

Madura Session Court
7 November 1895
W. Dumergue
Session Judge

To
The Superintendent of the Jail
Madura
for communication and delivery to the appellant in No 416

9/11/95

3/11

5
gud
4
5291

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Enclosure II  Duplicate

CONFIRMATION OF SENTENCE OF DEATH.

# IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Tuesday, the twenty-second day of October,
One thousand eight hundred and ninety-five.

PRESENT:—

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

and

The Honourable Mr. Justice Parker.

Referred Trial No. 54 of 1895.

Pottaya Tevan —— 3d. Prisoner.

Trial referred by the Court of Session of the Madura Division for confirmation of the sentence of death passed upon the said Prisoner in Case No. 46 of the Calendar for 1895.

Criminal Appeal No. 416 of 1895.

Appeal by the 3d. Prisoner against the said sentence.

**Order**:—This case coming on for hearing on Wednesday, the 16th Instant, Upon perusing the Petition of Appeal, and the record of the evidence and proceedings of the said Court of Session, and upon hearing the arguments of Mr. J. H. McRyan Counsel for the Prisoner ~~engaged for the defence under G. O., dated 17th December 1884, No. 3278, Judicial~~, and of the Public Prosecutor in support of the conviction; & the case having stood over for consideration till this day, **it is ordered** that the sentence of death passed upon the said 3d. Prisoner Pottaya Tevan —

be, and the same hereby is, confirmed, and his Appeal dismissed.

By the Court.

(Signed) Arthur Collins
Chief Justice
(s) G. A. Parker.
Judge.

C G Todhunter
Dy. Registrar,
Appellate Side.
22-10-

~~To~~

The ~~Sessions Judge of the~~

~~Division.~~

~~(in duplicate.)~~

~~N.B.—This order is to be communicated to the Superintendent of [illegible]~~ ~~in the Sessions Court.~~

(True Copy)

Madura Session Ct 26-Oct 95 } W. Dumergue.
Sessions Judge.

MT 26/10/95

300—11-17-93.

To The Superintendent of the Jail

KM 24/10

CONFIRMATION OF SENTENCE OF DEATH.

Order of the High Court.

Referred Trial No. of 189 .

Confirming the sentence of death passed on the prisoner in Session Case No. of 189 .

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[illegible]

1895 [illegible] 46 [illegible] 223 [illegible]

[illegible]

[illegible]

— [illegible]

Madura
November ~~October~~
9th 1895

Surgeon Major
Superintendent of Jail

To

His Excellency the Governor in Council
Fort Saint George

The humble petition of appeal for mercy of Convict No. 223, Pothaya Tevan, now Confined in the District Jail at Madura under the sentence of death passed upon him by the Sessions Judge Madura in Calendar Case No. 46 of 1895.

Sheweth,

That the petitioner did not at all Commit this murder. He was unjustly punished by the Sessions Judge, Madura, with death sentence in this Case which, by framing false witnesses, the Complainant had Concocted against the petitioner with whom he (the Complainant) had been in inimical terms. The Sessions Judge did neither examine the defence witnesses nor take the least Care to find out the real nature of the case. The High Court also Confirmed on appeal this unjust sentence of the Lower Court.

That, under these circumstances, the poor petitioner humbly beseeches the noble Government

to

to call for and peruse graciously all the records connected with the Case and to have justice rendered him.

— mark of Potheya Sevan

(True translation)

Madras
9th November ~~October~~ 1895

F O Rees
Surgeon Major
Superintendent of Jail

Enclosure I

Appeal for mercy from condemned prisoner No. 223, Pothaya Tevan, stating that he never committed the murder in which he had been, thro' enmity, implicated by the concoction of false witness and that the High Court confirmed on appeal the unjust punishment given by the Sessions Judge Madura, who had neither examined the defence witnesses nor taken pains to find out the truth and beseeching the noble Government to peruse mercifully all the record of his case and render him justice.

Dated 9 } November 1895
Received - }

No. 13.

Enclosures. 2

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Nominal Roll of convict No. 223, Pothaya Tevan.

| Crime. | Sentence. | Date of Sentence. | Adjudicating Court. | Age. | State of Health. | Conduct in Jail. | Result of the Appeal to High Court. | Number of ~~Remarks and~~ previous convictions, if any, and remarks. |
|---|---|---|---|---|---|---|---|---|
| Sections 395, 396, 397 & 302 I.P.C. | Death. | 29 July 1895. | Sessions Judge, Madura. | 38 years 3 months and 12 days. | Good | Good | Sentence confirmed. | Nil |

Madura Jail Office,
9 ~~October~~ November 1895 }

F C Lewes
Superintendent
Superintendent of Jail.

Enclosure II

189 5
Jud Dept.
Public No. 1
No. 5291

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CURRENT No 5291

No. 2078

Office of Superintendent of Jail
Madura 9th November 1895.

From Surgeon Major F. C. Reeves
SUPERINTENDENT OF JAIL,
MADURA.

To

THE CHIEF SECRETARY TO GOVERNMENT,
FORT SAINT GEORGE.

Sir,

With reference to Rule ~~987~~ 1019 of Jail Code, I have the honor to forward the enclosed petition from condemned prisoner No. 223, Pothaya Tevan, in calendar case No. 46 of 1895 on the file of Sessions Court Madura whose sentence has been confirmed by the High Court.

2. The nominal Roll as required by Rule ~~750~~ 701 of the Jail Code is herewith forwarded.

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

I have the honor to be,
Sir,
Your most obedient servant.

F. C. Reeves
Surgeon Major
*Superintendent of District Jail.*

1259 · 24 · 5 · 94 S.C.

"Appeal for mercy"
"Urgent"

CURRENT No.

1895. 5291

Jud

MADURA DISTRICT JAIL.

FROM

THE SUPERINTENDENT OF JAIL,
MADURA.

To

THE CHIEF SECRETARY
TO GOVERNMENT,
FORT SAINT GEORGE.

Dated 9th
Received 11th November 1895

No. 2078

Enclosures 2

*Subject.*

Submits a petition from condemned prisoner No. 223, Potthaya Tevan in calendar case No. 46 of 1895 on the file of Sessions Court Madura together with the usual Nominal Roll.

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J/43. 200—21-5-95

I can see no reason to doubt that the cattle were stolen or that the deceased was killed in the endeavour to recover them from the thieves. As to the petr's identity there can be no doubt as he was captured & the knife taken from him on the spot. I would dismiss the petition.

The neighbours of the 1st P.W., whose cattle were stolen, appear to have acted both with promptitude & courage in coming to his assistance. One of them, Arunachellam Pillai, was very severely, and other, Kandasami Pillai, severely injured in the affray, but all those who came up at the first & took part in the attack on & the securing of the thieves are entitled to commendation. I would direct the District Magte to disburse, as he proposes, suitable rewards.

HB
12/11/95

I agree in all respects

JG
12/11/95

So do I.

W
12 Nov

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JUDICIAL DEPARTMENT.

Current Number. 5291

FOR ORDERS.

APPEAL for mercy from Convict No. 223 Potthaya Tevan under sentence of death in Madura Sessions Case No. 46 of 1895, which sentence has been confirmed by the High Court.

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

11/11/95

11/11/95

PETITION FOR MERCY.

VERY EMERGENT.

Hon'ble Member and Circulation.

(FOR ORDERS.)

c 11/11 | c 12/11

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[J. / 16.]
1,000—5-2-94.

Judicial Department.

CHIEF SECRETARIAT, MADRAS.

# PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following letter, dated 9 Nov. 95, No 2078, from the Superintendent of the Dt. Jail at Madura, forwarding petition from Convict No 223 Pothaya Tevan under sentence of death in Madura Session Case No. 46 of 1895, confirmed by the High Court of Judicature.

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

ORDER THEREON, 13 Nov 1895, No. 2316

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 223 Pothaya Tevan.

2. The law will take its course.

3. The neighbours of the 1st Prosecution ~~witness~~ in Madura Sessions Case ~~(True Extract.)~~ No 46 of 1895 appear to have acted with commendable promptitude & courage in coming to his assistance. The Dt. Magistrate will ~~[illegible]~~ ~~Chief Secretary.~~ be requested to disburse, or propose, suitable rewards.

(From orders)

13.11.95

13/11/95

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

despd 13/11/95

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|---|---|---|---|---|---|---|---|
| *given for copying* ———<br>*copied* ———<br>*examined* ———<br>*signed* ——— 189 . | | | | | | | |
| AGAIN G.O., No. DATED 189 , | | | | | | | |
| RRENT No. | | | | | | | |
| ENCLOSURES TO C. No. | | | | | | | |
| ORDER OF GOVERNMENT .. .. .. | A | A | A | A | A | A | A |
| LETTER OF GOVERNMENT. | | | | | | | |
| STATEMENT WITH DITTO. | | | | | | | |
| PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL. | | | | | | | |

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

# Judicial (1895) Department.

ORDINARY MS.

**G.O., No.** 2317.

**Dated** 13" Nov 1895.

INDEXED.

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[Despatch Abstract.]

APPEAL FROM CONVICT UNDER SENTENCE OF DEATH.

Declining to forward to the Government of India the appeals from convicts No.9292 Sabapathy Pathan and No.9293 Govindan under sentence of death and directing that the law shall take its course.

Mid