

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 2370.

Dated 18th Nov: 1895.

INDEXED.

[Despatch Abstract.]

APPEAL AGAINST ACQUITTAL.

Requesting the Government Pleader to present an appeal to the High Court against the judgment of acquittal in Godavari Sessions Case No.20 of 1895.

met.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	5726		95-				

CURRENT No 4863

The District Magistrate's Office
Godavari

From

V. A. Brodie Esquire
Ag District Magistrate
Godavari

To

The Chief Secretary to Government,
Judicial Department.

Sir,

In forwarding herewith copies of the records, I have the honour to suggest that the same may be forwarded to the Public Prosecutor, Madras, and an Appeal preferred in the High Court against the sentence of acquittal of the Sessions Judge in Sessions Case No 20 of 1895, should that officer so advise. The accused in the case was charged under S. 302 of the Penal Code with the murder of a Police Constable.

The accused in the case is a young Brahmin of Tanuku Taluk and the deceased Police Constable had been charged with the duty of executing a warrant for his arrest issued by the Coacunda Town Sub Magistrate on a charge

of Criminal breach of Trust. Some previous warrants had been issued but none of them were executed by the Tanuku Police so the Magistrate was applied to by the husband of the prosecutrix in the case, to send the warrant in charge of the deceased who had investigated the case before, and could have no motive to screen the offender.

There is nothing unbelievable or extraordinary in this, as the judge appears to think.

3 The history of the circumstances under which the deceased met with his death can be gathered from the judgment and the deposition of the prosecution first witness (Mantena Subbarazu, husband of the woman who prosecuted accused in the Criminal Breach of Trust Case and the real prosecutor)

4 The judge has based his decision on "the so many points of suspicion" that hang about the case. It is true that such a fate as the deceased met with is very strange and unexpected in this district where, fortunately, such crimes are of rare occurrence, but nevertheless, in this case there is no more than one important point which is rather suspicious.

5 The suspicious circumstances

have been enumerated by the judge in para 8 of his judgment and I propose to deal with them serially.

(a) First, as regards the remark that for the execution of the warrant the services of the deceased need not necessarily have been secured from Cocanada, I have to observe that Subbarazu, the husband of the Complainant, believed that the local police (Penungonda) were wilfully and perhaps dishonestly neglecting to arrest the accused. This explanation is reasonable enough as they had failed to arrest him on a previous warrant and except this it is not clear what motive Subbarazu could have had in selecting the deceased as he did. Surely it is not contended by any body that any illegal intimacy existed between the deceased at Cocanada and Subbarazu's wife at Vadali (about 60 or 70 miles away as the crow flies) and that Subbarazu fired with jealousy and that Subbarazu fired with jealousy hit upon this not very simple method of killing the Constable. Moreover Subbarazu seems to have been quite dead to any feeling of jealousy. When the accused ran away with his wife, he did not take any action about it but was at once reconciled to her when accused threw her over, and was not apparently vexed at the elopement: but only for

the loss of her jewels and therefore made his wife file a charge of breach of trust against the accused. Subbaraya, it may be presumed, has therefore no jealousy and the suggestion that he committed a cool and deliberate murder on account of jealousy cannot reasonably be accepted, for a moment.

(b) The point that the accused was a field surveyor mentioned by the judge, is alluded to by the local Public Prosecutor in para (b) of his letter and I concur with him in thinking that the judge has laid too much stress on it. The fact remains that notwithstanding this, the Tanuku Police returned the warrant issued to them with an endorsement that the accused could not be found. — Therefore in place of rendering Subbarayas' conduct strange in asking for the services of the deceased specially, this fact only makes his explanation the more reasonable. If the Tanuku Police could not find such a man, the natural inference was that it was

was because they would not.

(c) Thirdly, meeting Mangayya is not at all strange, as he is a resident of the locality and deceased appears to have taken him also with him to Tamarada as he knew the dancing girls' house, where it was suspected accused might be found, in order to point it out.

(d) The accused was suspected to be with the prostitute at Tamarada because that was a natural suspicion seeing that it is alleged that he was in the habit of frequenting her house, and so more likely to be found there than at his own house when, he knew, the Police were seeking him.

(e) The judge is wrong in his statement that the Corpse was found outside the house of the prostitute. It was not there but outside the house of Komamula Subbrayya in whose verandah the accused was arrested and it seems to have been lying quite close to the verandah (5 yards) out of which he had just been dragged by deceased. There is absolutely no foundation for

the judge's supposition that deceased was murdered in the prostitute's house and the body then dragged to where it was found. It is not a reasonable one in any case. Considering the circumstances of the deceased's visit to her house.

In that case the place inside the house where the murder was committed and the way by which the corpse had been removed must have been easily traceable as there must have been a great rush of blood from the wound in deceased's throat.

In any case had he had any doubt about it, the judge could have easily ascertained the fact from the independent witnesses, like the village munsiff, at the trial and he was wrong in not questioning them with reference to this.

The judge attaches much weight to the fact that the dancing girl had the custody of the dagger, but surely there is nothing ^{improbable} ~~impossible~~ or suspicious about this. Of the three persons present at the time of the murder, viz, Mr. Subbaraz,

Mangayya and herself, she was the only person having a house in the village, and so naturally the other two being strangers to the village, might entrust the dagger to her for safe custody. Moreover when men struggling with another under the circumstances of this case succeed in wresting a knife from him, their first act naturally is to hand it to a bystander to ensure their adversary not regaining possession of it and beyond this woman, there seems to have been none to hand it to. The prostitute herself could not have evidently murdered the constable. What motive besides could she have had? And what motive could Mangayya have in that case to screen her at accused's expense?

(g) The only suspicious circumstance in the story of the prosecution is the fact that the accused was not arrested by Subbaraz, Mangayya and the other villagers but allowed to escape. Though it is suspicious it is not

impossible. The other villagers appear to have kept out of the way though aware something very serious had occurred as it is not unusual; and it is quite possible that Subbaray and Mangayya having rendered themselves secure by wresting the knife from accused did not think it advisable to continue their struggle with so desperate a character for fear of his devising some other means of injuring them. Moreover they must have been concerned about the deceased and (having got away the knife) more anxious to see how he fared than about securing his ^{Assistant} Assistant. I must admit that their conduct was rather strange when they found deceased actually dead in not at once rushing off to the village Munsiff or in not attempting apparently to rearrest accused, but it has to be remembered that they were strangers that the affair occurred in the middle of the night and that they were more than probably thunderstruck at

at what had occurred. I also think the matter might have been elucidated had the witnesses been more carefully examined on the point.

(h) That the accused did not abscond is not so wonderful. Perhaps he despaired of escaping and he was captured before he had made up his mind what to do. Being a clever man too, he might have decided his best course was to behave as usual and deny all knowledge of the matter.

(i) It is not clear why the judge discredits the story that the two house owners looked and saw the corpse and the group and did nothing else. Having seen that something dreadful had happened they seem to have followed a very common practice in this district - kept out of the way for fear of being involved at least as witnesses in the matter.

(j) Vaddi Subbarayudu was simply asked to state whether the deceased was in uniform and he replied

in the affirmative as the turban is the chief part of the uniform in the eyes of natives. Whether the deceased had his coat and trousers on, he was not asked.

(k) As for the bad demeanour observed by the judge, it is possible that it may have been attributable as much to the stupidity of the witnesses as to anything else.

6. The judge apparently accepts as possible the suggestion made by the accused, that Subbaray and Mangayya might have killed the Constable. Of this there is however absolutely no evidence and it appears to me to be most grossly improbable. If so too, what possible motive had the prostitute who was undoubtedly present to screen them and accuse her paramour. None has ever been alleged.

7. The plea of alibi set up by the prisoner is not credible and there is absolutely no reliable

evidence to establish it. Both witnesses he examined were fellow Surveyors (one also a fellow Brahmin) who probably wanted to help a Companion in distress when appealed to. His work also must have been over at Sun Set and they can have known nothing as to where he was when the murder was committed.

8. The story of the prosecution is very probable and there was no time to concoct a long false story, for the whole investigation was completed at the inquest which was held the next morning. The village Abunsiff's baker corroborates the prosecution evidence and it was written within a few hours of the occurrence.

9. Besides the two prosecution witnesses there were three others among the panchayatdars and these latter must be credited with having given a bona fide finding.

10. There is nothing in the Cross examination of the prosecution witnesses or in the evidence of the defence witnesses to suggest that

the deceased met his death in any other manner than at the hands of the accused.

" Though no doubt in respect of certain details the evidence of witnesses is somewhat confused and in respect of others has not been sifted so carefully as I think it should have been, the facts remain that the deceased was murdered, that Subbaray, Mangayya and the prostitute were certainly present when he was so murdered, that they all three unanimously state that it was accused who did the deed, that they have all said so from the very first, that the story they tell is a reasonable and probable one, that there is absolutely neither evidence nor ground for suspicion, that the deed was done by any one else, that either Mangayya or Subbaray did it, then the prostitute has no motive to screen them at the expense of accused and vice versa, and that the deceased moreover had certainly no quarrel or reason to quarrel —

4
~~quarrel~~ with any of the three
12 Under these circumstances, I am of opinion that an appeal should be preferred. A list of papers herewith forwarded, is appended.

I have the honor to be,
Sir,

Your most obedient servant

Devenaswami

Ag District Magistrate

Exd. M.
8-10

Judicial
Magisterial (1895) Department

CURRENT No 4868

From

The District Magistrate
Godavari

To

The Chief Secretary
to Government
Judicial Department

Refer to No 738
mag of 1895

Dated 8^o
Despatched 9^o
Received 16
Registered 17

Subject

Forwarding Copies of
records and requesting
that an Appeal may be
preferred in the High Court
against the sentence of
acquittal of the Sessions
Judge, Rajahmundry, in
Sessions Case No 20 of 1895
on his file.

116 OCT. 95

Cover

For order

As to whether an appeal
may be preferred?

CP No. 25507
Referred to the Sot. Pleader
for opinion as to the probable
result of an appeal
The Sot. Pl. (with enclosure & verbal)
disptd 25/10/95

CURRENT NO. 5248

Jud

From

The Government Pleader

SECRETARY
GOVERNMENT OF MADRAS
9-NOV. 1895

Dated 5^o

Received 6

Regd 7

November 1895

No. 1157

No. 4868

Encls: ntd.

Stating that an appeal against
the judgment of acquittal in Godavari
Sessions Case No 20 of 1895 might be
preferred to the High Court with
success.

By order 2550/95

H. M.

Chas. 4868 + 5248

In view

Perhaps the following order may
issue?

order 18 Nov 1895 No 2370

This

See the circumstances stated

The Sot. Pleader will be
requested to present an appeal
to the High Court under Sec
417 C.C.P. against the judgment
of acquittal in Godavari
Sessions Case No 20 of 1895.

12/11/95
This seems certainly a case in
which an appeal should be
made though the success of
it is a little doubtful.

12/11

To the Sot. Pleader (200)
D. M. Sivani (100)

Government Pleader's Office,

HIGH COURT,

Madras, 5th November 1895.

No. 1157.

From

E. B. POWELL, Esq.,
GOVERNMENT PLEADER,
Madras,

To

THE Chief Secretary to Govt.,
Fort St George.

SIR,

In reference to your Office Memorandum dated 25th October 1895, No 2550 dis^y, I have the honor to submit the following:—

Opinion.

1. I have read the evidence for the Prosecution and though there are undoubtedly many discrepancies in the accounts given by the various persons who were present at the time as well as those who came up afterwards they appear to me such as may be explained by the fact that the night was dark and a great deal of what the witnesses speak to may be nothing more than conjecture on their part.

2. The undoubted facts are that the Constable was stabbed that night.

that reports were sent to the Police and sent to the Magistrate

Enclosure
returned

Magistrate by the Village Munsiff, which the latter says, he despatched at 5 A.M. and which are initialed as received by those two officials at 10 A.M.

That in these the accused is mentioned as the person who stabbed the deceased and the 1st, 2nd, 3rd and 4th witnesses as being present attempting to rescue the deceased and seizing the dagger.

The inquest report, which I cannot read but of which an extract is given in the Committing Magistrate's Preliminary Register, also shows that the accused was declared to be the person who killed the deceased, though it differs from the report in saying the 1st and 2nd witnesses seized the accused and that 1st witness unseathed the dagger from him. It is quite possible the Village Munsiff in the hurry of writing the report made a mistake as to who actually deprived the accused of the dagger.

3 These discrepancies might have had some weight if accused had admitted his presence and asserted that the stab was inflicted by one of the other persons. But his defence is that he was elsewhere and was not arrested at all on the morning of the 18th.

4 It is certainly curious that no one in the house from which the accused is said to have escaped by scaling the wall is called to prove that the deceased made no

enquiries

enquiries about him and the manner of his escape. Such evidence would have falsified the accused's defence and no tant strengthened the case of the Prosecution.

5 The Judge points out a number of discrepancies, which are explained by the District Magistrate in his letter, so I shall not recapitulate them.

6 Any variations between the statements of ^{the} Waiving girl and the other witnesses may think be explained by the fact she admits she was kept by the Prisoner at one time and she may be endeavouring to make her statements inconsistent with theirs in the interest of the Prisoner.

7 The Judge has not assigned any reason for disbelieving the Munsiff's Report or the Inquest Report, all of which reached the officials to whom they were despatched within a few hours. The fact the Judge has not commented upon them at all.

8 The only person who had any apparent motive for killing the deceased was the accused.

9. It appears to me that the learned Judge has rejected the Prosecution evidence without any discrimination and on that ground an appeal might with success be made against the acquittal.

I have the honor to be,
Sir,
Your most obed^t. Serv^t,

W. Town

Government Pleader

When given for copying _____
When copied _____
When examined _____
When signed _____

189 .

READ AGAIN G.O., No.
189 ,

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT A A A A A A A

LETTERS 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.