

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 2455.

Dated 27th 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. 18 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.
	5808		95				

Magistral

REVENUE (1895) DEPARTMENT.

FROM

The District Magistrate
Collector,

Godavari District.

Cur No. 771
wage of 1895

Dated 26

Despatched 29 October 1895.

Received 2

Byd 4311

End 40

SUBJECT.

Forwarding records
in Godaman Session Case
No 18 of 1895 and
Requesting that an appeal
may be preferred in the
High Court against
the sentence of acquittal
of the Sessions judge.

CHIEF SECRETARY
2 NOV. 1895
GOVERNMENT OF MADRAS

C?

Endowment No 2651 of 6-11-95

Referred to the Court Pleader
for favour of opinion
as to the probable result
of an appeal in this case.

5/11/95

(By order)

Francis

At. Under Secretary.

GOVT. PLEADER'S OFFICE
Date 7-11-95
MADRAS.

At.
4/11/95

To the Court Pleader with
papers in my file for use

[Signature]

TO BE RETURNED
WITH REPLY.

No.

FROM

V. A. Brodie Esquire
Ag. Dist. Magistrate.
Collector,

Godavari District,

TO

THE

Chief Secretary to Government
Judicial Department

SIR,

In forwarding herewith at the instance of the Superintendent of Police Copies of the records in Sessions Case No 18 of 95, I have the honor 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, should that officer so advise. The accused in the case was charged under Sec 302 I.P.C.

with the murder of his wife.

2 The accused in this case, Potula Subbaya, is a young Carpenter of Rajahmundry and his wife was a young woman of 16 years of age. The murder was committed at Dowlaiswaram in her parents' house on the night of the 18th May 1895. The particulars of the case can be gathered from paras 1, 2, and 3 of the judgment. The accused refused to make any statement before the committing magistrate, but the fact was not unfortunately, by mistake, recorded in the Commitment Order. The defence of the accused before the Sessions Judge was that

2

"while he was sleeping in a room beside his wife, he was awakened by a cry of 'thieves', then when he went out into the yard he was knocked down senseless by a blow in the face and that when he recovered consciousness, he found the Police present and he was taken to the Station on a charge of murdering his wife." He could not say who killed her

3 Four witnesses were examined for the defence. The first witness, a neighbour of the accused, says that he never heard that the accused and his wife were on bad terms; the 2nd witness says that they were on good terms, the 3rd and 4th witnesses

a blacksmith and a carpenter
say that the axe before the
Court is not used by either black-
smiths or carpenters and that
they never saw it with the
accused. The evidence of these
last witnesses is utterly worth-
less as the accused might have
possessed the axe without the
knowledge of the witnesses or
procured it for the purpose of
the murder. Nor is the testi-
mony of the first two, as to the
absence of any quarrel between
the accused and his wife, of
any value as quarrels which
arise from jealousy are seldom
made known to the neighbours.
In Loni Shame.

4. The Conduct of the Hospital
Assistant, Dowlaiswarand in
giving inconsistent evidence is
very suspicious. Before the
Committing Magistrate he said
"An instrument of the kind
shown to me (the axe) can cause
the wounds stated above." Before
the Sessions judge at first he stated
"all these wounds had been inflicted
by an axe. This axe was produced
to me at the time; but the wounds
could not have been inflicted
by this axe." Subsequently he contra-
dicted the above statement and
said "the 4th, 5th and 6th wounds
could not have been caused
by this axe. They ^{were} ~~are~~ caused by
some sharp-edged instrument
The other wounds seem to have been
caused by an axe but I think

"not by this axe because its corners are turned." The Hospital assistant has apparently attempted to modify his previous statement, in the Sessions Court, so as to make it doubtful whether the axe produced was really the weapon used in committing the murder.

But still his evidence before the Committing Magistrate and even in the Sessions Court clearly proves that the axe produced could have caused the wounds from which death followed; for, before the Sessions Court, he admitted that some of the wounds could have been caused by an axe like the one before the Court though not the others. It is just possible too that the corners might have been turned by striking against some hard substance upon the ground when "was hacking at the deceased's

prostrate body, though the more probable explanation of this witness' discrepant evidence is that in the Sessions Court he was trying to favour the accused from corrupt motives; for he (Hospital assistant) bears a bad character generally at Dowlaiswaram.

5 The Judge lays much stress on the medical witness' statement that the axe had not "as much blood as he would have expected" on it, but before the Committing Magistrate the witness deposed that there "was blood on both sides of the axe above the edge and at other places and that the bit of cloth inserted into the head of the axe was a little bigger and redder."

This statement abundantly proves the fact that the axe had as much blood as it could well have under the circumstances of the

Case. It is also quite probable that in hacking the prostrate body of the deceased in the dark, the accused struck the axe into the ground and it may thus have lost some of the blood covering the edge. This supposition is borne out by the S. H. Officer's report at the time and the plan submitted with it.

6 The judge was mistaken in observing that there was no motive for the accused to kill the deceased. The statement of the first witness, (the deceased's father) that the deceased complained to him that the accused was ill-treating her, that the accused told him that he suspected her of infidelity, that he sent Saramma Saramma (7th witness for prosecution) to reprimand the deceased, that the accused's mother told him when leaving the deceased at his house that

the accused was threatening to beat and kill the deceased, the conduct of the accused's mother in staying at Pattabhi's house at Dowlaishwaram and not at the first witness's house where the deceased was taken there and the statement of Saramma that she found the deceased ^{over} locked up in a room when she went to the accused's house at Rajahmundry, are, I think, sufficient to show that the accused suspected the deceased and had treated her with great harshness in consequence. This Saramma seems to have felt pity for the accused and been somewhat reluctant to speak the whole truth at the trial, for her ~~beaten~~ statement that the deceased was beaten and locked up in a room for a long time and her jewels taken ~~up~~ away simply for giving false ~~man~~

Cannot be accepted for a moment
though of course there is no doubt
that the deceased was beaten
and locked up in a room.

No sane man would resort to
such inhuman treatment for
so simple a fault on the part of
his wife. If however the accused
was really so cruel for such
a trifle, the judge should have
had no difficulty in giving
the accused a motive as such
a man would not hesitate
to kill his wife if ~~he~~ he suspected
her of a more serious mis-
conduct. Moreover the S.H. Officer
of Rajahmundry (Pro: 10th witness in
the Court of the Committling Magistrate),
states that sometime previous
to the date of the murder, the
mother of the accused complained
to him saying that her son
(accused) said that his wife's

4.
(deceased's) Conduct was not good,
beat her and said he would go
away elsewhere, and that the
deceased was trying to take
away all the property and would
not listen to her advice and that
he thereupon sent a constable
to warn the deceased. From this
it is clear that the ill-feeling
between the accused and the
deceased had its origin in jealousy
on the part of the accused and
it is difficult to procure better
proof of jealousy on accused's part
as he is a young Telaga and
would not naturally like
to make a fuss about his wife's
infidelity and so publish his
own shame as a matter of
sentiment. The judge himself
was constrained to observe
from the manner and severity

of the wounds that jealousy
or anger must have been the
motive for killing the deceased.
There is not doubt that it was
and it has been established
that accused was jealous of
her, whilst there is absolutely
no evidence whatever to show
that any other person was or
had reason to be.

7 The other facts which
the Judge has noted in para 8
of his judgment as being in
favour of the defence are
not inconsistent with the
guilt of the accused.

(a) As regards the quarrels, re-
ferred to by the Judge these were
not ordinary quarrels as shown
above. The quarrels of young
married couples, moreover
will appear to be serious only
if something dreadful

as in this case, happens in
consequence. Jealousy clearly
was at the bottom of quarrels
and it is a trite remark
to say that in this country
it is the cause of most murders.
The Judge has not noticed also
that the mother of the accused
was an interested and reluctant
witness. If the girl wished to
see her parents, why should her
mother-in-law a female, take
her to Dowlaiswaram in the
absence of her husband (accused)
after stripping her of all her
jewels? Why should the mother-
in-law complain to the
Rajahmundry Station House
Officer? Why should she not
remain in the house of
the deceased's parents after
leaving the girl there but
go to sleep at a neighbour's

house? It is true that the
accused slept the previous night
also with his wife. But when
he suspected his wife of in-
fidelity and determined to kill
her, he would not naturally
make his suspicions or in-
tentions known to his wife
and quarrel with her but
give her no room to suspect
his purpose. His curt questioning
of his father-in-law as to who
brought his wife there the pre-
vious night, his remark
that he was angry for this
with his mother, and not with
his wife and his remark when
leaving the house in the morning
that he would return again,
his going to Dowlaismaram
on the night of the murder
without telling his mother

5
when he was going and his
sudden appearance late at
night at the door of the house
of the deceased's parents, all
point to premeditation and
deliberate intention on the
part of the accused to commit
the murder.

(d) As regards the remark
that the girl was killed in
the yard and not in the room,
no evidence could be procured
as to how the deceased came
to be killed in the yard as there
was no one there except the accused
and the deceased for the first
witness only went to the scene
of offence when the deceased was
being killed. It may be presumed
that she went out into the yard
for some necessary purpose and
accused followed her or that
she was decoyed into the yard
where the act had taken place.

been put by him on some
pretent or she might have been
drugged ^{out} into the yard so that
the members of the family might
not be awakened and instantly
murdered. If however any ex-
planation ^{on this point} was necessary it was
the accused who should have
been called upon to furnish
it as he and she was alone
together according to his own
statement. The judge himself in-
deed is unable to suggest any
other explanation of the death
of the wife than that the husband
killed her and no other seems
possible as the number and severity
of the wounds render it out of
the question that any thief
could have killed her. Moreover
the deceased had no jewels what-
soever on her person at the time.
The accused's own statement also appears

to me practically to be an
admission of his guilt for there
was no cry of "thieves" raised
until the 1st witness raised
it and he only raised it when
the murder was being committed.
His defence too that she was
murdered by some thief is clearly
disproved; for nothing was stolen
and no thief would not only
have killed deceased but
hacked her body afterwards.
(c) The 3 eye witnesses also
who saw accused in the very
act of hacking the body of
deceased are not shown to
have had any motive what-
ever to perjure themselves at
the expense of accused, and

their evidence that accused
was hacking at the body of
deceased was borne out by
the number of injuries on the
corpse.

(d) As regards the black eye
of the accused, I have to observe
that it does not appear to have
been a very serious one and no
doubt he either received it either
in the struggle between him-
self and Narayanaswamy
when the latter attempted to
take away the axe from him
or the father of deceased may
have struck him when he
discovered what he was doing
as the witnesses admit that
there was a struggle between
them and the accused, and
on form may be sure they did

not treat him over tenderly when they
got the upper hand. Considering the
relationship of two of them to deceased
this black eye is no cause for sur-
prise. When accused caused bruises on
the head and chest of the 1st witness
also, the latter may be presumed
to have retaliated and the black
eye to be one of the results.

(e) I can see nothing surprising
in the 1st witness on awaking crying
out "theives". Hearing a disturbance
and not knowing exactly what
is happening, this is the cry which
any native would utter in order to
arouse and attract the attention of
his neighbours.

(f) That the deceased did not also
attempt to murder his father-in-law
after murdering his wife is hardly,
I think, a point in his favour
as the District Judge appears to think
he had no quarrel apparently
with his father-in-law (1st witness)

so that he should desire to kill him.
(9) The judge lays stress on the bad
demeanour of the 1st witness but I
confess that I can see nothing in
his evidence itself to justify the
supposition that he was perjuring
himself. The District Judge also
does not give any reasons such
as hesitation or prevarication on
the part of this witness for this opinion,
and demeanour alone is a very
indefinite criterion to test the
evidence of a witness by. His evidence
appears to me on perusal to be simple
& and straight forward enough. He
had no special spite previously
to accused apparently, and though
no doubt he must be considered
accused's enemy now, his evidence
gives good reasons for his enmity
and it is not only borne out by
the other witnesses but corroborated
by the injuries he himself received.
He says that he had no

Suspicion that the accused was
so enraged with his wife as to
be likely to murder her, he no
doubt told the truth and the
defence have entirely failed
to show that he received the injuries,
he undoubtedly did receive at the
time, in any other manner than
that in what he says he did
ie at the hands of accused.

(10) The judge gives no good
grounds for discrediting the evidence
of the other prosecution witnesses, simply
because he was a fellow workman
of the 1st accused, there is no reason
to suppose that the 3rd witness is
so base as to give false evidence
of murder against the accused
to whom he bears no ill-will, and
if the 1st witness did not give his
daughter in marriage to his
nephew as he (witness) deposed.

the 4th witness must have been
angry rather with the 18th witness
than with the accused who had
nothing to do with the settling
of the marriage. Besides such
feelings would die away soon
after the marriage was performed.
This then was no sufficient motive
for his committing perjury against
accused at the instance of the
18th witness. There is nothing also
to show that there are any other
neighbours who could have reached
the spot at that hour of the ~~house~~ night-
as soon. At such a time and
under such circumstances the
persons who are naturally expected
to go to the place are friendly neigh-
bours and relatives. There is no
reason therefore why the evidence
of the witnesses (pro:) in this
case should be regarded as
saying anything. Nor is any good

Pro 12 int

motive proved for the witnesses to charge
the accused ~~for~~ falsely with murder.
(j) The absence of proof of blood on
the body of the accused is imma-
terial seeing that the defence itself
did not try to make much of it.
Moreover it is explained by the
fact that the weapon used
is an axe with a long handle
the ^{evidence} ~~quest report~~ however ~~does~~
shows that there were some stains
of blood on the clothes worn by the
accused at the time, whilst it is
not part of the theory of prosecution
that any knife was employed
in killing the deceased. The
presence of these blood stains, the
accused has not at all accounted
for.
(k) I do not understand the judge's
remarks about its not being clear
whether the wounds were inflicted
before or after death. The
Hospital Assistant's evidence

to which he gives so much credit weight when it tells against the prosecution, shows that death was due to the wounds and the blood on the axe proves not only this but that it was used in inflicting some or more probably all of them.

8 The opinion of the Hospital Assistant before the Judge is not wholly reliable as it is in part inconsistent ~~not~~ with his previous statement before the committing magistrate as already mentioned. Also this Hospital Assistant bears a very doubtful character and is anything but popular at Dowlaismaram. As a witness before me, I should not put great faith in his evidence except ^{where} it is in accordance with other evidence. The defence of the accused is utterly unworthy credit. Indeed it is practically

an admission of ^{his} guilt. The only injury he received was a trivial one and the blow which caused it could not have stunned him and there is no evidence of any kind to show that he was even insensible either before or at the time of the arrival of the police, whilst the evidence he adduced proved nothing.

10. To sum up, there is evidence that the accused suspected his wife with or without reason of infidelity, that he had before treated her with great harshness, that he was ~~at~~ angry at her going to her father's house, that he was seen by first witness and 3rd witness striking deceased with the axe, that the 4th witness took the axe with which the murder was committed from his hand, that he was at once made over to the Police, whilst the evidence of the 1st witness is supported by the injuries on his person and that of all 3 direct prosecution

witnesses by the production of
 the blood stained one at once,
 that there were blood stains on
 the clothes accused was wearing
 that his defence is worthless and
 that jealousy must have been the
 cause of the murder whilst no one
 else save deceased had reason to
 be ~~jealous~~ jealous of deceased.
 Lastly the Sessions Judge practically
 admits that there is no possibility of
 accounting of deceased's death other-
 wise than as the prosecution accounts
 for it, whilst ~~of~~ acquitting the
 accused. As I feel strongly that
 in this case there has been a
 glaring miscarriage of justice,
 I venture to suggest to Govern-
 ment, that the acquittal
 should be appealed against.

I have the honour to be

Sr

Your most obedient servant,
 (Sd/ V. A. Bowdler)

D. Majisthe

For D. Majisthe.

CURRENT NO 5388

From

THE GOVERNMENT PLEADER,

Madras.

Dated

13th

Reed.

14

November 1895

No. 1203.

ENCLOSURE

C No 5160 Lits Smt
 ut?

CHIEF SECRETARY
 14 NOV. 1895
 GOVERNMENT OF MADRAS

Stating that an appeal against the
 judgment of acquittal in S. C. No. 180795
 under file of the ~~Godavari~~ Godavari
 Sessions Court may be preferred to
 the High Court with success.

H. M. C. No 5160 & 5388.

For review

The following order may perhaps
 issue?

1084 27.11.95
 M. No 2455 23/11/95

The Smt 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 1807 1895.

W. S. N. S. 21/11/95

The case seems to me a very
 clear one. H

The way in which Mr. Kankarjee
 is acquitting murder cases is
 very peculiar. H

See. Issue.

M. S. N. S.

To the Smt Pleader (1000)
 with record & the return
 D. Majisthe, Godavari

CURRENT No. 5388

Government Pleader's Office,

HIGH COURT,

Madras, 13th November 1895.

No. 1203.

From

E. B. POWELL, Esq.,

GOVERNMENT PLEADER,

Madras,

To

THE Chief Secretary to Govt.

St. George.

SIR,

With reference to your Office Endorsement N^o 2637
Dated of the 6th instant, I have the honor to submit the
following:-

— Opinion. —

1. It is unnecessary to recapitulate all the facts and
reasons advanced by the District Magistrate to support the view
that the Sessions Judge has arrived at a wrong conclusion. I
may merely observe that after reading ^{through} the evidence I entirely
agree with him.

2. The defence set up by the accused was not heard
of before the trial in the Sessions Court. It has all the
appearance of an afterthought.

3. It was no doubt a very reprehensible mistake on
the part of the Magistrate not to put on record the accused

Statement

+ enclosures returned.

Statement.

4 There must however have been many persons present in the Sessions Court who knew the facts and could have informed the Judge, and I am surprised the Judge did not call the Magistrate as a witness. The fact also that the accused received the cross examination of the witnesses before the Magistrate is significant.

5 The Hospital Assistant has obviously varied his statements in the interest of the accused. I believe an appeal will probably be successful.

I have the honor to be,

Sir,

Yours most obedt servt,

M. W. W.

Government Pleader.

en given for copying _____
en copied _____
en examined _____
en signed _____

189

AGAIN G.O., No.
189

DATED

PRESENT No.

ENCLOSURES TO G. No.

PADES 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.