

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 457

DATED / 1st March 1895

INDEXED.

[Despatch Abstract.]

FEE TO PUBLIC PROSECUTOR.

According sanction to the payment of a fee of Rs.75 to the Public Prosecutor, Madura, for conducting the prosecution in Calendar case No.408 of 1894 on the file of the Stationary Magistrate, Madura.

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BACK PAPERS.

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

FURTHER PAPERS.

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

Stationary Ltd
Class Magistrate of Madras Taluk

Court of the Second

Serial number.	Name of complainant.	Description of Accused				Offence complained of.	Result of trial.	Duration of Proceedings.			Explan-ation of delay.	Remarks.	
		Name.	Father's name.	Caste.	Calling.			Age.	Residence.	Date of report or complaint.			Date of commencing trial.
1	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	30-10-84	18-12-84	29-1-85	8	9	
2	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	30-10-84	18-12-84	29-1-85	8	9	
3	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	30-10-84	18-12-84	29-1-85	8	9	
4	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	30-10-84	18-12-84	29-1-85	8	9	
5	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	30-10-84	18-12-84	29-1-85	8	9	
6	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	30-10-84	18-12-84	29-1-85	8	9	
7	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	30-10-84	18-12-84	29-1-85	8	9	
8	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	30-10-84	18-12-84	29-1-85	8	9	
9	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	30-10-84	18-12-84	29-1-85	8	9	
10	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	Chas. Thero	30-10-84	18-12-84	29-1-85	8	9	

During a quarrel between the accused and the complainant, the accused fired a shot which wounded the complainant in the chest. The accused was arrested on 30-10-84 and committed to custody. The complainant was treated at the hospital and recovered. The accused was found guilty and sentenced to 18 months imprisonment with hard labour. The sentence was passed on 29-1-85.

(Signed) J. Jaganatha Rao
Magistrate Class
(True copy)
J. Jaganatha Rao
Magistrate Class

CALENDAR No. 408 of 1894

Name of the accused: - Massthan
 Offence: - Firing a gun & thus causing hurt
 as to endanger the life & offence punishable
 Finding: - under sections 285 & 337 2nd
 Sentence: - Guilty
 to pay a fine of 30 Rs in default to
 undergo simple imprisonment for
 1 month

JUDGMENT: -

The accused Massthan a servant of
 Mr Fischer is charged under sections 337 & 285
 of the Madras Town Police. This case
 was transferred to this court to file by
 the District Magistrate and the connected
 papers were received on 30-11-94

2 The case for the prosecution is that
 on the morning of 30-10-94 the complainant
 aged about 12 went on the Teppacolam
 road towards Marianman Teppacolam
 He went to arrive to the east of the east
 gate of Mr Fischer's Bungalow behind
 a bamboo cluster, where a bullet
 shot from within the compound of Mr
 Fischer struck him on his left side
 He turned and saw the accused going
 at a quick pace towards the Bungalow
 with a gun and fell down. Prosecution
 2nd and 3rd witnesses who happened
 to pass

to pass by at the time heard
 the shot and saw the boy wounded
 and fallen on the road to the
 south of the bamboo cluster to
 the east of the Eastern gate and within
 also saw the accused going with
 a gun from about 30 yards from
 the spot in question towards the
 Bungalow. Prosecution 2nd witness
 in the Bungalow stated and recorded
 under section 164 of the Town
 Sub Magistrate about 3 days after
 the occurrence stated that he
 saw some body going away with
 a gun and that 2nd witness gave
 out that it was Massthan the
 accused. But here he states that
 he saw no body going with a
 gun inside the compound and
 that 2nd witness was at 60 or 70
 yards in the road to the west of
 the spot where the report of the
 gun was heard. As soon as the
 boy fell down 2nd witness ran to
 his aid and ascertaining from
 the

the boy that his parents resided at Santhapettai took him back again as far as Mr Dumerque's gate where in consequence of the boy swooning he stopped a little. In the meanwhile prosecution 3rd witness the complainant's father came and he took him to Mr Fischer. Prosecution 2nd witness and 4th witness another constable who happened to be on beat there also accompanied the accused ^{him}. They told him that his servant shot the boy where upon Mr Fischer sent for the accused and asked him how it happened and the accused replied that he aimed at a bird and that the boy was accidentally shot. Mr Fischer required the complainant's father to take the boy at once to the hospital. The boy was taken to the hospital and statements Exhibit A & Exhibit B were taken from the boy by the Station house Officer and Town Sub Magistrate that very day. They (prosecution 7th

8th and 9th witnesses) gave these statements and swear that they had been correctly recorded as stated by the complainant. At the hospital the bullet was extracted by Dr. Reeves at about 4 PM on the date in question. Hospital it is said (prosecution 10th witness) who also aided in the operation speaks to this and produces the bullet thus extracted. He says the boy was conscious at the time he was brought to the hospital and that the bullet was extracted from the back about 3 1/2 the jaw inch to the left of the spine. He says the boy was under treatment from 30th October to 13th November and is of opinion that the wound was not so serious as to endanger life. Prosecution 5th witness is a Dalai of Mr Dumerque. He says he came to Mr Dumerque's Bungalow which is opposite to Mr Fischer's Bungalow on the other side of the road from his house at the time in question and saw the

pages

the prosecution and witness holding
the wounded complainant. He asked
him who shot him and ~~was~~
replied that Moshaw did it.
He also says that 15 or 20 days
prior to this occurrence Mr Dumerque
told him that he heard the noise
of bullets flying over his head
and asked him to enquire who
fired the shot. He came out and
saw the accused and Packham
and other servant of Mrs Fischer
entering Mrs Fischer's Bungalow
with the gun. He also admits
that it was Packham that
had the gun at the time and
not the accused. Prosecution
to the witness merely proves the
place of the locality. ~~that~~ he did

plawg the
3 the accused says that he did
not shoot and wound the
complainant and that he
was sick at the time and lived
in Mr. Fuchero's Bangalore. He
does not explain why the
prosecution witnesses speak
thus

page 6.

thus falsely against him
4 Mr Fischer and another
servant of his speak to the
fact of the accused's illness
at the time. But Mr Fischer
himself admits that the
accused attended him at his
table and he cannot say
whether he was so weak as
not to handle a gun. As to the
occurrence Mr Fischer says
that he himself fired a gun that
morning from his office room
that he aimed ^{a dog about} ~~at the~~ ^{from the Banglow} ~~towards~~
2000 feet of ^{the} ~~towards~~ ^{the} south
or a little towards south west
facing the compound wall
and did not hear any other
reports of a gun and 5 or 6 after
the complaint was brought
to him ^{he} ~~he~~ himself admits
that the western gate is at
a distance of about 200 yards
from his office room and the
eastern gate (the scene of occur-
rence) is about 250 yards from
the

the same and that the compound wall in the south is about 150 yards. If so how the boy came to be affected by the bullet thus aimed becomes inexplicable unless we suppose he was inside the compound at the time. Mr. Fischer himself says that he has serious doubts as to how his bullet might have affected the boy and he is perfectly justified by the circumstances. It is impossible to believe that his shot aimed so spoken to by him would have affected the boy at the spot where the prosecution's evidence discloses he was picked up.

5- The prosecution's evidence proves that it was Masthai's bullet that wounded the boy. No apparent motive or enmity has been elicited against accused and earliest statements made by

by the complainant and the 2nd and 3rd witnesses implicate the accused & fix him with responsibility of injury. Their subsequent evidence in this court shows that they were rather favourably inclined towards the accused. The accused does not rebut the evidence by any satisfactory evidence. He was in the Bungalow at the time and his illness if he had any was not such as to make him powerless and completely bedridden. Mr. Fischer's account of his firing the shot is unsatisfactory to himself and it does not explain how it came to affect the boy at such a distance. Under these circumstances the natural and reasonable conclusion that can be arrived at is that it was Masthai's shot that affected the boy and not Mr. Fischer. Of course Mr. Fischer says that he had his gun

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guns locked up and that his
servants took them with
his permission when he is
present and without it when
he is absent. But Mr. Fischer
himself admits that Maathau
is his favourite servant and
favourite servants do sometimes
take things ^{and} without request
and permission, so it is likely
that Maathau might have taken
his gun without his knowledge.
Again Mr. Fischer says that
the prosecution witnesses did
not tell him that morning
that it was Maathau that shot
the boy and that he did not
send for him and examine
him as to whether he shot or
not but that they merely told
him that some body in his
compound fired the boy and
that he asked them at once
to remove the boy to the hospital.
The prosecution witnesses state
that they did ~~not~~ mention Maathau's
name and that he was sent for
and

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Their version
and examined
is also consistent with reason
If Maathau's name did transpire
before the Complainant was
taken to Mr. Fischer, it is natural
to expect that they would
mention his name to Mr.
Fischer and that he would
send for and examine him.
Mr. Fischer says that they
simply told that some body
inside the compound shot
the boy and did not mention
Maathau's name. If so how
did the boy mention his name
to the station house officer
and Sub Magistrate that very
same day. A nipper having bitten
him his servant Maathau who
stood by at the time very
readily sucked the poison
out of the wound ^{to save his master's life} and
gave life. Perhaps Mr. Fischer
being under the influence of this
gratitude speaks in this
manner to protect his faithful
servant. But be this as it may
it has been clearly proved by
disinterested

disinterested witnesses that it was Nathan that shot the boy and earliest statements recorded by independent witnesses ^{reliable} amply corroborate their statements. It is true that Mr. Fischer states that he told Mr. Medel Suban (Lawn Police Inspector) that it was he that shot. But the particulars about the shot which he now gives even according to his own admissions do not account for the boy's wound.

Under these circumstances I find that it was Nathan's bullet that affected the boy and not Mr. Fischer. Then as to the question whether the accused's act would amount to an offence in the first place the son's wall extends up to the eastern gate and no farther. The bamboo cluster is adjoining the road which is frequented by people. The accused ought therefore not to have fired guns.

guns loaded with bullets at or near such spot as it is likely and he ought to have known that it may come in contact with the passers by and endanger their life. Negligence has been defined as acting without the consciousness that the illegal or mischievous effect will follow but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had he would have had the consciousness. The imputability arises from the neglect of civil duty of circumstances. So in the present case the accused may have thought that there was no body near & even wished that they were more near but if he had been more cautious he would have known that as the adjoining road was frequented by people his bullet might come in contact with

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with any of them and endanger
their life - The accused has
acted in the present case
without that civil duty of
circumspection and the
result is that a young boy
who lawfully took the road
was seriously hurt and his
life put in danger. The accused
is accordingly guilty of the offence
punishable under sections 337
& 285 I.P. and I sentence him
to pay a fine of 30 Rupees (thirty
Rupees) in default of payment
of the said fine he is to be kept
to simple imprisonment for
one month.

(Signed) G. Jagannatha Siva
Magistrate Class
29/1/25

(True copy)

Enclosure, in a letter from
the District Magistrate Madras
dated 18 February 1895 No 242

Copy of Judgment
8/1

Refon C No 242
Magisterial 1895 Madras District Magistrate's Office
8/1 18 February 1895

From J. Swigg Esquire
Acting District Magistrate
Madras
To The Chief Secretary to Government
Judicial Department
Madras.

Sir,
I have the honor to request that
Government may be pleased to sanction
payment of Rs 75 to the Public Prosecutor
Madras being his fees for professional
services rendered in connection with Calendar
case No 408 of 1894 on the file of the Second
Class Stationary Magistrate, Madras Taluk.
The trial occupied 3 days.
* Copy enclosed of judgment.

2 One Musthan was charged by the Town
Police under Sections 337 and 285 I.P.
and as a High Court Advocate appeared for
the defence, the Superintendent of Police
requested that the Public Prosecutor
might be instructed to appear on behalf
of the prosecution.

I have the honor to be,

Sir
Yours most obedient Servant

K. V. V.

Acting District Magistrate

K. S. V.
8/1

From 841
The District Magistrate
Madura.



Dated 1st February 95.
Ref No 242 of 95
Recd 30th Magisterial
Enclosure - 1

Subject

Requesting sanction
of Government for the
payment of Rs 75 to the
Public Prosecutor being
his fees in C. C. No 408 of
1894 on the file of the
Stationary Magistrate
of Madura.

Order 1st March 95 No 457

Sanction is accorded
to the payment of a
fee of Rs 75.... to the
Public Prosecutor for
conducting the process
in C.C. No 408 of 94 on the
file of the Stationary Magistrate
Madura.

Copy 2/3 2 There was no necessity
to send up a
copy of the judgment
as the acct. had been
disptd. 10
2/3/95 4/3/95

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LETTER OF GOVERNMENT. _____

STATEMENT WITH DITTO. _____

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