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Judicial (1895) Department.

ORDINARY MS.

G.O., No. 555.

DATED 12th Mar: 1895.

INDEXED.

[Despatch Abstract.]

APPEAL AGAINST AN ACQUITTAL.

Forwarding to the Government Pleader, Madras, certain papers with instructions to present an appeal against the acquittal by the Sessions Judge, South Arcot, in Calendar Case No. 24 of 1894, if he considers the evidence to warrant such a course.

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.
	7497		1895				

1895.

1175

Job Department.

From

The Collector, *+ District Magistrate*
South Arcot.

To

The Chief Secretary
to Government
Madras.

Dated

Despatched

Received

10

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No.

10 MAR 95

Suggesting that an appeal
against the order of acquittal
by the Session's Judge s.c. c.
No 24 of 94 may be present-
ed to the High Court under
Sec: 417 C. b. c.

*Placed the
records if they
have been received
please do 10/10 K-
Not yet received
do 10/10
Have received 10/10
do 10/10*

For orders

11.3.95

South Arcot.

No.

From

A. E. Easthurst Esquire
of District Magistrate of
South Arcot.

To

The Chief Secretary to Government
Judicial Department
Madras.

Sir,

I have the honour to submit printed
copy of judgment of the local Court of Session
in C. C. No. 24 of 1894 with copies of the evidence
in the case in which the accused (1) Nalla
Perumal Asari and (2) Alan were charged with
the murder of one Palani Pillai. Both the
accused were found "not guilty" by the two
assessors and the Sessions Judge and they
were accordingly "acquitted" on the 6th September
1894.

2. The copy of the judgment reached me on
the 2nd October 1894. The result of the trial
surprised the Police by whom a conviction
of both the accused had been regarded as
almost certain. On the 24th idem, being then
in camp, I wrote to the local Public Prosecutor
who had conducted the prosecution in the
Sessions Court and asked him to examine

5 months +
5 days before
the despatch of
this letter

Subject.

Enclosure

No.

Received

Despatched

Dated

Madras.

to Government

The Chief Secretary

To

South Arcot.

The

From

Department

189

the records with the Judge's permission and report whether an appeal might be made against the acquittal of the 1st Defendant as the evidence against him appeared to me to be specially strong. The Public Prosecutor's reply was received on the 12th January 1895. Copy of it (marked #) is enclosed. After giving his opinion, he suggested that "the question of appeal might be decided on a perusal of copies of the evidence oral and documentary". The Sessions Judge was accordingly requested on 15-1-95 to furnish copies of the evidence in the case. These were received on the 6th ultimo. I have carefully examined the records and discussed the case fully with the Superintendent of Police and the Public Prosecutor, both of whom are of decided opinion that both the accused were guilty of murder and that there has been a miscarriage of justice.

3. That Palani Pillai was murdered on the night of the 14th June 1894 cannot I think be doubted. His mother (1st Prosecution witness) proved that "her son was not suffering from any disease. He was like a young deer" and that he ate his food that night and went off to sleep as usual. Subsequently she was aroused by her son being brought to the front of her house in a moribund condition. The medical evidence went to prove that Palani Pillai had been strangled, and as observed by the Judge "considerable force must have been used

used. This completely disposes of the suggestion made at different stages of the case that Palani died of snake bite."

4. There is direct positive evidence that Palani Pillai was murdered by the two accused. The 3rd Prosecution witness was sleeping in the house of one Kuppi - 4th Prosecution witness. He swears that when he went to lie down, the accused were talking together on Kuppi's threshold, that the deceased came to solicit Kuppi, that the accused fell on Palani Pillai and ^{They then carried him out and placed him} strangled him under a tamarind tree. He and Kuppi raised an alarm when the 2nd Prosecution witness - Solay Pillai and the Village Munsiff appeared. Kuppi - the 4th Prosecution witness - corroborated Munsiff as to Palani having come and solicited her on the night in question. She refused him and fell asleep, to be soon awakened by hearing a gurgling noise. She then ~~said~~ saw the two accused strangling Palani. The 5th Prosecution witness - Mutha Pillai - deposed that he was sleeping on Kuppi's verandah, that he was aroused by a cry that some one had been killed. He got up and saw the accused carrying Palani. The 2nd Prosecution witness - Solay Pillai - was aroused by hearing Munsiff cry that the accused were murdering Palani. He found Palani lying under a tamarind tree. The 6th Prosecution witness - the Village Munsiff

Munsiff - heard an alarm and found the deceased lying under a tamarind tree. He examined Minian, Kuppi and Mutha Pillai all of whom stated that the two accused had carried the deceased out and laid him under the tree. Palani Pillai was then carried to his house and died in a short time. The two accused were then arrested, the time being about 1 A.M.

5. Both accused pleaded alibi. Three witnesses were examined on behalf of Valla - Perumal Asari but the Judge himself has recorded "I do not believe one word of the evidence of these witnesses."

6. Two witnesses were examined on behalf of Alan who urged that he and one Narana Goundan sat up late that night splitting date stems after taking their meal. They then heard that Palani had been ^{hit} killed by a snake and went near his house but did not see him. The Judge states "I consider that Alan's two witnesses told the truth. They were not in the least shaken ~~away~~ in any point, and they agreed in little matters as to which it is not likely that they would have been prepared." The Public Prosecutor however points out that one of these witnesses was examined one evening and the other on the following day. It is obvious therefore that they had ample opportunity of taking care that their evidence tallied.

The certified copy of the deposition of the witnesses in the first place in the first day. This cross-examination of the whole case of the 2nd witness took place on the second day.

The theory of snake-bite was discredited by the Judge himself. I do not consider that the defence evidence can be held to have met the direct evidence of the eye witnesses to the murder.

7. The assessors were of opinion that having regard to the time when Minian, Kuppi and Mutha Pillai said the murder was committed, it was impossible that they could have identified the men who murdered Palani. The Judge said he was "constrained to agree with the Assessor." He thought that if the moon was in the position pointed out by Minian - that position agreeing with the hour given by the Village Munsiff - then "the moon was within an hour of setting." He believed that it was impossible "that in Kuppi's room there could have been at that time any light from the moon which would have enabled any person to recognize another, and the moon had sunk behind trees to the west of Kuppi's house which must have made the room perfectly dark."

8. The Public Prosecutor points out that "the evidence shows that the place where Kuppi and Minian were lying down was not a room enclosed by walls on ^{four} all sides but a portion of the house which had walls on all sides with an opening or inner yard." He also points out that "neither the witnesses on both sides nor the accused can be said to have accurately described the exact position of the moon about that time."

the

the accused and their witnesses say that the moon was in the zenith or about an hour late. The body of the deceased was found not at 10 P.M. when the moon was in the zenith but after midnight and the Village Munsiff's report fixes the hour as 2 A.M. Taking the whole of the evidence about the position of the moon, it may be concluded that the moon was sufficiently high to admit of light in Kuppi's house so as to enable the witnesses to recognize the accused already known to them even before they came to the street soon after the deceased was removed from the house by the accused. The mother of the deceased distinctly states that when her son was carried to his house in a dying state "the moonlight was clear" and that when she first saw him after he was brought home "there was no torch or lamp. A light was brought afterwards."

9. Against the opinion of the assessors that there was not sufficient light to enable the witnesses to identify the accused is the fact that they swear to the identification and to the existence of moonlight.

10. The Judge further refers to contradictions between the evidence of Muniam, Kuppi, Mutha Pillai and the Village Munsiff in the Sessions Court and the evidence given by them before the committing Magistrate.

Says "There are no discrepancies worth the name as to what the witnesses saw at the time of the offence but there are discrepancies on other points as noticed in the judgment. After witnessing the murder, the witnesses must have been in great confusion and this might have been the cause for their discrepant statements."

11. The Village Munsiff's evidence was regarded by the Judge as very "contradictory and unsatisfactory." The Munsiff's statement that it took him two or two and a half hours to write his reports to the Police (A) and to the Magistrate (B) is regarded as a "ridiculous story," but with all due deference, having regard to what had occurred, the late hour and the ordinary standard of ability of village Munsiffs, I do not think 2 or 2 1/2 hours was ^{very} so long a time for the Munsiff to take to report the facts of a very grave crime to the Authorities. As the Public Prosecutor observes "The Village Munsiff has blundered on some points but his report shows that both the accused were under arrest when he wrote the report."

12. I venture to suggest that if Government considers that an appeal from the order of acquittal should be presented to

to the High Court under Section 417 C.P.C.
the Public Prosecutor he instructed to
present such appeal before the 18th instant
as under Act XV of 1877 Sec. 11 Article 157
the special limitation period of 6 months
expires on that date.

I have the honour to be

Sir

Your most obedient servant

M. S. S. S.

for ag Dist. Magistrate.

The District Magistrate of
South Arcot.

Sir,

In returning the judgment C.C. No. 24
94

sent to me for perusal of evidence in the case
I have perused the evidence with the leave
of the Court and I beg to report as follows:-

1. That Palania Pillai was murdered
has been proved beyond doubt. That more
than one was concerned in committing the
offence appears to be certain because the
body was carried and left under a
tamarind tree in the street near the
house of Kuppi. The evidence shows that
Kuppi was the concubine of the deceased
Palania Pillai and of the accused is
and that the accused killed the de-
ceased a well to do ryot, in the house
of Kuppi.

There is no reason to doubt and the
Judge

20/2/11
Judge does not doubt, that Kuppi and
Munian were lying down in the house
in the inner varandah (or nadai) and
that there was moon light at the time. The
roof of the inner varandah is high. There
was no suggestion that there were any
others interested in getting rid of the de-
ceased, the only allegation attempted
to be made on the side of the defence was
that the deceased died of snake bite.

The evidence shows that no one who saw
the body and noticed the appearance
of the neck could have thought of snake
bite as the cause of death and it is im-
probable that the witnesses for the
accused who make mention of such a
story would have heard of such a story
that night.

In para 15 of the judgment the Judge
observes that it is impossible that in
Kuppi's room there could have been
at that time any light from the moon
which would have enabled any
person to recognise another, and that
the moon had sunk behind trees to
the west of the Kuppi's house which
must have made the room perfectly
dark.

dark.

The evidence shows that the place where
Kuppi and Munian were lying down
was not a room enclosed by walls on
four sides but a portion of the house
which has walls on all sides with an
opening or inner yard.

Neither the witnesses on both sides
nor the accused can be said to have
accurately described the exact position
of the moon about that time, the accused
and their witnesses say that the moon
was on the zenith or about an hour
later. The body of the deceased was
found not at 10 P.M. when the moon
was in zenith but after midnight and
the village munsif's report fixes the
hour as 2 A.M. Taking the whole of the
evidence about the position of the moon
it may be considered concluded that
the moon was sufficiently high to
admit of light in Kuppi's house
to enable the witnesses to recognise
the accused already known to them
when

even before they came to the street soon after the deceased was removed from the house of the accused. There are no discrepancies worth the name as to what the witnesses saw at the time of the offence but there are discrepancies on other points as noticed in the judgment.

After witnessing the murder the witnesses must have been in great confusion and this might have been the cause for their discrepant statements.

The village munsif has blundered on some points but his report shows that both the accused were under arrest when he wrote the report.

The evidence of the witnesses examined by the 1st accused was regarded by the judge as worthless but he accepts the evidence given by the 2 witnesses on behalf of the 2nd accused Allan. These witnesses were Narainan and Muthan; after Narainan was examined one night intervened and Muthan who was examined the next day probably found it easy to repeat what Narainan had stated.

Both these witnesses say that at a late hour in the night after they finished the work of splitting date stems, they heard that Palany was bitten by a snake, and they all ran and stood near his house for 2 or 3 haligays; one of these witnesses is a 40 or 50 or snake charmer who says that he used to administer medicines to cure snake bites, but in the present case he was ^{not} invited for the purpose by any body nor did he go into Palany's house to see him. None of the 2 witnesses went into Palany's house nor make any inquiries as to whether any medicine was given to Palany. It would have most naturally occurred to the snake charmer that he should go into the house to offer his services if really he had approached the house on hearing of snake bite. And the people of the village would not have failed to resort to this witness for treatment on the occasion. There is no reason as to why these 2 witnesses should have

spoke

a long time by simply standing in a lane close to Palani's house without being able to hear what was spoken at the house where there was a large and noisy crowd and yet they say there was no talk there about Allen having been in any way concerned in the matter.

Aharaiman says that Allen who was splitting date stems to oblige him was not his friend and no cooly was paid for the work and Muthan the uncle of Allen says that he came to that village from his own the preceding evening for making arrangements for certain marriages in Allen's house.

It may be viewed that the evidence on behalf of Allen is not so good as to rebut the direct evidence as to murder. The question of appeal may be decided on a perusal of copies of the evidence oral and documentary.

12th January 1895.
Your most obedient servant
(Signed) C. S. Srinivasan Rao
Public Prosecutor.

(True copy).

Mundann

For Agt. Magistrate

[G.]
25.
100-21-12-94.

DEPARTMENT.

No.

From

Dated

189

FOR ORDERS.

This is an appeal against an order of appeal received yesterday. The appeal was received on the 19th March (not 18th as the Dist. Magistrate says for the judgment is dated 19th Sept.). -

The Sessions Judge is Mr. Graham & the main reasons for acquittal are (a) that there was not sufficient moonlight to identify the prisoners (b) that the contradictions in the evidence of the prosecution witnesses are fatal.

2. The Almanac for 1894 shows that the moon was at its zenith at 9.5 p.m. on the day of the murder (14 June 1894), & set at 2.16 a.m. - varying times are fixed; the village sariff's report mentions 2 a.m. apparently as the time when he got word of it; his evidence says "17 or 18 miles" i.e. from 12.48 a.m. to 1.12 a.m. The plan, enclosure marked with red tape, seems to show that the moon below the tamarind tree in the back, may have given light, certainly in the door.

3. The contradictions are not of great

importance, & the delay in sending the report was only a matter of a few hours during which the village maniff remained witnesses. — on the night of the night — the report being sent off by dawn. the village maniff has probably a fool, but it is doubtful if he was a known as well.

4. There is just time to refer the matter to the Govt Pleader. If H.M. thinks there is a prima facie case; perhaps the following order will do

Order 12 March 1895, No 555.

The papers will be forwarded to the Govt Pleader with instructions to present an appeal against the judgment of acquittal if he considers the evidence to warrant such a course. The Govt is disposed to think that a strong prima facie case for appeal has been made out, ^{if not} if the Govt Pleader differs from this view & considers an appeal to be inexpedient, he should report his reasons by the 14th inst. in order to enable Govt to decide what course to adopt before the appeal time expires. His report should in that case be marked "Very urgent". — There will of course be no need for him to submit any report if he concurs in the view taken by Govt

for orders 11/3/95

The G.P., with papers all in

Appeal from
in original
VE

H.M.

In order

(Appeal time expires)
very urgent

before the 14th inst.

VE

Order
11/3/95

12/13

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

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.

A A A A A A A

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