[J/53]
1,000—95-7-96

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 568.

DATED 14th Mar: 1895.

INDEXED.

[Despatch Abstract.]

APPEAL AGAINST AN ACQUITTAL.

Directing the Government Pleader, Madras, to present appeals against acquittal in South Canara Sessions cases Nos. 33 and 34 of 1894 except in so far as relates to the acquittal of the first accused in the former case.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	291.		11-2-95				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Go	672.		1-4-95				
Go	742		20-8-95				

I.—P. No. 28—93

[illegible]

CURRENT No 733

Disposal Judl.

~~1895~~ ~~95~~ Mad No 450/95.

From,
The — District Magistrate of
South Canara.

To,
The Chief Secretary to Government,
Judicial Department,
Fort St. George.

Dated 9th February
Despatched 11th do. } 1895.
Received 15/2

Current R. № 653/95

ENCLOSURES 3.

Subject.

In continuation of Mr. Dance's letter dated, Bombay 19th January Disposal No: 51 of 95, Submitting the translation of the Petition of Narasappaya to the Station House Officer of Panemangalore, Dr. A. J. O'Hara's deposition before the Sub Magistrate, Mangalore, and a Copy of the deposition of Civil Apothecary G. Gascoyne before the Sub Magis~~trate of~~ Mangalore.

291 - 11-2-95

G.O. 291. 11.2.95 Mis

N

Order d/18-2-95 No. 328

Referred to the Govt. Pleader in Continuation of G.O. No. 291 of 11. Feb. 95.

16/2/95

To The Govt. Pleader (with Encls) } despd. 18/2/95

15/2/95

Copd 16/2.

Current № 653/25
Resf.

CURRENT No 733

SOUTH CANARA DISTRICT MAGISTRATE'S OFFICE,

Camp, Bajpe, 10th February 1895.

From

W. H. Welsh Esquire,
District Magistrate of
South Canara.

To

THE CHIEF SECRETARY TO GOVERNMENT,
Judicial Department,
Fort St. George.

Sir,

× G.O. 291
11.2.95

In continuation of Mr. Dance's letter dated, Bombay, 19th January, Disposal No. 51 of 1895, I have the honor to submit enclosed the marginally noted papers for reference in the disposal of the matter therein referred to. These are not certified copies according to the rules and are only intended for the information of the Government Pleader. If ordered I shall obtain and submit certified copies.

1. Translation of the petition of Narsapayya to the Station House Officer of Panemangalore
2. Copy of the District Surgeon A. J. O'Hara's deposition before the Sub Magistrate, Mangalore
3. Copy of the deposition of Civil apothecary G. Gascoyne before the Sub Magistrate of Mangalore.

I have the honor to be
Sir
Your most obdt. Servant

W. H. Welsh
District Magistrate

Sir

Shri a Rhow and [illegible]

assessors – [illegible]

why they would be glad to get rid of it

nothing [illegible] of [illegible]

It has been alleged that [illegible] the [illegible] time

CHIEF SECRETARY'S
13 SEP 1895
GOVERNMENT OF MADRAS

Fo. Reg. 320
18/2/95

Go. 291 · 11·2·95
Refer No 238/95

CURRENT No. 830

From
THE GOVERNMENT PLEADER,
Madras.

CHIEF SECRETARY'S
20 FEB 1895
GOVERNMENT OF MADRAS

Dated 19. 2. 95
Recd. 20. 2. 95

No. 155

ENCLOSURE. ~~3 files.~~
C No. 4584–733 &c.

Recommending an appeal against acql. in South Canara Sess. Cases No. 33 & 342 1894.

H.M.

Ch

~~For orders~~

Order.

Ch 20/2/95 The Govt. Pleader will be instructed under sec. 417 to prefer an appeal against the judgment of acquittal in S. Canara Sessions Case No. 33 of 1894 except in so far as concerns the 1st accused.

21·2·95

The Govt. Pleader, with records returned
The Dist. Magt., S. Canara.

Note Please see note for orders in Go. 291 11·2·95. The Govt. Pleader now expresses no doubt as to the result of an appeal to the High Court.

D
21·2

CURRENT No. 830

Government Pleader's Office,
High Court,

No. 155

MADRAS, 19th Febry 1895.

From

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

To

THE Chief Secretary to Govt
Fort St George.

SIR,

With reference to the Proceedings of Government No. 291 Judl dated the 11th instant, I have the honor to submit the following:- opinion:-

1. It is unnecessary for me in the face of the full and exhaustive review of the judgment by the District Magistrate pointing out the very unreasonable and in some instances absolutely baseless condemnation passed by the

Sessions Judge on the prosecution evidence to go through that Judgment in detail

2. I have no hesitation whatever in saying that in my opinion there has not been a proper trial. The Judge had evidently formed an opinion at a very early stage of the Case (as shewn by his remarks in para 19 and passim) long before he heard the whole of the prosecution evidence. He consequently took a prejudiced and distorted view of the rest of that evidence.

3. No reasons are assigned for disbelieving many of the witnesses beyond their "demeanour" or "the substance of their evidence". As regards the "substance of their evidence" I can find nothing remarkable about it certainly nothing so

so unnatural or improbable as to stamp it as false on its face.

4. As regards the demeanour of the witnesses it appears next to impossible that witness after witness who was put into the box could have had "liar stamped upon his face" as the Judge puts it. It may be that the unfortunate inhabitants of Panemangalore possess cranial or facial developments which a phrenologist might consider as indicating a characteristic aversion to telling the truth, but, even so, they are entitled to be judged by their evidence and not by their faces.

5. A number of important facts have been shut out by the Judge's disallowance of questions which ought

not to have been disallowed.

6. It is impossible to read the Judgment without being struck with the utter absence of that fair and impartial Consideration of the evidence of each witness on its own merits which a serious Case like this deserves. All the witnesses (it appears to me) are condemned by the Judge because their evidence is against the view too prematurely adopted by him.

7. I Consider there has been a miscarriage of Justice and I do not think there is much doubt that the High Court will order a retrial before another Court.

8. I agree with the District Magistrate in thinking that there is no use in appealing against the acquittal of the 1st Accused.

9. All the enclosures to the G. O. under reply are herewith returned.

I have the honor to be
Sir
Your most obedt Servt
E L Vowen
Govt Pleader

[G/9]
2,000—23-1-95.

Current No. 850

Jud DEPARTMENT.

From

Gangamma
widow of Narasappayya
of Narikombu
S. Canara

No.

Dated 21. 2. 95

Received 21. 2. 95

Enclosures 2

SUBJECT.

Reqnt. to orders for a retrial of her case

Endorsement dy 26. 2. 95 No. 401

Referred to the Govt. Pleader for opinion as to whether it is desirable to appeal against the acquittal in Sessions case No. 34 also. The Dist. Magte. does not say if he has dealt with this case

D 26.2.95

G.P. (with enclosures of this & of his previous letter)

C. To the Govt. Pleader — despd 26/2/95

For orders

Re-Submd with C No. 830 of 95:—

Perhaps this might be referred to the Govt. Pleader also. Neither his letter nor Mr. Dance's deals with C.C. 34 of 1894 as far as I can make out, & judgment seems radically defective. If C.S. agrees, the other case need not go to H.H. till the G.P. replies

D
22. 2. 95

Send [illegible]

Triplicane, 21st Feb. 1895.

850

To.

A. Butterworth Esq. I.C.S.,
Under Secretary to Government,
Judicial Department,
Madras.

Respected Sir,

I beg to acknowledge, with thanks, the receipt through my brother, M.R.Ry. Karinki Vachannayya, of G.O. No. 291, dated 11th Feb. 1895, in which the Government referred the records connected with the Panemangalore Case in which my husband Mr. Narsappayya was brutally murdered to the Govt. Pleader for his opinion. I do not know whether the Govt. has been furnished with his valuable opinion or not.

In this connection, I think it necessary to bring to the notice of Govt. some of the facts

already stated in my petition to
the Dt. Magistrate of S. Canara.

I understand
from my vakil at Mangalore that
Mr. Dance has not recommended
to Govt. that a retrial should be
ordered against the acquittal
of the 1st accused Padmaraja
alias Laxumappa Arasa Bangara.
It is quite true that the Public
Prosecutor withdrew the Case No. 34
in which the 1st accused was
charged under Secs. 224. 225.
212 and 150 of I.P.C. He did so,
because the Sessions Judge found
in Case No. 33 that no murder was
committed by the accused 2 to
14. It will be seen from judgment
in Case No. 34 that the Judge was
of opinion that there was no
evidence against the accused
in that case. In para 2 Mr. Holmes
says— "There is no evidence that
the accused shut the door
himself

himself Police Superintendent and
There is therefore [illegible] deavor to
in para 3 it is said — [illegible]
charge under Sec. 150 I. P. C. there
is no evidence of any hiring or
engagement or employment". It is
indeed a mystery to understand
which evidence the learned Judge
refers to inasmuch as no evidence
was taken by him. In fact no law
witness was examined by the
Court to decide whether the
accused in case no. 34 is gui
of the charge or not. There man
The Judge's conclusion in case . It
is meaningless as mat e the
in the last sentence of up inside
of my petition to the D e these
His Excellency the Govern *prejudiced*
will be satisfied by *not* late that
deposition of Perein guilty
Constable of Buntw ders.
that Bangara with circumstances
Shut himself up beg to request
o good as to
st acquittal
in

when the Police Superintendent and his party went to Nandavar to arrest them. The doors were not opened until they were informed of the order of the Police Superintendent that they will be broken open unless opened by them. An authenticated ×Copy of Pereira's deposition in Canarese is attached with an English translation. All this mischief was the result of the wicked action of the 1st accused who is a lawless man and bilongs to a feudy race. It was he who harboured all the accused and shut them up inside his house. On the face of these facts, the Judge *with a prejudiced mind* was pleased to state that the 1st accused was *not* guilty of harbouring the offenders.

× To be kindly returned to me when done with

Under these circumstances I most respectfully beg to request the Government to be so good as to order a retrial against acquittal in case no. 3te also notwithstanding the recommendation of Mr. Dance to the Contrary.

Begging to be excused for the liberty I have taken in intruding upon your precious time and hoping to find justice at the hands of parental Government

I beg to remain,
Respected Sir,
your most obedient Servant
[illegible]
(Gangamma, widow of Narsappaya
of Karikombu, S. Canara.

Address:—
Gangamma, C/o Karinki
Vachannayya, No. 14, Sami Pillai
Street, Triplicane.

UNDER SECRETARY
21 FEB 95
PUBLIC ETC. DEPTS.

6 N° 320 4/95

Refce N° 401/95 & papers

1032

Jud

From

The Government Pleader,
Madras

For orders

Dated 1st
Received 2
March 1895

D/4 202

Enclosures returned: C No 450,
733 & 850
&c.

UNDER SECRETARY
5 MAR 95
PUBLIC ETC. DEPTS.

Recommending an appeal against acquittal in Sessions Case N° 34 of 1894 on the file of the Sess: Court of South Canara.

Government Pleader's Office,
High Court,
Madras, 1st March 1895.

No. 202.

From
E. B. POWELL, Esq.,
Government Pleader,
Madras.

To
The Chief Secretary to Govt.,
Fort St. George.

Sir,

With reference to your Office Memorandum No. 401 of the 26th ultimo I have the honor to state that a perusal of the evidence of the witness Pereira as given in the accompanying translation has induced me to alter my opinion in the other case regarding the 1st Prisoner.

2. I could find nothing in the former evidence incriminating the 1st Prisoner except those witnesses referred to by Mr. Dance in his letter as "Police witnesses", who are often introduced into a case to supply a link or fill up a gap.

3. In the copy of the evidence previously sent to me there is a hiatus in Pereira's evidence at the most critical part, viz:, where he refers to the search of the 1st accused's house and the finding of the other accused there. This appears at page 3 of the translation now sent. In the former copy the evidence is as

represented by three or four lines of stars. Why that evidence is not recorded I cannot understand. There is no note to shew whether any evidence was excluded and why it was excluded. If the Judge has excluded it on the ground of its being irrelevant he is clearly wrong. It is of the greatest importance as shewing the connection between the 1st Prisoner and the others and is clearly admissible as evidence of conspiracy. With a mutilated record such as this, it is difficult, if not impossible, to come to any satisfactory conclusion as to what evidence there is against all or any of the prisoners. Moreover in his judgment in Sessions Case 34 of 1894, the Judge says "according to the prosecution the "door of the accuseds' house was shut as the Police approached "and it was only opened when a threat was used that it would "be broken open. There is no evidence that the accused shut the "door himself or ordered it to be shut. There is therefore no case."

Now, as I understand, no evidence was taken at all in this case. So what the Judge says he must have imported into this case from the evidence in the other case. This was altogether illegal. It is quite unnecessary that there should be direct evidence that the accused shut the door himself or ordered it to be shut. It is sufficient if the Court is able to draw the inference from the surrounding circumstances that the door was caused by him to remain closed. As the accused was the owner of the house and as he was present in

it

it at the time and could not possibly have been ignorant that the Police was demanding an entrance, the reasonable inference is that it was kept shut under his orders.

The withdrawing of the charges by the Public Prosecutor would have been sufficient *per se* to justify the acquittal. The Judge should not however have based the acquittal on defects in the evidence when there was no evidence. Ordinarily the High Court would be averse to set aside the acquittal of a person in a case where the Public Prosecutor had withdrawn the charges against him, but in the present case it is obvious that it would have been a useless waste of time to have persisted in proceeding with the case seeing that the Sessions Judge had taken such a prejudiced view of the prosecution evidence in the other case.

I think it is questionable whether a conviction can be obtained against the 1st accused on the evidence I have before me. He is apparently an influential and unscrupulus man and will no doubt account for the door being kept closed against the Police and for the presence of the other accused in his house by some concocted story, but I think nevertheless that an appeal should be presented in order that the High Court may have before it all the material possible, which tend to shew the impossibility of accepting the judgment of the Sessions Judge as a judicial determination of the case based upon the evidence before him.

The enclosures to your Memorandum under reply are herewith returned.

I have the honour to be,
Sir,
Your most obedt. Servt.,

E. L. Powell
Government Pleader.

250—12-12-93.

DEPARTMENT.

From

No. G.O. 291/11. 2. 95

Currents. 433 from the Dist. Magte of S. Canara.
Currents. 830 from the Govt. Pleader.
Current. 850 from the widow of the murdered man.
Current. 1032 from the Govt. Pleader.

Dated 189 .

FOR ORDERS.

The question for decision is whether appeals should be preferred against the judgments of acquittal in South Canara Sessions Cases numbers 33 & 34 of 1894.

2. In the first case one Padmarasa was accused of having abetted the murder of one Narasappaya by the 13 individuals jointly accused with him in that case. — The note for orders in G.O. 291/11.2.95 briefly discusses the grounds of appeal stated by the District Magte; the Govt Pleader, to whom the papers were referred for opinion, strongly recommends an appeal in his reply - current 830.

3. In the second case Padmarasa was accused of resisting the apprehension of himself & of others, of harbouring & hiring the other accused persons. The Dist. Magte made no recommendation as regards this case, but in C. 850 the murdered man's widow asked for an appeal. This was referred to the Govt. Pleader, who recommends an appeal in Current. 1032. — In this case (the judgment will be found at page 37 of the bound enclosures) an order of acquittal was made partly because the public prosecutor withdrew the charges on the disposal of the other case, and partly because of certain inferences drawn by the Judge from evidence recorded

Certainly order appeal in both cases — I dont think I ever read such an extraordinary judgment as that in No 33 —

When the H.C. decides the appeals the papers shd. be circulated so that my hon colleagues may see them.

W.A.
9/3/95

in that other case.
The Public prosecutor would in all probability not have withdrawn the charges, had the first case had a fair trial; and for this reason alone a retrial appears desirable. The Govt. Pleader also recommends it on the grounds that it is expedient to place the High Court in possession of the facts of both cases.

D
4. 3. 95

8/3/95

Appeal against an acquittal

A.M

For orders.

[G./24]
100—20-12-94.

Judicial DEPARTMENT.

Papers to be read in Proceedings :—

18 , No.
Again G.O., dated — 1895, No. 291 Jud.
Again G.O., dated 11. 2
Current No. 733 of 1895, dated 9 February from the Dist. Magte. S. Canara
830 — 19 — Govt. Pleader
850 — 21 — Gangamma

Current No. 1032 of 1895, dated 1 March from the Govt. Pleader

Order. 14th March 1895 No. 568

The Govt. Pleader will accordingly be instructed to present appeals against the judgments of acquittal in S. Canara Sessions Cases Nos. 33 & 34 of 1894 except in so far as relates to the acquittal of the 1st accused in Sessions Case No. 33

(Draft for orders)

D
12. 3. 95

13/3/95

The Govt. Pleader (g.o.) with record returned
The Dist. Magte. S. Canara (g.o.) with a copy of C. 1052 dated 15/3/95.
copy to Petitioner of C. No. 850.

desp. 14/3/95

desp. 14/3/95

Office
Note that the papers are to be circulated when the appeal judgments are received

D
12/3

When given for copying ______
When copied ______
When examined ______
When signed ______
} 189 .

READ AGAIN G.O., No. DATED
189 ,

CURRENT 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.
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