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68
1,000—25-7-96

Judicial (1895.) Department.

ORDINARY MS.

G.O., No. 600.

DATED 22.nd Mar. 1895.

INDEXED.

[Despatch Abstract.]

CONVICT--JELLCUT CASE.

Rejecting petition from Thoddiammal and Thavuna Goundan praying that the sentence of transportation for life passed upon convict Ramasami Goundan in Madura Sessions Case No. 39 of 1894 may either be remitted or commuted.

McJ.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
80	2050.		4-10-95				

(1895) DEPARTMENT.

From *A. C. L. Carr Esq. J. C. T.*

THE PRIVATE SECRETARY TO THE
RIGHT HONORABLE THE GOVERNOR.
12 MAR. 1895

To
THE CHIEF SECRETARY

TO GOVERNMENT,

Judicial DEPARTMENT.

Dated 11 } March 1895.
Received 12 }

ENCLOSURE 23

Subject.

TRANSFERS a petition from *Thoddi animal*
and *Thavura Goundan* praying
that the order of transposi-
tion of life passed upon
convict *Lamasani Goundan*
may be either remitted or
commuted.

*Petition from a
Convict - the petitioner's case*

H.M.

For over

Please see rule IV
of the Petition Rules, C.
under which these papers
are technically liable to
rejection. A pet. from the prisoner
himself was disposed of on 19.12.94
90. 130. H.M. considered the case in
passing 19.12.94 3157
90. 130. 15.3.95

Office need not go to Ch.
The technical ground
for rejecting the
petition need not be
mentioned - There
have been thought it was
rejected on the merits.
I don't consider that
the petrs make out
their case 16/3/95

C. 5022 March 1895 11600
The Govt sees no reason
to accede to the petrs' request
(from order)

DESPATCHED 2. 95
25 MAR 95
12/5

Petition from Thoddiammal and
Thavumafoundan on behalf of
Ramasami foundan, now a
convict.

DATED _____ 189- .

TRANSFERRED to the Chief Secretary to
Judicial Department
Government for disposal.

(By Order.)

R. C. C.
Ag Private Secretary.

GOVERNMENT HOUSE,
Guindy. }
11 March 1895.

[G
9
2,000-25-1-95.

Current No. 1189

DEPARTMENT.

From

J. H. Ryan Esq.
Parry's Buildings

No.

Dated 9-3-95

Received 10-3-95

Enclosures 11-3-95

SUBJECT.

Forward duplicate of a memorial
from Thoddiammal & Thavum-
foundan praying that the
sentence of transportation
on Ramasami foundan
may be remitted or commuted

Note

This may await
the original which
is said to have been
forwarded to the P.S.

12/3/95



His Excellency The Right Honorable

The Governor-in-Council,

Fort Saint George.

The humble Memorial of THODDIAMMAL and THAVUNA GOUNDAN, in respect of the sentence passed upon one RAMASAMI GOUNDAN, late Village Munsif of Vannivelampatti, in Tirumangalam Taluk, in the District of Madura, but now Prisoner, No. 6508.

SHEWETH,

The case brought against Ramasami Goundan.

1. The Memorialists are the wife and brother (respectively) of Ramasami Goundan (hereinafter briefly referred to as the convict) who was on the 25th February 1895 transported to the Andaman Islands in pursuance of the sentence passed upon by the Sessions Judge of Madura in Sessions case No. 39 of 1894 confirmed by the High Court in Criminal Appeal No. 402 of 1894. And notwithstanding the rejection by the Government of the petition presented by the convict himself, the Memorialists venture, in virtue of the privilege recognised by Section 401 of the Criminal Procedure Code, to approach the Government with a statement of some considerations bearing on the degree of punishment to which the convict has been sentenced: considerations that do not appear upon the face of the petition submitted to the Government by the convict himself or upon the face of the Judgments delivered by the High Court and the Sessions Court.

The sentences of the other accused committed: that on the convict maintained by the Government.

2. The convict with ten others was convicted of murder by the Sessions Judge in the case abovementioned. He and his fellow-prisoners thereupon appealed to the High Court who, confirming the conviction, expressed the opinion that transportation for life was too severe a penalty and in consequence directed the records to be submitted for the consideration of the Governor in Council. Whilst the records were with the Government the convict presented a petition to the Government urging several objections to the credibility of the evidence produced against him and praying His Excellency the Governor to direct his acquittal or to exercise in his favour the Prerogative of Mercy. The Government declined to interfere with the sentence passed upon the convict; but, the Memorialists are informed, commuted the

sentences on all the other accused (except the second) as follows, viz., the sentences on the 3rd and 4th accused to 10 years' imprisonment and the sentences on the 5th to the 11th accused to 7 years' imprisonment.

The object of this Memorial.

3. The 3rd to the 11th accused whose sentences have thus been commuted were alleged to be the actual perpetrators of the murder while the convict and the second accused were charged as abettors merely. The order of the Government assigns no reasons, and the Memorialists are consequently unaware of the grounds upon which the Government considered the actual perpetrators less guilty than the alleged abettors. The Memorialists are aware that in some cases the instigator is considered more blameworthy than the doer of a deed, because the latter is merely a tool in the hands of the former: but they have not been able to discover in the evidence in this case any facts that make the guilt of the alleged instigators (the convict and the 2nd accused) greater than that of the actual perpetrators. But besides the absence so far as the Memorialists are aware, of any circumstances that make the convict more guilty than his co-accused, there appear to the Memorialists to be other considerations that should mitigate the punishment of the convict and which (it would seem) the Government have not had an opportunity of considering. It is with a statement of these considerations that the Memorialists now approach the Government.

Preliminary statement of Records enclosed.

4. The Memorialists submit herewith a copy of the Judgment of the Sessions Court a copy of the evidence recorded and a copy of the Judgment of the High Court in order that their references to the Records may be readily verified.

Summary of the Prosecution Evidence.

5. Since the circumstances of the case will not be fresh in the recollection of the Government, it is necessary to explain at the outset that the murder is said to have been committed in the course of a riot that arose out of a Jellicut held at the Village of Kottanipatti in April last. This Jellicut was attended by the neighbouring villagers; and amongst others, by the convict and his co-accused who came from the village of Vannivelampatti and by the deceased and others (including the 1st and 3rd to 8th Prosecution witnesses) who came from the village of Villur. The facts of the riot are given by the 1st and 3rd to 10th Prosecution witnesses and may be stated as follows:—

During the riot a bull from Vannivelampatti was let loose: and as it was running was seized by the deceased and the 3rd Prosecution witness. As the bull was running with these men hanging on to it, the convict (so it is alleged) said "a Villur man has seized the bull, beat him." These are the words as given by the 4th witness, though, of course, the witnesses differ as to the exact words. Hereupon the 3rd and 4th accused beat the deceased who fell down. While the deceased thus lay upon the ground the 3rd to the 11th accused continued to beat him. Other men from Villur (including the 1st and 3rd to 8th Prosecution

witnesses) who ran to his assistance were also beaten by the same accused.

The Alleged Motive.

6. In order to disclose a motive that would induce the convict to order Muthukaruppan—the deceased—to be beaten, it is explained that the bull was famous for its speed and ferocity and had never been actually made captive in any Jellicut (Sessions Judgment, para. 3): that the deceased had caught the bull in a previous Jellicut though it was rescued from him and now for the second time caught the Vannivelampatti bull invincible but for him (Sessions Judgment, para. 7) and that the Vannivelampatti villagers took great pride in their bull (High Court Judgment, para. 4). It is worth noting as a clue to the intentions of the convict, though the Memorialists do not deal with the evidence, that famous as the bull was, no one appears to know who its owner was, and the Police Inspector was unable to trace it. (See Inspector's evidence at p. 59.) Far less is there any reason to suppose that the convict had any special interest in this bull.

The two stages of the beating and their severity respectively.

7. In order to appreciate the extent of the convict's guilt, it is necessary to distinguish carefully what may be spoken of as the two stages of the beating under which Muthukaruppan is said to have died. In the first stage he was beaten while hanging on to the bull. While in this position he received two blows delivered by the 3rd and 4th accused, and fell down. The 1st prosecution witness says (Evidence, p. 4, line 10) "my brother fell down on receiving these two blows." The evidence of the other witnesses which it is unnecessary to quote in detail, is also to the effect that after receiving the first two blows (given by the 3rd and 4th accused, while he was hanging on the bull) Muthukaruppan fell to the ground. The position of these two blows can also be fixed. The witnesses are unanimous that the first blow was struck by the 4th accused, and the 1st, 3rd, and 7th to 11th witnesses say that the 4th accused struck the deceased on the neck below the ear. The second blow was according to all the eye-witnesses delivered by the 3rd accused. The first witness says that the 3rd accused struck on the head, but the 3rd and 4th witnesses say that he struck on the side. It may therefore be taken that the second blow was struck on the side. Thus the first stage of the beating—while Muthukaruppan was hanging on the bull—accounts only for two wounds. But the evidence of the Apothecary (11th witness: see Evidence, p. 31 and Exhibit B., p. 69) shows that very many more wounds were received by the deceased: so many indeed, that in addition to wounds on the left arm and hand, the whole of the upper half of the body, back and front, was covered with wounds. The blow on the neck delivered by the 4th accused does not account for all the wounds observed even on the neck of the deceased; for, according to the Apothecary, externally the whole of the neck—and not merely the part under the ear—was swollen and of a blue colour and internally in the front and lateral aspects there was a copious effusion of blood. Nor is the blow on the side, delivered by the 3rd accused, the only blow observed on the side of the deceased. It is thus clear that the two

blows that constitute the first stage form a very inconsiderable part of the whole beating received by the deceased: that the greater part of the beating—all in fact that made it so cruel and so cowardly—was received during the second stage of the beating, when, as the Prosecution witnesses say, Muthukaruppan lay upon ground.

The importance of the distinction between the two stages, as regards the question of punishment.

8. These two stages, if the evidence for the Prosecution be true, followed close upon one another, and it may therefore be that all who were in fact participators in the first stage are in law participators in the second stage. But in meting out punishment it may nevertheless well be the case (as the Memorialists submit it is) that it would be unjust to hold all who participated in the first stage responsible also for the second, or equally responsible for each stage. There is a wide difference between the two stages. In the first stage there is a beating—unsportsmanlike if Maravers and Muppans are to be governed by English rules of fair-play—but a beating the object of which could only have been to prevent the bull being captured—a beating which therefore was not intended to be severe, and which on the evidence amounted only to an assault. In the second stage there is the infliction of a beating so cruel and so violent that—in the words of the Sessions Judge, evidently referring to the second stage—the death of Muthukaruppan was the direct, the natural and the only probable result.

The Memorialists are now concerned merely with pointing out the great difference between the beating in the two stages. But they cannot here refrain from pointing out, in passing, that this difference shows that the Prosecution did not lay the whole truth of the riot before the Courts. According to the evidence when the first stage of the beating had commenced Muthukaruppan had but seized the Vannivelampatti bull; there is nothing to show that he was on the point of capturing it, for there is a great gap between seizing a bull famous for its speed and ferocity (Sessions Judgment, para. 3) and bringing it to a standstill and carrying away the cloth. But the chagrin of the Vannivelampatti villagers at seeing a bull from their village overtaken by Muthukaruppan might account for their wishing to beat him off, it does not, and it cannot, of itself, be made to account for the savage and determined beating that was afterwards given to Muthukaruppan. The Memorialists submit that there must have been some other cause for the savage and determined beating of the second stage, a cause that the Prosecution do not care to disclose.

The first and second stages then of the beating are separated not only by the nature of the beating given in them respectively but also by their several immediate causes. And it therefore by no means follows that one who participated in the first stage, whatever may be the offence of which he is guilty in law, should, when the time for awarding punishment comes, be held to be responsible also for the second stage.

The two grounds upon which the Courts held the convict guilty of Murder.

9. Their Lordships of the High Court and the Sessions Judge held the convict guilty on two grounds.

(a) because in inciting the Vannivelampatti villagers to beat the deceased off the bull he called into action a force that he could not control:

(b) because he actually aided and participated in the second stage of the beating by encouraging his fellow villagers to beat off all the Villur people who came to the rescue of the deceased.

The Sessions Judge says (Judgment, para. 11), "with regard to the first (the convict) and second prisoners, they must have known that those whom they incited to acts of violence were armed with deadly weapons, and they not only urged the other prisoners to beat the deceased but also urged them to beat the Villur men who came to rescue the deceased. Thus they not only woke into action but also kept in motion an indiscriminate power and the death of Muthukaruppa Tevan was the direct, natural and only probable result of their act." The High Court say (in the 4th para. of their Judgment) "we have no doubt the story told by the Prosecution is substantially true. The Vannivelampatti villagers took great pride in their bull, which they regarded as invincible. The bull had however been captured* at a previous Jellicut by a Villur man,—the deceased—and when he appeared again on the scene and seemed likely to repeat his victory they grew angry and 1st Prisoner (the convict) who was the headman of Vannivelampatti gave the signal to beat him for his impudence and to beat off all the Villur people who came to his assistance. It is probable that no deliberate intention to kill Muthukaruppan had been formed,—but the 1st and 2nd prisoners knew that the person (sic) invoked by them to administer the beating were armed with formidable weapons which might be dangerous to life, and they called into action a force that they could not control. Not only that but they continued to encourage their men to beat the Villur people who came to Muthukaruppan's assistance after he had been knocked down and was insensible from the injuries received."

* Note: Never actually captured, the bull on the previous occasion had been seized but rescued. (See evidence of 3rd witness, pp. 13, 20.)

10. It would seem that on the first of the above grounds alone, viz., on the ground that the convict gave the first signal to beat Muthukaruppan, the High Court and the Sessions Court would have held the convict guilty of murder. The second ground therefore, the ground that the convict actually participated in the second stage of the beating, did not affect the decision of the Judges. But on the question of punishment this supposed participation is of the utmost importance. And it is upon this supposed participation that, the Memorialists venture to think, the Government must have chiefly relied when it decided to allow the convict to undergo the terrible punishment of transportation.

Now this supposed participation the Memorialists submit is an error. And though the rectification of this error would not have affected the judgments of the High Court or the Court of Sessions, it appears to the Memorialists to have misled the Government. They proceed accordingly to show that there is no evidence of such aiding and partici-

pation on the part of the convict as the learned Judges supposed.

11. With the exception of the evidence of the 3rd witness, there is not a particle of evidence from one end of the record to the other that the convict did anything at all while the deceased lay on the ground; with the exception of that one witness, no witness says that he did anything but use the words, "A Villur man has seized the bull, beat him." It therefore becomes necessary to see what this 3rd witness attributes to the convict. After Muthukaruppan fell the 3rd witness says (Evidence, p. 12, line 7), "I also said, you let the bull loose, challenging any one to catch it. Did you do so intending to beat?" "Then," (line 13) "Ramasami Goundan (the convict), and Vembuli Muppan said 'beat this fellow also.' Thereupon some men came and beat me with sticks and shot stones at me from bows." He then identifies the 5th to the 9th and 11th accused as those who beat and stoned him. This is a wholly different thing from encouraging their men to beat off all the Villur people who came to Muthukaruppan's assistance. Had the convict urged others to beat off all who came to the assistance of the deceased while he was lying on the ground, it would have shown not only that he approved of this the second stage of the beating but actually aided it. But the incident related by this 3rd witness does not connect the convict with this second stage of the beating. It consists of this—a beating not to prevent assistance to Muthukaruppan but in return for an upbraiding. This incident as thus related may be a part of the whole transaction. But if it is a part it is a subordinate and incidental part and it surely does not and cannot be made to show that the convict approved of or in any way aided the second stage of the beating given to Muthukaruppan.

12. But further, the evidence of the witness on this point is wholly untrustworthy. Their Lordships of the High Court do not say that they accept the Prosecution evidence in its entirety. They do no more than say that they have no doubt that the story told by the Prosecution is *substantially* true (4th para. of the Judgment). The Memorialists therefore conceive that it is open to them, without questioning the finding of the High Court, to show that the evidence of this incident related by the 3rd witness ought not to be accepted. And they would draw the attention of the Government to the following reasons for discrediting it. In the first place it is unsupported by the rest of the evidence. Not only the witnesses, viz., the 8th, 9th and 10th who speak generally to the beating of the Villur men but even the 7th witness who speaks specifically to the beating of the 3rd witness makes no mention of, or reference to this incident. Had the convict really ordered the 3rd witness to be beaten it is incomprehensible how not one of this batch of witnesses who testify to the beating of the 3rd witness should have failed to say that the convict had commanded it.

In the second place, this incident as given by the 3rd witness is obviously an excuse invented to account for his having beaten. The Memorialists have said above that the true cause of the savage and determined beating of Muthukaruppan has not been disclosed. But apart from the cause, it is clear that this riot was not a one-sided affair as the Prosecution witnesses make out in which they did nothing but run to the assistance of the deceased. It was, as the Memorialists submit the circumstances show, a fight in which blows were given and received on both sides. If men in a riot do no more than merely run to the assistance of the beaten person, they do not receive the very severe wounds that these Prosecution witnesses received. (See Evidence of 11th witness and Exhibit B). The nature and the extent of their injuries clearly points to a determined *struggle*. Moreover the fact that no complaint was laid; the fact that the Villur men endeavoured to burn the deceased's body at once and hush up the matter (see Evidence of 1st witness, p. 4, line 42; Evidence of 15th witness, p. 43, line 43), show not only that there was a fight, but a fight also in which they were quite as much to blame as any of the accused. The fact all the Villur prosecution witnesses (except the 7th) excuse themselves from giving any details by saying that they fainted at once or almost at once, also shows that they wished to screen their own share in the fight. Amongst the most prominent of the Villur men, and one of those most severely injured in the fight was the 3rd witness (see Evidence of 11th witness and Exhibit B). And his account of how he became to be beaten is an easily invented excuse for being in the fight at all, and is obviously intended to show his own passivity in the riot: a passivity which is inconsistent with the severe injuries that he received.

13. Both because the evidence of the 3rd witness on this point is untrustworthy first as being uncorroborated, secondly as being in the nature of self-exculpation, and also because, even if it were true, it does not show that the convict aided or in any way participated in the second stage of the beating, the Memorialists submit that in awarding punishment the Government should hold the convict responsible not for the second stage of the beating, separated as it is from the first stage in the manner above pointed out, but only for having instigated the first stage of the beating, the object intention of which was merely to beat Muthukaruppan off the bull.

14. Such instigation the Courts would have held to be murder. But the question now for the Government is—How far is a man who instigates a beating with the object of preventing the capture of a bull, a beating that had no ulterior object, to be punished for a subsequent beating "the direct, natural, and only probable result" of which was the death of the man beaten.

In deciding this question the Memorialists would respectfully request the Government to bear in mind the following considerations:

(a) On a previous occasion this same bull, under the same circumstances, was overtaken in the same manner by the same person who was beaten off in the same way as on this occasion (see Evidence of 3rd witness, Evidence pp. 13 and 20). On that occasion the bull was rescued without any loss of life. Those then who instigated a rescue on the present occasion would have had the rescue of the previous occasion in mind; and would not have intended or foreseen (whatever the law may declare they ought to have foreseen) anything more than the result of the previous beating.

(b) The Prosecution have not shewn how the second stage of the beating arose out of the first. Though the alleged motive may account for the first stage of the beating it cannot account for the second stage.

(c) Inasmuch (for the reasons given) it is clear that there was a fight, and not a mere one-sided beating, the Prosecution have not given a full and candid story.

15. The Memorialists have refrained from impeaching the Prosecution evidence in this case as a whole, because the main purpose of this Memorial is assuming the guilt of the convict, to lay before the Government certain considerations on the punishment to which he has been subjected. But before leaving the case in the hands of the Government they desire to draw attention to what seems to them a significant fact. The stay Prosecution proceeds on the assumption that there was a riot as between the dwellers in two villages. But, every accused person with the exception of the 4th accused who is a barber and the convict is a Muppan while every one of the witnesses who was present at the riot is a Maraver. The caste of the witnesses is given at the head of their examination, and that of the accused at the head of their examination before the Magistrate (Exhibits N. to Z.). This would show that the riot was not between one village and another, but between one caste and another. In a riot between Maravers and Muppans, the convict, being a Goundan, would have had no part. But in any case, whether the riot were between caste and caste or village and village, there would be strong reasons for implicating the convict in it from the commencement; for by so doing the Muppans of Vannivelampatti would be deprived in their defence of the advice and influence of the headman of their village.

16. There is also another consideration on the facts to which the Memorialists desire to draw the attention of Government. They have already pointed out that the riot was probably not a one-sided affair, but a fight in which both combatants were equally to blame. In these circumstances both sides would naturally after the riot stand by to watch the development of events. If then the whole truth were to be elicited a police investigation should have taken place not only in both the villages of Villur and Vannivelampatti but also in Kettanipatti, where the riot took place and

where of course the most impartial evidence would be available. Now the Police Inspector did indeed go to the scene of the riot (Evidence, p. 55, line 28): but he appears to have done nothing more than look at it. Contenting himself with an examination of the persons aggrieved and an inspection of the scene, he does appear in the words of the Criminal Procedure Code, § 157, to have proceeded "to the spot to investigate the facts and circumstances of the case." Such an investigation of the facts and circumstances would probably have revealed the part taken in the riot by the Prosecution witnesses: while without it there is nothing but the evidence of witnesses whose purpose is, the Memorialists suggest, as much to screen themselves as to bring the accused to justice.

17. These considerations on the facts of the case the Memorialists leave to the Government, they confine their prayer to the punishment of the accused.

The Memorialists therefore pray that the Government may take into consideration the matters set out in this Memorial and order that the sentence of transportation on Ramasami Goundan be remitted or commuted as may to the Government appear just.

Barry's Buildings

1189 Mar 9th 1895

CURRENT No. 1189

To
The Chief Secretary to Government.

Sir

I enclose a duplicate of a memorial which the signatories desire to lay before the Governor in Council. The original has been forwarded to the Private Secretary with three enclosures. I request you to lay the matter before the Government & inform me of the Orders that Government may pass upon it.

I am Sir,

Yr. obedient servant

M. Ryan.

Ramasami Goundan.

Right Honorable
Governor-in-Council,

Fort Saint George.

Humble Memorial of THODDIAMMAL and AVUNA GOUNDAN, in respect of the sentence passed upon one RAMASAMI GOUNDAN, late Munsif of Vannivelampatti, in Tirumanam Taluk, in the District of Madura, but now prisoner, No. 6508.

The Memorialists are the wife and brother (respectively) of Ramasami Goundan (hereinafter briefly referred to as the convict) who was on the 25th February 1895 transported to the Andaman Islands in pursuance of the sentence passed upon by the Sessions Judge of Madura in Sessions case No. 39 of 1894 confirmed by the High Court in Criminal Appeal No. 402 of 1894. And notwithstanding the rejection by the Government of the petition presented by the convict himself, the Memorialists venture, in virtue of the privilege recognised by Section 401 of the Criminal Procedure Code, to approach the Government with a statement of some considerations bearing on the degree of punishment to which the convict has been sentenced: considerations that do not appear upon the face of the petition submitted to the Government by the convict himself or upon the face of the Judgments delivered by the High Court and the Sessions Court.

The sentences of the other accused committed: that on the convict maintained by the Government.

2. The convict with ten others was convicted of murder by the Sessions Judge in the case abovementioned. He and his fellow-prisoners thereupon appealed to the High Court who, confirming the conviction, expressed the opinion that transportation for life was too severe a penalty and in consequence directed the records to be submitted for the consideration of the Governor in Council. Whilst the records were with the Government the convict presented a petition to the Government urging several objections to the credibility of the evidence produced against him and praying His Excellency the Governor to direct his acquittal or to exercise in his favour the Prerogative of Mercy. The Government declined to interfere with the sentence passed upon the convict; but, the Memorialists are informed, commuted the

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CURRENT No. 1189

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The sentences of the other accused commuted: that on the convict maintained by the Government.

2. The convict with ten others was convicted of murder by the Sessions Judge in the case abovementioned. He and his fellow-prisoners thereupon appealed to the High Court who, confirming the conviction, expressed the opinion that transportation for life was too severe a penalty and in consequence directed the records to be submitted for the consideration of the Governor in Council. Whilst the records were with the Government the convict presented a petition to the Government urging several objections to the credibility of the evidence produced against him and praying His Excellency the Governor to direct his acquittal or to exercise in his favour the Prerogative of Mercy. The Government declined to interfere with the sentence passed upon the convict; but, the Memorialists are informed, commuted the

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5. Since the circumstances of the case will not be fresh in the recollection of the Government, it is necessary to explain at the outset that the murder is said to have been committed in the course of a riot that arose out of a Jellicut held at the Village of Kottanipatti in April last. This Jellicut was attended by the neighbouring villagers; and amongst others, by the convict and his co-accused who came from the village of Vannivelampatti and by the deceased and others (including the 1st and 3rd to 8th Prosecution witnesses) who came from the village of Villur. The facts of the riot are given by the 1st and 3rd to 10th Prosecution witnesses and may be stated as follows:—

During the riot a bull from Vannivelampatti was let loose: and as it was running was seized by the deceased and the 3rd Prosecution witness. As the bull was running with these men hanging on to it, the convict (so it is alleged) said "a Villur man has seized the bull, beat him." These are the words as given by the 4th witness, though, of course, the witnesses differ as to the exact words. Hereupon the 3rd and 4th accused beat the deceased who fell down. While the deceased thus lay upon the ground the 3rd to the 11th accused continued to beat him. Other men from Villur (including the 1st and 3rd to 8th Prosecution

witnesses) who ran to his assistance were also beaten by the same accused.

The Alleged Motive.

6. In order to disclose a motive that would induce the convict to order Muthukaruppan—the deceased—to be beaten, it is explained that the bull was famous for its speed and ferocity and had never been actually made captive in any Jellicut (Sessions Judgment, para. 3): that the deceased had caught the bull in a previous Jellicut though it was rescued from him and now for the second time caught the Vannivelampatti bull invincible but for him (Sessions Judgment, para. 7) and that the Vannivelampatti villagers took great pride in their bull (High Court Judgment, para. 4). It is worth noting as a clue to the intentions of the convict, though the Memorialists do not deal with the evidence, that famous as the bull was, no one appears to know who its owner was, and the Police Inspector was unable to trace it. (See Inspector's evidence at p. 59.) Far less is there any reason to suppose that the convict had any special interest in this bull.

The two stages of the beating and their severity respectively.

7. In order to appreciate the extent of the convict's guilt, it is necessary to distinguish carefully what may be spoken of as the two stages of the beating under which Muthukaruppan is said to have died. In the first stage he was beaten while hanging on to the bull. While in this position he received two blows delivered by the 3rd and 4th accused, and fell down. The 1st prosecution witness says (Evidence, p. 4, line 10) "my brother fell down on receiving these two blows." The evidence of the other witnesses, which it is unnecessary to quote in detail, is also to the effect that after receiving the first two blows (given by the 3rd and 4th accused, while he was hanging on the bull) Muthukaruppan fell to the ground. The position of these two blows can also be fixed. The witnesses are unanimous that the first blow was struck by the 4th accused, and the 1st, 3rd, and 7th to 11th witnesses say that the 4th accused struck the deceased on the neck below the ear. The second blow was according to all the eye-witnesses delivered by the 3rd accused. The first witness says that the 3rd accused struck on the head, but the 3rd and 4th witnesses say that he struck on the side. It may therefore be taken that the second blow was struck on the side. Thus the first stage of the beating—while Muthukaruppan was hanging on the bull—accounts only for two wounds. But the evidence of the Apothecary (11th witness: see Evidence, p. 31 and Exhibit B., p. 69) shows that very many more wounds were received by the deceased: so many indeed, that, in addition to wounds on the left arm and hand, the whole of the upper half of the body, back and front, was covered with wounds. The blow on the neck delivered by the 4th accused does not account for all the wounds observed even on the neck of the deceased; for, according to the Apothecary, externally the whole of the neck—and not merely the part under the ear—was swollen and of a blue colour and internally, in the front and lateral aspects, there was a copious effusion of blood. Nor is the blow on the side, delivered by the 3rd accused, the only blow observed on the side of the deceased. It is thus clear that the two

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blows that constitute the first stage form a very inconsiderable part of the whole beating received by the deceased: that the greater part of the beating—all in fact that made it so cruel and so cowardly—was received during the second stage of the beating, when, as the Prosecution witnesses say, Muthukaruppan lay upon ground.

The importance of the distinction between the two stages, as regards the question of punishment.

8. These two stages, if the evidence for the Prosecution be true, followed close upon one another, and it may therefore be that all who were in fact participators in the first stage are in law participators in the second stage. But in meting out punishment it may nevertheless well be the case (as the Memorialists submit it is) that it would be unjust to hold all who participated in the first stage responsible also for the second, or equally responsible for each stage. There is a wide difference between the two stages. In the first stage there is a beating—unsportsmanlike if Maravers and Muppans are to be governed by English rules of fair-play—but a beating the object of which could only have been to prevent the bull being captured—a beating which therefore was not intended to be severe, and which on the evidence amounted only to an assault. In the second stage there is the infliction of a beating so cruel and so violent that—in the words of the Sessions Judge, evidently referring to the second stage—the death of Muthukaruppan was the direct, the natural and the only probable result.

The Memorialists are now concerned merely with pointing out the great difference between the beating in the two stages. But they cannot here refrain from pointing out, in passing, that this difference shows that the Prosecution did not lay the whole truth of the riot before the Courts. According to the evidence, when the first stage of the beating had commenced Muthukaruppan had but seized the Vannivelampatti bull; there is nothing to show that he was on the point of capturing it, for there is a great gap between seizing a bull famous for its speed and ferocity (Sessions Judgment, para. 3) and bringing it to a standstill and carrying away the cloth. But the chagrin of the Vannivelampatti villagers at seeing a bull from their village overtaken by Muthukaruppan might account for their wishing to beat him off, it does not, and it cannot, of itself, be made to account for the savage and determined beating that was afterwards given to Muthukaruppan. The Memorialists submit that there must have been some other cause for the savage and determined beating of the second stage, a cause that the Prosecution do not care to disclose.

The first and second stages then of the beating are separated not only by the nature of the beating given in them respectively but also by their several immediate causes. And it therefore by no means follows that one who participated in the first stage, whatever may be the offence of which he is guilty in law, should, when the time for awarding punishment comes, be held to be responsible also for the second stage.

The two grounds upon which the Courts held the convict guilty of Murder.

9. Their Lordships of the High Court and the Sessions Judge held the convict guilty on two grounds.

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(a) because in inciting the Vannivelampatti villagers to beat the deceased off the bull he called into action a force that he could not control:

(b) because he actually aided and participated in the second stage of the beating by encouraging his fellow villagers to beat off all the Villur people who came to the rescue of the deceased.

The Sessions Judge says (Judgment, para. 11), "with regard to the first (the convict) and second prisoners, they must have known that those whom they incited to acts of violence were armed with deadly weapons, and they not only urged the other prisoners to beat the deceased but also urged them to beat the Villur men who came to rescue the deceased. Thus they not only woke into action but also kept in motion an indiscriminate power and the death of Muthukaruppa Tevan was the direct, natural and only probable result of their act." The High Court say (in the 4th para. of their Judgment) "we have no doubt the story told by the Prosecution is substantially true. The Vannivelampatti villagers took great pride in their bull, which they regarded as invincible. The bull had however been captured* at a previous Jellicut by a Villur man,—the deceased—and when he appeared again on the scene and seemed likely to repeat his victory they grew angry and 1st Prisoner (the convict) who was the headman of Vannivelampatti gave the signal to beat him for his impudence and to beat off all the Villur people who came to his assistance. It is probable that no deliberate intention to kill Muthukaruppan had been formed,—but the 1st and 2nd prisoners knew that the person (sic) invoked by them to administer the beating were armed with formidable weapons which might be dangerous to life, and they called into action a force that they could not control. Not only that but they continued to encourage their men to beat the Villur people who came to Muthukaruppan's assistance after he had been knocked down and was insensible from the injuries received."

* Note: Never actually captured, the bull on the previous occasion had been seized but rescued. (See evidence of 3rd witness, pp. 13, 20.)

By violence of the same kind, though without the same result, as in this case.

10. It would seem that on the first of the above grounds alone, viz., on the ground that the convict gave the first signal to beat Muthukaruppan, the High Court and the Sessions Court would have held the convict guilty of murder. The second ground therefore, the ground that the convict actually participated in the second stage of the beating, did not affect the decision of the Judges. But on the question of punishment this supposed participation is of the utmost importance. And it is upon this supposed participation that, the Memorialists venture to think, the Government must have chiefly relied when it decided to allow the convict to undergo the terrible punishment of transportation.

Now this supposed participation, the Memorialists submit, is an error. And though the rectification of this error would not have affected the judgments of the High Court or the Court of Sessions, it appears to the Memorialists to have misled the Government. They proceed accordingly to show that there is no evidence of such aiding and partici-

pation on the part of the convict as the learned Judges supposed.

11. With the exception of the evidence of the 3rd witness, there is not a particle of evidence from one end of the record to the other that the convict did anything at all while the deceased lay on the ground; with the exception of that one witness, no witness says that he did anything but use the words, "A Villur man has seized the bull, beat him." It therefore becomes necessary to see what this 3rd witness attributes to the convict. After Muthukaruppan fell the 3rd witness says (Evidence, p. 12, line 7), "I also said, you let the bull loose, challenging any one to catch it. Did you do so intending to beat?" "Then," (line 13) "Ramasami Goundan (the convict), and Vembuli Muppan said 'beat this fellow also.' Thereupon some men came and beat me with sticks and shot stones at me from bows." He then identifies the 5th to the 9th and 11th accused as those who beat and stoned him. This is a wholly different thing from encouraging their men to beat off all the Villur people who came to Muthukaruppan's assistance. Had the convict urged others to beat off all who came to the assistance of the deceased while he was lying on the ground, it would have shown not only that he approved of this the second stage of the beating but actually aided it. But the incident related by this 3rd witness does not connect the convict with this second stage of the beating. It consists of this—a beating, not to prevent assistance to Muthukaruppan, but in return for an upbraiding. This incident as thus related may be a part of the whole transaction. But if it is a part it is a subordinate and incidental part and it surely does not and cannot be made to show that the convict approved of or in any way aided the second stage of the beating given to Muthukaruppan.

12. But further, the evidence of the witness on this point is wholly untrustworthy. Their Lordships of the High Court do not say that they accept the Prosecution evidence in its entirety. They do no more than say that they have no doubt that the story told by the Prosecution is *substantially* true (4th para. of the Judgment). The Memorialists therefore conceive that it is open to them, without questioning the finding of the High Court, to show that the evidence of this incident related by the 3rd witness ought not to be accepted. And they would draw the attention of the Government to the following reasons for discrediting it. In the first place it is unsupported by the rest of the evidence. Not only the witnesses, viz., the 8th, 9th and 10th who speak generally to the beating of the Villur men, but even the 7th witness who speaks specifically to the beating of the 3rd witness makes no mention of, or reference to this incident. Had the convict really ordered the 3rd witness to be beaten it is incomprehensible how not one of this batch of witnesses who testify to the beating of the 3rd witness should have failed to say that the convict had commanded it.

In the second place, this incident as given by the 3rd witness is obviously an excuse invented to account for his having been beaten. The Memorialists have said above that the true cause of the savage and determined beating of Muthukaruppan has not been disclosed. But apart from the cause, it is clear that this riot was not a one-sided affair, as the Prosecution witnesses make out, in which they did nothing but run to the assistance of the deceased. It was, as the Memorialists submit the circumstances show, a fight in which blows were given and received on both sides. If men in a riot do no more than merely run to the assistance of the beaten person, they do not receive the very severe wounds that these Prosecution witnesses received. (See Evidence of 11th witness and Exhibit B). The nature and the extent of their injuries clearly points to a determined *struggle*. Moreover the fact that no complaint was laid; the fact that the Villur men endeavoured to burn the deceased's body at once and hush up the matter (see Evidence of 1st witness, p. 4, line 42; Evidence of 15th witness, p. 43, line 43), show not only that there was a fight, but a fight also in which they were quite as much to blame as any of the accused. The fact, all the Villur prosecution witnesses (except the 7th) excuse themselves from giving any details by saying that they fainted at once or almost at once, also shows that they wished to screen their own share in the fight. Amongst the most prominent of the Villur men, and one of those most severely injured in the fight was the 3rd witness (see Evidence of 11th witness and Exhibit B). And his account of how he became to be beaten is an easily invented excuse for being in the fight at all, and is obviously intended to show his own passivity in the riot: a passivity which is inconsistent with the severe injuries that he received.

13. Both because the evidence of the 3rd witness on this point is untrustworthy first as being uncorroborated, secondly as being in the nature of self-exculpation, and also because, even if it were true, it does not show that the convict aided or in any way participated in the second stage of the beating, the Memorialists submit that in awarding punishment the Government should hold the convict responsible not for the second stage of the beating, separated as it is from the first stage in the manner above pointed out, but only for having instigated the first stage of the beating, the object and intention of which was merely to beat Muthukaruppan off the bull.

14. Such instigation the Courts would have held to be murder. But the question now for the Government is—How far is a man who instigates a beating with the object of preventing the capture of a bull, a beating that had no ulterior object, to be punished for a subsequent beating "the direct, natural, and only probable result" of which was the death of the man beaten.

In deciding this question the Memorialists would respectfully request the Government to bear in mind the following considerations:

I don't remember any evidence of any injuries to the attacking party
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(a) On a previous occasion this same bull, under the same circumstances, was overtaken in the same manner by the same person who was beaten off in the same way as on this occasion (see Evidence of 3rd witness, Evidence pp. 13 and 20). On that occasion the bull was rescued without any loss of life. Those then who instigated a rescue on the present occasion would have had the rescue of the previous occasion in mind; and would not have intended or foreseen (whatever the law may declare they ought to have foreseen) anything more than the result of the previous beating.

(b) The Prosecution have not shewn how the second stage of the beating arose out of the first. Though the alleged motive may account for the first stage of the beating it cannot account for the second stage.

(c) Inasmuch (for the reasons given) it is clear that there was a fight, and not a mere one-sided beating, the Prosecution have not given a full and candid story.

15. The Memorialists have refrained from impeaching the Prosecution evidence in this case as a whole, because the main purpose of this Memorial is, assuming the guilt of the convict, to lay before the Government certain considerations on the punishment to which he has been subjected. But before leaving the case in the hands of the Government they desire to draw attention to what seems to them a significant fact. The ~~say~~ Prosecution proceeds on the assumption that there was a riot as between the dwellers in two villages. But, every accused person, with the exception of the 4th accused (who is a barber) and the convict, is a Muppan while every one of the witnesses who was present at the riot is a Maraver. The caste of the witnesses is given at the head of their examination, and that of the accused at the head of their examination before the Magistrate (Exhibits N. to Z.). This would show that the riot was not between one village and another, but between one caste and another. In a riot between Maravers and Muppans, the convict, being a Goundan, would have had no part. But in any case, whether the riot were between caste and caste or village and village, there would be strong reasons for implicating the convict in it from the commencement; for by so doing the Muppans of Vannivelampatti would be deprived in their defence of the advice and influence of the headman of their village.

16. There is also another consideration on the facts to which the Memorialists desire to draw the attention of Government. They have already pointed out that the riot was probably not a one-sided affair, but a fight in which both combatants were equally to blame. In these circumstances both sides would naturally after the riot stand by to watch the development of events. If then the whole truth were to be elicited a police investigation should have taken place not only in both the villages of Villur and Vannivelampatti but also in Kottanipatti, where the riot took place and

where of course the most impartial evidence would be available. Now the Police Inspector did indeed go to the scene of the riot (Evidence, p. 55, line 28): but he appears to have done nothing more than look at it. Contenting himself with an examination of the persons aggrieved and an inspection of the scene, he does, appear, in the words of the Criminal Procedure Code, § 157, to have proceeded "to the spot to investigate the facts and circumstances of the case." Such an investigation of the facts and circumstances would probably have revealed the part taken in the riot by the Prosecution witnesses: while without it there is nothing but the evidence of witnesses whose purpose is, the Memorialists suggest, as much to screen themselves as to bring the accused to justice.

17. These considerations on the facts of the case the Memorialists leave to the Government, they confine their prayer to the punishment of the accused.

The Memorialists therefore pray that the Government may take into consideration the matters set out in this Memorial and order that the sentence of transportation on Ramasami Goundan be remitted or commuted as may to the Government appear just.

Theddigammat by M. R. au.

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