Judicial (1895) Department.

ORDINARY MS.

G.O., No. 861.

Dated 26th Apr 1895

INDEXED.

[Despatch Abstract.]

FEES TO PUBLIC PROSECUTOR, SOUTH CANARA.

According sanction to the payment of the proposed fee of Rs.900 to the Public Prosecutor, South Canara, for services rendered in connection with South Canara Sessions case No.38 of 1894, but considering it unnecessary to retain the Advocate-General for the hearing of the appeal to the High Court and that it should suffice to depute the local Public Prosecutor to assist the Government Pleader.

anA

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	672		1-4-95				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
96	883		29-4-95				
	3250		95				

Disposal of 883/95 & paper.

1895.

From,
The- District Magistrate of
South Canara.

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

Dated 21st March 1895.
Despatched 29th —do—
Received 26

Ref. 27
Reference to C.R. **No.** 1132/95
May

ENCLOSURE 1

Subject.

Recommending that the Government may be pleased to sanction a fee of Rupees 100 to the Public Prosecutor, Mangalore for conducting the prosecution in Sessions Case No. 88 of 1894.

GOVERNMENT OF MADRAS
26 MAR 1895
CHIEF SECRETARIAT

914/1877 Pt

So 29 15 4
& Law Officers Fees

914 (877) RC
So 568 14 3 95 } Para 3.
291 11 2 95 }
1535 21 6 95 Similar

JUDGMENT.

In the Court of Sessions, South Canara.

Session Case No. 38 of 1894.

Present: W. C. Holmes Esq.

Queen-Empress *Vs.* 1. Krishna Bhatta.
2. Naraina Bhatta.
3. Biranna.
4. Madana.

(Committed by Mr. T. Roberts, Stationary Magistrate, Kasaragod Taluk).

Charge: *Against all accused*—Murder Sec. 302 I. P. C.
Against 4th accused—Abduction Sec. 365 I. P. C.

Assessors: Messrs. 1. Santa Poi (Konkani Brahmin). 2. B. Subba Rau (Gowda Brahmin). 3. Doddamane Abdul Kadri (Mopla).

Opinion of the Assessors: 1st, 2nd, and 3rd accused guilty under Sec. 302 I. P. C. and 4th accused not guilty under Sec. 302, but guilty under Sec. 365 I. P. C.

Finding of the Judge: Concurred with Assessors.

Sentence: The 1st and 2nd accused are each sentenced to death, subject to confirmation of the sentence by the High Court. The 3rd accused is sentenced to transportation for life, and 4th accused to 7 (seven) years' rigorous imprisonment.

Judgment: The four accused are charged under Section 302 I. P. C. with having, at Enmakaje village in Kassergode Taluk, on the 3rd August last, murdered a young man named Venkatramana. There was also added in this Court a charge nder Section 365 I. P. C. against the 4th accused of having abducted Venkatramana.

2. In dealing with this very long and very important case, I shall first state in outline what the averments of the prosecution are, and I shall then give an abstract of the evidence that has been laid before the Court, stating various interlocutory orders passed during the trial, and I shall after that discuss the evidence in the case generally and as it affects each accused.

3. In outline the prosecution case is as follows:—The deceased Venkatramana, a young man of 17 or so, claimed that he was entitled to a property called the Bolubyle property situated in the village of Katkukke in Kassergode Taluk. This property has been for many years in possession of the Bolubyle family to which the 1st accused Krishna Bhatta belongs. The property was the chief means of support of the Bolubyle family, and 1st accused was a leading member of the family. He (1st accused) brought from a village called Karopadi in Kassergode Taluk, some 18 miles from Bolubyle, to his house at Bolubyle a relation of his named Mapanna, and the 2nd accused Naraina Bhatta, a relation of Mapanna's, the 4th accused Madana, a washerman of Karopadi, and two others, a Brahmin Babu Kampti and a Mopla

Muse who have been admitted as approvers in this case; and with these and the 3rd accused Biranna, a Bant living in Enmakaje, he went to Venkatramana's house at Manjalkeri in Enmakaje on the evening of Friday, the 3rd August last. The 2nd accused, Mapanna and Biranna left the rest of the party and went in advance, and the 2nd accused entered the house and falsely represented that he had come to take Venkatramana's sister Sarasvati to her husband's house and had meals in the house, and lay down there and after Venkatramana had gone to sleep opened the door; and the others of the party except 4th accused, who kept watch in the yard outside, entered the house, and Venkatramana was strangled where he lay asleep on a pyal and his body was taken out of the house to the river near the house and thrown in. The whole party then went together except Biranna, who stopped on the way at his own house, to the house of a man named Hamed Kunhi; and from thence the 1st accused and 2nd accused and Mapanna went towards Kassergode, and the 4th accused and the two approvers returned to Karopadi being guided as far as the Kandel ferry by Hamed Kunhi.

4. For a clear understanding of the evidence in this case, reference is necessary to the maps that have been put on the record. One of these maps, Exhibit D, is a map of the Kassergode Taluk published by the Revenue Survey Department. It shows the relative positions of Karopadi, 51 on the map, where the approvers, Mapanna and 4th accused live, Enmakaje, 90 on the plan, where Venkatramana lived, Katkukke, 91 on the plan, where 1st accused lived, and of a number of other villages referred to in the evidence. Several places referred to in the evidence have also been entered on the map in manuscript by the 11th prosecution witness, Revenue Inspector, showing the path from Karopadi to Bolubyle *via* the Kandige ferry, and another path to Karopadi *via* the Kandel ferry. Another map, Exhibit B, which is also of great assistance in understanding the evidence is the Revenue Survey Map of the Enmakaje village. On it is shown the main road running through the village, and there are also shown in manuscript by the 11th prosecution witness, Revenue Inspector Martu Kini, a number of places referred to in the evidence (the houses of deceased, of the witnesses &c.). The 3rd map, Exhibit C, is a plan of the surroundings of Venkatramana's house up to the river and a plan of the house itself and of the yard on a larger scale. This is proved by the 11th prosecution witness Martu Kini.

5. The approver Babu Kampti was the first witness examined by the prosecution at this trial.

He described himself as a retail trader living at Karopadi, making beaten rice and carrying it and other articles for sale about the villages and to fairs. He lives close to the 2nd accused, Ettu Naraina Bhatta's house. He also knew Mapanna who lives in Karopadi. He deposed that one Tuesday the day before the Ati Amavase (*i. e.* Tuesday 31st July last) Mapanna and the 2nd accused came to his house and said they were going east for tobacco, wanted him to come with them and offered him ¼ maund of tobacco as cooly for carrying the tobacco they got and it was agreed to start after meals the next day.

The next day (Wednesday, 1st August) the 2nd accused, he deposed, came to his house at 1 o'clock or so, and he went with him to 2nd accused's house where Mapanna and 1st accused were. He had, he said, twice seen the 1st accused before. Krishna Bhatta (1st accused) asked him if he were coming for tobacco, and he said he was. At 1.30 or 2 they (all four) started and went a mile to Kodla where Muse's shop is, and Mapanna and 2nd accused called Muse who came to them and Mapanna said "We are going east for bullocks and for a she-buffalo, come with us."

Muse first said he could not go, but on being told he could be back the next day and that he would be paid cooly (or tobacco in place of cooly), he agreed to go, and after going to his house and getting a cloth, all five went on. After they had gone a mile farther, they met Madana the 4th accused. 2nd accused asked him where he had been, and asked him to accompany them to the east for bullocks and a buffalo, and after some objections he went for a cloth, presumably to his house, which was half a mile from the place they met him, and on his return they (now 6) started. Near a place called Berapadavu the witness (after some questioning) said they met Rayappa Shanbog, who asked him where he was going, and he said "I am going east for tobacco with these people." When it was evening (after sunset) they got to the Kandige river, and a Mopla whom he did not know ferried them over it and Krishna Bhatta (1st accused) paid him 2 annas. Some way farther on, Krishna Bhatta got cocoanut-leaf torches at some house from some man he did not know, and they went on to the public road. That public road is the road that passes through Enmakaje and goes from Kassergode to Vittal. They then went along the road; and in front of a house, Krishna Bhatta called out "Biranna, Biranna," and some one said from inside the house "He is not here"; and Krishna Bhatta and Mapanna went to the house to get torches, which they did, and then they all went to Krishna Bhatta's where (after cooking and having meals) they slept.

Next morning (Thursday, the 2nd August) it was raining, and Krishna Bhatta said he would put off going to see the bullocks &c. till the afternoon. In the afternoon the rain continued and Krishna Bhatta told them to stop where they were and he and Naraina Bhatta (2nd accused) would go and look about a she-buffalo and left, and returned when the lamp was lit.

The following day (Friday, the 3rd August) the rain ceased and Krishna Bhatta said they could see the bullocks, tobacco and all, and after meals they—the six—went and got to the public road, and as they were going along it, Krishna Bhatta (1st accused) said to Mapanna Bhatta with reference to some bullocks grazing near the road, "These are the bullocks, I bought them for Biranna "Banta", and Mapanna said "It's enough if they drag" and the party went on. They left the public road and went by a bye-path to a Byle (paddy land), where there were some people transplanting paddy, and Krishna Bhatta called "Subunji" "Subunji" and a man came and Krishna Bhatta asked for tobacco, and they went to his house, and after some bargaining some tobacco was bought for Rs. 8½ and Krishna Bhatta paid Rs. 4½ and promised to pay the rest in a few days, and they left with the tobacco which Muse carried. On the way Krishna Bhatta said to Mapanna "You take these people home, I'll go to Biranna about the bullocks," and Krishna Bhatta left them and they went to his (1st accused's) house, where they sorted and weighed the tobacco, and after that Krishna Bhatta returned, and he and Mapanna and Naraina Bhatta (2nd accused) went inside for meals and returned to the Chavadi where they chewed betel.

When they were doing so, a Bhatta of that place came and asked for a drum and invited Krishna Bhatta to a Talamadale (a kind of entertainment) at his house that day, and Krishna Bhatta first said he could not go as he had relations and people for trade, but also said if convenient he would go.

After that Biranna Banta (3rd accused) came, and Krishna Bhatta proposed to give his (Biranna's) bullocks to Mapanna and he agreed, and he (Biranna) went inside for meals and returned and betel was chewed.

At a galige or 2 to sunset Krishna Bhatta proposed to go to the Talamadale, and they—the 7—started and went across the hill to the public road,

and as they went Krishna Bhatta said to Mapanna "We'll go and see the milk of the buffalo;" and Krishna Bhatta, Biranna and Naraina Bhatta left the road by a bye-path, and the others led by Mapanna went by another bye-path till they came to a wall (Agalu, trench and dyke), where Mapanna made them sit. It was then dark and was raining. When it was 4 or 5 galiges of night Krishna Bhatta and Biranna came and they sat. Krishna Bhatta said he had a thing to tell, and proposed to catch a boy who had a suit against him, and after some objection on his (witness's) part they got up and left and went by a jungle-path to near a house, and Krishna Bhatta made them stand near a channel outside the yard, and Krishna Bhatta and Biranna went into the yard saying "We'll see if they have slept" and they came back, and Krishna Bhatta called them into the yard and they went in, and Krishna Bhatta said to Madana 4th accused "There is a Mahratti "house, you see no one comes out" and he was posted at the door of the house.

Then Krishna Bhatta asked Biranna for the *Pandavu* and *Badige* (pole), and Biranna brought a *Pandavu*.

They then went to the door of the house. The door was shut and Krishna Bhatta took a small stick from a vegetable pandal close by and rattled it a few times between two of the bars of the Dalli or veranda, and Naraina Bhatta opened the door and the five of them went in. Krisha Bhatta told him (1st witness) and Muse to stop at the door of the inner room (see plan of house), and Krishna Bhatta made a ball of a cloth and he and Biranna and Naraina and Mapanna—these four—all at once went to where the boy was sleeping on a pyal to the south of the veranda (see plan) and seized him—Krishna Bhatta catching his tuft and putting the cloth to his mouth, Mapanna and Naraina Bhatta catching each a leg, Biranna jumped on the pyal and sat on the boy's chest with his feet on his upper arms and tied the *Pandavu* round the neck and a noise came from the boy as if life were going out. After ¼ galige the boy was carried outside by his hands and feet and was put down near a drain outside the yard.

The body was taken again some distance and put down. It was then taken as far as an Agalu (wall), where the path takes a steep descent and put down again, and Krishna Bhatta told Biranna to throw away the '*Pandavu*,' which he did, and tied a cloth round the neck.

Krishna Bhatta and Biranna said they would put the body in the river but Biranna fell down into the field. Krishna Bhatta then got down and the body was dragged down the slope.

After a galige, Krishna Bhatta and Biranna returned to them, and they all went by a hill-path to the public road.

As they were going, Krishna Bhatta said "You stay here, I'll go and get "torches". He brought 7 or 8 torches—one of which was lighted—to where they were on the road and they sat there, and Krishna Bhatta said to Mapanna "Take out "the Rupees" and he took Rupees from his waist and Krishna Bhatta paid him (witness) Rs. 25 and Muse Rs. 25 and Madana Rs. 25.

They then got up and Krishna Bhatta said he would get someone to show them the way and they went on along the public road, and on the way Biranna said he would go home and left.

Krishna Bhatta, after they had gone some further distance, called from the road "Hamed Kunhi" 4 or 5 times, and a man came. As he was coming, Krishna Bhatta said "We go to Kassergode, there must be a record, and after 4 or 5 days "we'll come to Karopadi." Hamed Kunhi had by that time come to them, and Krishna Bhatta asked him why he had not come the previous day and Hamed Kunhi

said "I came, you were not at home." Krishna Bhatta said "Never mind, the "business is not finished; show them the way to Kandel ferry."

Krishna Bhatta, Mapanna and Naraina Bhatta left, and Muse, Madana and witness went to the Kandel ferry, Hamed showing them the way and ferrying them across the river. When they crossed the river the sun was up 2 fathoms. Hamed returned and they went to Karopadi.

6. The 2nd prosecution witness was Muse the other approver. He gave an account of what happened that was almost identical with that given by Babu Kampti. Muse is a young Mopla of 21 years of age.

7. The 3rd prosecution witness Rayappa Shanbog lives in Karopadi. He rents a small shop and house not far from the 1st witness Babu Kampti's house. He deposed that one day Babu Kampti came to his shop and at about 8 o'clock the same morning—the Amavase day or the 1st August—the 1st accused, whom he did not know, and Mapanna came to his shop, and Mapanna asked if Babu Kampti had come there and he said "He is not here. He went that way after "having supplied beaten rice." The two men then left and went by the way they had come. They did not apparently follow Babu Kampti.

He further deposed that on the same day (on the Amavase day he thought), at about 2 or 3 o'clock as he was on his way selling Pappadams and was going to Mitanadka, he met at Birapadavu six people, namely, Babu Kampti and Muse (the 1st and 2nd prosecution witnesses), Mapanna Bhatta, the 2nd accused Naraina Bhatta, and the 1st and 4th accused. He said he asked Babu Kampti "Where are you going?" and that he said "I am going to bring tobacco and to see "if the medicine will have effect," and they went on.

Before the Magistrate, the witness did not say that Babu Kampti had said that he was going for tobacco; and in explanation he here said that as Babu Kampti was a medicine-man, he only kept in mind about the medicine and that he was not asked particularly about tobacco. His evidence as to the alleged meeting was somewhat confused (see notes page 87); nor was his demeanour, especially at the earlier part of his examination, such as to make a favorable impression on me. He had accompanied Babu Kampti's wife to Kassergode and he said he met her by accident on the road near his house as he was himself going to Kassergode for things. On his way back, he said he again met Babu Kampti's wife at Mangalpadi, and she sat in the cart in which his things were and went to Karopadi and paid him Re. 1 for the use of the bandy.

The general impression left on my mind at the time of the examination of this witness was that, though what he said might be true, it would not be advisable to put much reliance on his evidence.

8. The first Court witness who was examined after the 3rd prosecution witness was a man named Ammu, and he was examined under the following circumstances. The approvers had stated that on their way from Karopadi to Bolubyle, shortly after they had crossed the Kandige ferry, the 1st accused had obtained torches at a house. After the approvers were examined, the Court adjourned for the Christmas vacation; and on the re-opening of the Court, the Public Prosecutor applied that Ammu who was alleged by the prosecution to be the person from whom the torches had been obtained should be examined as a Court-witness under Section 540, Criminal Procedure Code.

In a case at the November Sessions of 1894, the Court had ruled that the Public Prosecutor could only as of right examine witnesses who had been examined by the committing Magistrate, and it was in consequence of that ruling that the

Public Prosecutor applied that Ammu should be examined as a Court witness. The ruling passed at the November Sessions is an important one and so far as I know, the point has not been decided by any High Court; as for the reasons I had for taking the view I did, I have nothing to add to what I stated in my former judgment (see para 25 of judgment in Session Case 33 of 1894).

The examination of Ammu as a Court witness was opposed, but the Court ruled that he should be examined.

9. Ammu deposed that he lived in a house beyond a call from the Kandige ferry, and that one evening when it might have been 2 or 3 galiges of night, as he was in his house some one called out for torches. The man said "Who is at home? We want 4 torches" or "Who is the house-man; 4 torches are wanted. It is "not possible to go, being dark." The witness tied up four torches, lighted one and brought them outside, and then outside the yard he saw a man, and as he seemed a Brahmin he laid the torches down on the ground. The man took them and offered him some pice which he refused and asked where he was going and the man said "I am going to Katige Bolubyle" and left. The witness deposed that the man was the first accused. There were 6 or 7 others on the path above the house, but these he did not recognise. All the party went east.

The witness said that this took place on a Wednesday night, and the next morning he went to Kumbla to an Abkarry sale, and thence to Kassergode, where on Saturday at an Abkarry sale he purchased a toddy-shop at Kandige, and on the next day, Sunday, on his way home he heard of the murder of a young Brahmin at Manjalkeri. Thus, the night on which he says he saw the 1st accused corresponds with Wednesday the 1st August on which day, according to the approvers, the party passed the witness's house.

The witness is a Billawar, a toddy-drawer by caste, and his employment is cultivation and tapping trees. He deposed it was an ordinary thing for wayfarers, if they wanted torches, to be given them at his house. He did not remember having himself given torches before or after that Wednesday night to others, but he said there were 10 or 13 people in his house and they probably gave torches. The torches he referred to are only dried cocoanut leaves which are commonly used as torches in this District.

The witness is a tenant of a man named Sanna Krishna Bhatta whose son is married to a daughter of one of Gauramma's late husband's brothers.

I thought the evidence reliable.

10. The 4th prosecution witness was Subunji. His house is shown on the village map of Enmakaje.

He recollected that one Saturday he heard of the death of Venkatramana, and he deposed that either the day before that or on the previous day, in the afternoon as he was working in a paddy-field near his house with 7 or 8 others, the 1st accused came alone to the ridge of the field and asked him "Is there any "tobacco for sale?" and he (Subunji) said there was, and he said "Show the tobacco," and he and the 1st accused went to his house and there in the outhouse five people whom he had not seen before were sitting. The 1st accused went to the five and he went to the house and brought the tobacco from there to the outhouse and undid the bundle and showed the tobacco. Krishna Bhatta, the 1st accused, asked the price of the tobacco a maund, and he said Rs. 8½; then Krishna Bhatta asked the price of the bundle and he said he wanted Rs. 10 and was offered Rs. 8½ and agreed, and he was paid Rs. 4½ by the 2nd accused to whom 1st accused gave the money and Krishna Bhatta agreed to pay the balance of Rs. 4 and they left,

the Beary who was there—whom he identified as Muse the 2nd prosecution witness—carrying the bundle.

He identified 4th accused as having come. The 3rd accused was not at his house. It appears this witness told the Inspector that the persons came on Thursday and to the Magistrate he said 2 days before Saturday. He now said he was not sure. He said he worked in the field on Thursday and on Friday. He denied that he saw accused from that day till he saw them before the Magistrate.

This witness was a young man of 21 and he did not seem quick. I should perhaps rather say that he seemed to be giving evidence on a matter in which he considered he had little interest or concern. It seemed to me to be clear that he was not tutored.

11. The 5th prosecution witness Malikarjuna was at the time of the occurrence a Head Cooly on the public road that runs through Enmakaje. He heard of the murder on a Saturday and he deposed that on the previous evening (Friday) he was repairing a culvert on the road, a mile from his house, and saw Krishna Bhatta, 1st accused, and another going north along a bye-path that passes near the culvert and which leads to Neroli and to Manjalkeri. It was then about sunset. The witness could not identify the person who accompanied Krishna Bhatta, but said that from his dress he appeared a Brahmin. The witness had known Biranna the 3rd accused for 8 or 9 years.

This witness was only temporarily employed as Head Cooly, that is for 3 months during the monsoon, and he has since been acting Ugrani under Potail Bynki Banta, the 19th prosecution witness, on a pay of Rs. 3 and his wife's house is on his land. He had previously cultivated land under Kunchinadka Sham Bhatta the 13th prosecution witness, the father-in-law of the deceased Venkatramana. He had no land of his own.

This witness's story is one the truth of which it is difficult to test. He is not a man of means. His demeanour did not make a particularly favorable impression. I did not think that much reliance can be placed on his evidence.

12. The 6th prosecution witness was Sarasvati the elder sister of the deceased Venkatramana. She lived along with her mother and brother in their house at Manjalkeri. Venkatramana's wife, a girl of 10 or 11, occasionally lived there. On the Tuesday before the Ati Amavase, that is on Tuesday the 31st July, this witness Sarasvati went to the Kudukoli house 1½ miles from the Manjalkeri ho The witness's mother's mother Sarsamma lives in the Kudukoli house with brother's son Shenkara Bhatta, the 12th prosecution witness. Near the Kudu house, ½ mile east of it, is the Mailengi house where a relation, that is to say, Sarsamma's sister's daughter's husband Venkappa Bhatta lives.

Sarasvati deposed that on Thursday (that is, Thursday the 2nd August) she went alone to the Mailengi house with no particular object. She sat on the Chavadi with the house-people—Venkappa Bhatta, his brother Krishna Bhatta and the females of the house—and at about 2 or 3 galiges to sunset, she deposed, she saw the 1st accused Krishna Bhatta and another man in the yard coming towards the house. She deposed that "as soon as he saw me," Krishna Bhatta said something to the man with him and made a sign to him with his hand and the man went to one side, and Krishna Bhatta came to the house and said to her "Who is there in your house?" and sat down on a plank in the Chavadi. She said "There is no one." He said "Where did you came from?" She said "From "Kudukoli." He said "Are your mother and brother not at home?" She said

it up

"There is no one." He said "When are you going home?" She said "I must go "to-morrow." He said "At what time do you go to-morrow?" She said "In the "morning." He said "What is it to you if there is no one in the house? There are "no vessels for thieves to steal. Is it not only a lodging?" and she said "Yes." Then Venkappa Bhatta asked him "Who is it that went there?" and he said "He is a man of Koliyur. He came for tobacco. He is waiting for me sitting "there. I am going now, I cannot delay" and went away and after that she went to Kudukoli.

She identified the strange man as the 2nd accused.

The next day (that is, Friday the 3rd August) she said her mother and her brother and the latter's wife, whom they had gone to bring to their house from her parent's came to the Kudukoli house, and they and the witness went to the Manjalkeri house.

That evening after sunset, as the witness, her mother, Venkatramana and Honnakka, Venkatramana's wife, were sitting in the Chavadi—the lamp being lit—a Brahmin came to the Chavadi and sat and asked for water. Venkatramana said "Where do you come from?" and he said "I live in Nujibyle," and when he said so Venkatramana brought a mat for him and a Chambu of water. He asked him "Why did you come from Nujibyle?" He said "I have come to call your sister." Her brother asked her (witness) if she knew the man and she said she did not, and Venkatramana asked the Brahmin "Where do you live in Nujibyle?" He replied that he was in Puttanna's house, and that he was in the house of his (Venkatramana's) younger brother-in-law and elder brother-in-law. Venkatramana then asked him as to how he found his way to the house, and he told him he had been to Kassergode and on Venkatramana questioning him further he said a person in a house higher up had directed him. Venkatramana and the strange Brahmin had meals and then lay down in the Chavadi, her brother on the Mannu Chitte, a pyal, and the Brahmin near it on the floor—and they talked together, and her mother shut the outer door and she, Honnakka and the witness went inside and her mother shut the door and they slept.

The witness identified the 2nd accused as the Brahmin who came to her house.

During the night the witness heard nothing.

Next morning her mother went out and called to her from outside. "The man who came is not to be seen nor the boy" and she went out to the veranda.

The witness described how she found the bedding. The Brahmin's bedding had not been disturbed. Her brother's bedding, which consisted of a plaited mat and on it a Cumbly and over that (according to her) a cloth, was on the floor near the pyal folded in the way she showed, that is, folded over and over from one end two or three times to about half way down the mat and then folded across and had apparently been trodden on. The witness deposed she unfolded the bedding and found the upper fold of the cloth covered with foot-marks. After that she saw a long pole produced in Court in the yard near the door.

Some days afterwards (the date was the 9th August) she went to Kandel and there saw a body which she deposes was the body of her brother. The body was much decomposed. The witness said she identified the body to be her brother's by the form of the chest which, she said, was broad and by his hand and legs. The nail of the right-hand little finger was long and this was another mark of identification.

13. Gauramma, Venkatramana's mother, was the 7th prosecution witness. She deposed that the Brahmin who came to her house the evening before Venkatramana, her son, was missing was the 2nd accused. She deposed that he said to her son that he lived in Nujibyle and that he said to him "Your brothers-in-law Putukunyi and Ramappa sent me to take your sister."

She deposed that she shut the outer door of the Dalli and fastened it with its two bolts, slept in the inner room, and that the next morning she opened the door of her room and found the outer door of the Dalli open and the Brahmin and her son not there. She went to the pyal where her son had lain and she found on it his pillow and a fresh *Pandavu*. She also found on the floor near the pyal her son's bedding. She in Court arranged the bedding consisting of a mat, a Cumbly and a cloth in the way she said she found it. According to her, the Cumbly was under the mat and the cloth over it and the mat was *not folded* but crumpled and apparently trampled on. Earth from footsteps was on the cloth and the cloth was, she said, covered with the footprints. It will be seen that her description of the state in which Venkatramana's bedding was materially differed from her daughter's account. Gauramma said she did not interfere with the bedding, but called her daughter saying "Akku! your brother is not to be seen and the Brahmin is "not to be seen" and she deposed her daughter came crying and saying "Where is he "gone? What has become of him? I served rice to a Brahmin. Both are missing. "What did he do?"

Gauramma deposed that in the yard she saw a pole and then went with Honnakka making enquiries in the neighbourhood. After enquiring at one or two houses near hers, she went by the path that leads to the river. On the way, she deposed, she found a Langoti (produced in Court) which she identified as her son's. In cross-examination she stated at length how she was able to identify the Langoti (notes, page 136). She then went to Mahratti Myla's house (No. 19 on Exhibit C) and thence to the river and along the river-bank, and in a field called Dasanna Gadde (No. 20 on Exhibit C), where there is a waterfall, she saw the track of something having been dragged across the field and as far as the river. In cross-examination she stated that she also saw foot-prints and the paddy was about 1 foot high; she said she went into the field and saw and then got on the bank again. She then went to another house Muttu Bhatta's (No. 15 on Exhibit C) and thence home and afterwards to her mother's, the Kudukoli house.

After 5 days (it was on the 9th August 1894) she said she was taken to Kandel and there saw a body. She positively deposed the body was the body of her son. She was almost contemptuous at the suggestion that she could not recognize the body of her son otherwise than by his face. The face was much decomposed.

In cross-examination she admitted she had not got the body burned and so far as she knew the obsequies had not been performed. She admitted that Honnakka's hair had not been shaved and stated that it was a matter of choice in the case of a widow, and in re-examination she said it was not done as her daughter-in-law was young and did not put on a forehead mark.

In cross-examination she was shown a cloth which had not been shown to her in examination-in-chief. This cloth was taken by the Police from the river near where, it is alleged, the body was thrown into the river. It was taken from the river on the 26th September. The witness deposed that it was the cloth 1st accused wore when he came on one or two occasions to her house. She said he left his cloth outside in the veranda and when she was arranging the beds, she took it up

and saw it. She said she got information about the cloth being in the river from Kudukoli Shankara Bhatta and told the Police. It appears from Exhibit VI that the information given to the Police was that the cloth appears to be Venkatramana's.

This part of Gauramma's evidence is relied on by the defence as showing that there must be some one behind the scenes who got up evidence.

She deposed that she had sued to recover the Bolubyle land which had belonged to her father and which she as his only child claimed. The suit was disposed of she said against her, but a compromise was come to and she was paid she said Rs. 999 by her father's brother Subraya Bhatta. Exhibit A, dated 24th June 1879, is a copy of the document by which she sold her rights to Subraya Bhatta and his two brothers. Of that sum Rs. 800 were invested. It appeared that there was a suit recently about that investment. The judgment in the suit which was O. S. 77 of 1894 on the file of the Kassergode Munsif's Court was filed as a defence exhibit (Exhibit IV). It appeared that the witness's husband's brother Naraina Bhatta sued for the interest on the Rs. 800, the bond for which stood in his brother's, the witness's husband's, name. The defence was that the money was really Gauramma's money, that is, her Stridhana. The Munsif held that the suit as brought was unsustainable but that the then Plaintiff, if he came in as representative of his nephew Venkatramana, would be entitled to a decree for the amount claimed and because the money had never come into Gauramma's hands as Stridhana.

This witness in cross-examination gave the names of the members of her husband's family.

Her son, according to her, was entitled to $\frac{1}{5}$th of the family property of the witness's late husband's family.

After her husband's death in 1884, Gauramma lived at his family house. But in consequence of differences, she left it some 3 or 4 years ago and went to her mother's, that is, to the Kudukoli house where she was for a year or two, and then went to the Manjalkeri house. She deposed that her son Venkatramana had generally lived from an early age in the Kudukoli house. The witness got no maintenance from her husband's family, but had brought a suit to obtain it. (The suit was O. S. 447 of 1893 on the file of the Puttur District Munsif's Court). She also claimed some jewels.

14. Honakka, a girl of 10 or 11, was the 8th prosecution witness. She deposed to Venkatramana being her husband, to his coming to her father's house and to Gauramma's also coming there and to all three of them going to Kudukoli and thence along with Sarasvati with them to Manjalkeri.

She deposed that after lamp-light that evening, they got to their house, as they four were in the Chavadi, a Brahmin came and sat and asked for something to drink which was given to him, and that he said "I came from Nujibyle to take "your sister." The witness went in and heard no more of the conversation. She then gave an account of what happened that evening similar to that given by Gauramma and Sarasvati. She identified the 2nd accused as the Brahmin who came to the house.

She deposed that when her mother-in-law called out the next morning, she went out to the veranda. According to her, her husband's mat was lying by the mat on which the Brahmin had lain, and was in a heap.

She deposed that she accompanied her mother-in-law towards the river, and on the way saw a Langoti. They went along the river and in the Dasanna Gadde, she deposed, there was the mark of something having been dragged across

the field to the river. She also deposed she saw foot-prints. She showed the breadth of the mark, showing it as nearly a yard. She showed the direction of the track—straight across the field to the ridge, then at right angles and then up the ridge. In cross-examination she was unable to tell the name of any other fields about her house. In re-examination she said the Kudukoli people owned the Dasanna field and said she knew its name as she had gone there before.

This witness wore certain ornaments.

15. Sarasvati's husband Ramappa and her husband's brother Shankara Bhatta were examined as Court witnesses. They deposed they lived undivided at Nujibyle in Kelnad in Kassergode Taluk and they denied that they sent for Sarasvati about Ati or that they knew of any proposal to send for her at that time. Sarasvati had left her husband 15 months ago and had not since returned. Her husband had married a second time, and though he says Sarasvati consented to the second marriage, she gave that as her reason for not returning to her husband. About a year ago she was sent for they said, but not since. Each of them said he was not acquainted with the 2nd accused.

There seems no reason not to accept this evidence of these witnesses.

16. Hamed Kunhi was the 9th prosecution witness. He has a house and shop by the side of the public road leading through Enmakaje. He deposed that one day Krishna Bhatta (1st accused) came to the road close to his house and called him and told him to go to his (1st accused's) house that evening, as he had something to tell him and he (witness) agreed, and 1st accused left. He deposed that he went to 1st accused's house the same evening and got there at 2 galiges to sundown, but the 1st accused was not there, and after waiting some time he left and went home and slept.

During the night, he deposed, he was wakened by some one calling out "Hamed Kunhi" and he recognized the 1st accused's voice and went outside to the road where he found some men. The 1st accused had a torch. The 1st accused said "I told you to come in the evening, why did you not come?" and he said "I went but you were not present." The 1st accused said he had something for him to do and told him to take 3 of the persons with him to Kandel and that he and the others were going to Kassergode. He accordingly, he deposed, went with three persons, namely, Babu Kampti, Muse and the 4th accused to Kandel ferry, and the other three, Krishna Bhatta and Naraina Bhatta, the 1st and 2nd accused, and Mapanna left for Kassergode. At Kandel ferry, the witness deposed, he ferried the party over the river and returned.

This witness stated in cross-examination that he had been convicted of murder in this Court of Sessions but had been acquitted in appeal. He had been twice convicted by a Magistrate. He also stated in cross-examination that he had gone with the 1st accused for rioting. The man had the appearance of being a desperate character.

The witness is not a man on whom much reliance could be placed, but it would be only a man of the stamp that the witness appeared to be who would be employed on the errand he and the 1st two witnesses say he was. He was cross-examined at great length and his evidence appeared to me to remain unshaken.

17. The 10th prosecution witness, Mohidin Sahib, deposed that on the evening before the murder, he saw 1st accused on a hill $\frac{3}{4}$ mile from his, 1st accused's, house and that early the next morning he went to Biranna's, 3rd accused's, house and found him limping and with an injury on his side below the waist—he did not know on which side.

18. The prosecution 11th witness, Revenue Inspector Martu Kini, proved some maps and some measurements.

19. The 12th prosecution witness Shankara Bhatta is one of the Kudukoli family living in the Kudukoli house. He deposed that on Saturday in Ati, Sarasvati came to his house at about 4 galiges in the morning, she was alone and was crying and stated to him that a Brahmin had come to her house and had taken meals and he and her brother had lain down to sleep and that in the morning they were dead missing, and the mat too as it was spread. The witness went to Venkatramana's wife's father Kanchinadka Sham Bhatta's house, a mile from his, and he and Shamd Bhatta came together to Kudukoli and found Gauramma and her daughter-in-law Honnakka, Sham Bhatta's daughter, there lying on the floor and crying, and they left to give information to the village authorities. The Potail had a report written and they took it to the Perdal Police Station (some 6 miles off) and returned, and after sleeping at Pallatadka reached the Kudukoli house the next morning.

After meals, the witness deposed Constable Aitu came, and they all went to Manjalkeri, being joined on the way by the Potail. After inspecting the house, he deposed, they went to the river—on the way finding the Langoti—and saw in the Dasanna field a mark as of something having been dragged across it. They then returned to the house.

He deposed that he got orders from Constable Aitu and the Potail, in consequence of which he and others went and searched the river that evening (Sunday). Nothing was found. He also, he deposed, searched on Monday and Tuesday unsuccessfully, but on Wednesday near sunset as he and Balimulu Keshava Shastri (the 18th prosecution witness) were searching, when they were near Kandel 8 miles from Manjalkeri, they saw a body floating in a whirlpool and pulled it with a stick tied to a bamboo to the bank and found it was Venkatramana's body and took it to a garden and watched it all night, and the next morning Keshava Shastri started for Manjalkeri and he (witness) remained with the body.

Venkatramana had lived in the same house as the witness says for 7 or 8 years. He deposed that when they took the body from the water, the eyes had decomposed, but the rest of the face was intact as far as he recollected, except that the ear and lips were a little decomposed. He deposed he saw two holes in the right ear and that Venkatramana had two holes in that way. The right fore-arm was gone and so were parts of the flesh.

A Constable arrived in the morning and the Inspector and Gauramma and Sarasvati arrived in the evening and an inquest was held.

Next morning he returned to Manjalkeri.

He deposed that the Bolubyle property was worth Rs. 20,000 and that Venkatramana had intimated to him his intention of suing for it and had told him of a Panchayet between him and the Bolubyle people.

In cross-examination he said he found the women Gauramma and Honakka lying and crying "Where he is gone we don't know" and he said they were beside themselves.

The report that the Potail got written that Saturday (Exhibit F) after stating that a Brahmin had come to the house and that that Brahmin and Venkatramana were missing, added that as the mat which had been spread out to sleep on had not been rolled, Gauramma and others searched for Venkatramana and he was not found. Nothing is said in the report about a fresh *Pandavu* having been found on the pyal, nothing about the state in which Venkatramana's mat was found, nothing

about the piece of wood in the yard, and nothing about the Langoti being found nor about the marks of something having been dragged across the Dasanna field.

20. The 13th prosecution witness was Kunchinadka Sham Bhatta, the father of Honnakka. He corroborated the evidence of the last witness Kudukoli Shankara Bhatta as to what they did on Saturday, the 4th August, and on the next day, Sunday, the 5th. The Potail's report was not delivered at the Perdal Station till shortly after dark on the 4th August. The witness was questioned at some length in cross-examination and in re-examination as to the delay in delivering the report. He gave approximately the distances between the places he went to and he gave approximately the hours he got to each. Considering the nature of the country he had to traverse and the state of the weather at the time, his account of the time appeared, I thought, satisfactory.

This witness like the last deposed to the women crying at the Kudukoli house, especially, Gauramma and Honnakka. In cross-examination on this point he said Gauramma was crying "The boy was not to be seen," "Someone killed him." He also said that Gauramma said "Someone of our enemies killed him. He was "not a boy to go anywhere" and was uttering woeful cries. He said that he was more grieved than Gauramma was, and this is probable as the witness at part of his examination could hardly restrain himself from crying.

The witness deposed that on Sunday after he got to Kudukoli, he sent a tenant Mahalinga Banta to search for Venkatramana. He also deposed to seeing the various things, the mat &c. in the Manjalkeri house, and to their having gone to the river, and to finding the Langoti on the way, and to seeing the mark as of something having been dragged across the Dasanna field. He deposed to his having sent his tenant to search the river as far as Kumbla (on the sea-coast) and he deposed to others having gone to search the river.

He deposed that he went to Kandel and identified Venkatramana's body.

After the examination-in-chief, cross-examination and re-examination of this witness had been finished, it occurred to me that the witness might know something about his son-in-law Venkatramana's affairs, about which he had not been questioned by the Magistrate or by the Public Prosecutor or by the defence Vakils. I accordingly questioned him on the subject, and he gave important evidence about them. The witness deposed that after Venkatramana married his daughter (1 year and 5 months ago about), he had gone to Kadangodlu to Venkatramana's father's house about his son-in-law's $\frac{1}{8}$ share in the Kadangodlu family property. He said the family expressed themselves ready to give the share but required security as Venkatramana had not attained age. He did not ask for any maintenance for the boy. The witness said he informed Venkatramana about it, and Venkatramana said it was better to wait till he attained age and which would be in Phalguna (*i. e.* February-March 1895) and the witness went, he deposed, again to Kadangodlu and told the family what Venkatramana said, and said that Venkatramana's share should be separated and given with 3 years' produce when Venkatramana attained majority. The witness deposed the Kadangodlu family agreed to this, but that he got no writing about it. This was, witness deposed, immediately after Venkatramana's marriage. He said he made no enquiry about Gauramma's jewels or her maintenance because it was no concern of his.

This witness further deposed that about 2 months before the boy Venkatramana was missed, he and Sayada Krishna Bhatta went on behalf of Venkatramana to the Bolubyle house about the Bolubyle property —Venkatramana accompanying them.

There were at the Bolubyle house the 1st accused's uncle Shenkanna Bhatta, the 1st accused and Sanna Krishna Bhatta, a cousin of the 1st accused and, the 1st accused's father Naraina and others. There was a discussion as to how much cash should be paid for the Bolubyle property. The Bolubyle people offered Rs. 4,000, but Venkatramana wanted Rs. 10,000. The matter was not settled.

The witness further deposed that about 15 days before Venkatramana was murdered, the 1st accused came to the house close to his—of his younger brother who had married 1st accused's sister—and thence to his (witness's) house and said to him (witness) "You broke the Razi and came away. It is better to settle the matter "amicably. Don't wish for more money. Don't proceed" and he replied "What "am I to do? The boy wants Rs. 10,000." The 1st accused then left. Venkatramana was not living in the house at the time.

The witness deposed that an anxious purchaser would give Rs. 20,000 for the Bolubyle property.

21. The 14th prosecution witness was the Potail of Enmakaje, Kinhanna Banta. He proved his report Exhibit F already referred to. He also deposed to going to the Manjalkeri house on Sunday, to what was found in the house, and to the finding of the Langoti and to seeing the track across the Dasanna field. He also deposed that he gave orders to the Brahmins to search the river.

The Public Prosecutor then proposed to ask the Potail about certain things Biranna the 3rd accused did and said when he was brought to the Manjalkeri house after his arrest by the Police. This evidence was objected to and I admitted it for the reasons given in the following order:—

"The fact that anything the 3rd accused said would not be admissible in "evidence against the other accused cannot be allowed as a sufficient reason for "excluding evidence of a fact, if the fact could be proved against the 3rd accused. "Suppose the 3rd accused were being tried alone, would what the Public Prose-"cutor proposes to prove be admissible in evidence? It is said the 3rd accused gave "information which led to the discovery of the cudgel before the Court, in a bush "near the Manjalkeri house. So much of the information as led to the discovery "can, I think, be proved under Section 27, Evidence Act. The fact that 3rd accused "went to the Manjalkeri house to kill Venkatramana some time before Venkat-"ramana was murdered, but could not then carry out his intention is, I think, part "of the transaction which led to Venkatramana's death, within the meaning of "Section 6 of the Evidence Act."

It, however, turned out that this witness—the Potail—knew personally nothing of any information given by the 3rd accused regarding the cudgel, and that nothing *new* was discovered in consequence of anything the 3rd accused said at the place near the path from the Manjalkeri house to the river, where there were marks of someone having fallen into the field. With regard to the discovery of the tree from which it is said the *Pandavu* had been taken, the witness said the 3rd accused Biranna showed a cocoanut tree 10 or 18 fathoms from the Manjalkeri house and showed the mark of a *Pandavu* having been taken from one of the leaf-stalks. The witness also said "He (*i. e.* Biranna) showed the *Pandavu* saying it "was taken from this tree." In cross-examination he said the *Pandavu* that was found on the "pyal" was not with them at the time.

In cross-examination the witness said that after he got the report written at the Shanbog's, he went back to his house, and he explained that the reason he did not go at once to Manjalkeri was that he had not proper dress on. He stated that the same day he went as far as Nalka (see village map) on his way to Manjalkeri,

but as it was getting dark he stopped there for the night, and the next morning after washing and taking Conjee he went to the Kudukoli house, a little over a mile from Nalka, and when he got near the house, he saw the Constable and others coming from it and waited for them and went with them to Manjalkeri.

As to what was found at Manjalkeri the witness gave evidence similar to that given by the other witnesses on the point.

22. The 15th prosecution witness was Constable Aitu. He is a young Constable enlisted in 1887, and happened to be temporarily in charge of the Perdal Station on the 4th August when he got the report of this case. He left the Station at 6 A. M. on the 5th and got to Kudukoli, he said, at 12.30 P. M. and thence went to Manjalkeri. He described the state of the bedding &c. They then went to the river and on the way found, he deposed, a Langoti and a mark of something having fallen in a field, and in the Dasanna field, he deposed, he saw the mark of something having been dragged across the field up to the river.

In a list of property that this witness prepared on the 5th August nothing was said about the Langoti. This, the witness said, was by mistake. On the 8th August, this witness wrote a report about the case to the Magistrate at Kassergode, and in it he said that Gauramma had stated that she could not identify the Brahmin who had come to the house. This he also said was a mistake, and he deposed she said she could. In the report a full description of the man as given by Gauramma is recorded, and it seems to me to have been obviously a mere error on this witness's part to have reported that Gauramma said she could not identify the man. His note-book shows that she said she could identify the man.

This witness said he did not notice any marks of foot-prints on the white cloth that formed part of Venkatramana's bedding and he said that if he had, he would have kept the cloth. I think that his not keeping the cloth or possibly his not noticing that there were foot-prints on it was probably due to his inexperience.

In re-examination of this witness, the Public Prosecutor tendered in evidence a report written by this witness on the morning of the 6th August to the Inspector. The witness had been cross-examined with a view to showing that he had not seen the mark of something having been dragged across the Dasanna field, and as the report of the 6th contained a statement that he had, the report was tendered in evidence under Section 157 Evidence Act to corroborate the witness. I allowed the report to be filed as new matter under Sec. 138 of the Evidence Act. In the report it is stated (though not in so many words) that he saw the marks of dragging in the Dasanna field. The report was marked Exhibit G.

The witness was then asked whether any statement was made to him on the 5th, giving him a clue as to who the Brahmin who had come to the house was, and if so, what the statement was. This question was objected to. I allowed this question to be put under Section 138 of the Evidence Act although introducing new matter. The witness then stated what Sarasvati had told him at his enquiry into this case, and said he had recorded the statement in his note-book. His note-book was then tendered. It was objected to, and Sec. 162 of the Criminal Procedure Code was quoted.

Sec. 161 of the Criminal Procedure Code authorizes a Police Officer when holding an investigation into a cognizable offence, to examine orally any persons supposed to be acquainted with the facts and circumstances of the case and to reduce to writing any "statement" made by the person so examined; and Sec. 162 provides that, except as a dying declaration, no "statement" so made "shall, if reduced to writing, be "signed by the person making it, or shall be used as evidence against the accused."

This Section was not brought to my notice when I allowed the question, as to what Sarasvati said to this witness in the course of his investigation, to be put. What she said would, as I considered, be relevant under Sec. 157 of the Evidence Act to corroborate her on what is an important point in this case; but as what she said was stated to a Police Constable in the course of an investigation, Sec. 162 prohibits the proof of the statement against the accused. At a late stage of the trial the same question was again argued and 15 All. 25 was quoted. This decision clearly supports the view I have taken. The point raised is an important one, and the ruling I have made is not consistent, I am told, with the practice that has hitherto prevailed in this Court. I regret being obliged to adopt the view I have taken, for it is better to let in all facts bearing on the case and to take them for what they are worth, but I must of course abide by the Code. The result seems to be that statements to Police Constables can be proved to contradict witnesses but not to corroborate them, and that part can be used to contradict a witness and another part cannot be used to corroborate the witness.

23. The 16th witness, Keshava Shastri, on Wednesday the 8th August accompanied the 12th prosecution witness, Kudukoli Shankara Bhatta, down the Manjalkeri river and found a body in the river near Kandel.

He deposed there was no difficulty in identifying the body as Venkatramana Bhatta's. He corroborated Shankara Bhatta as to what they did.

The next morning he went to Manjalkeri and informed the Police Inspector, but did not go himself back to the body that day as he was tired. The following day, as he had been requested by the Inspector and by Kudukoli Krishna Bhatta, he followed the party, and learning that Krishna Bhatta and others had gone to the Badur Potail's house, he went there and from thence he accompanied Kudukoli Krishna Bhatta to Kumbla and when they reached Kumbla they found the body in a boat there. The body was then examined by the Civil Apothecary of Kassergode, but neither he nor Kudukoli Krishna Bhatta after the examination of the body took charge of it or got it burnt.

This witness who seemed to have considerable knowledge of the Hindu Shastras deposed that if a Brahmin of his sect were murdered, the "Santanagars," that is, the paternal relations of the murdered man, should perform certain purificatory ceremonies on the body of the murdered man which would cost not less than Rs. 100 or Rs. 200, and only after that could the body be burnt and the ceremonies connected with burning the body performed.

The witness was not a Santanagar of Venkatramana. They were connected, as his wife was Gauramma's, Venkatramana's mother's, sister's daughter, but as he was not a Santanagar, he deposed, he could not perform the purificatory ceremony and burn the body. Venkatramana's Santanagars lived at Kadangodlu several leagues from Kumbla.

24. The 17th prosecution witness Sayada Krishna Bhatta and Gauramma are the children of two sisters. He lives in Enmakaje village. He deposed that at Venkatramana's request about 2 month's before Venkatramana's death, he went along with Venkatramana's father-in-law Kunchinadka Sham Bhatta to the Bolubyle house, where there was a Punchayet held about the Bolubyle land which Venkatramana claimed. He said a compromise by a cash payment was proposed by the Bolubyle people and for whom the 1st accused acted as spokesman. The Punchayetdars then estimated the value of the property at Rs. 20,000 and Venkatramana asked for that sum. The Bolubyle people refused this; after that Venkatramana said he would take Rs. 10,000 and not less, and the Bolubyle people consulted among themselves and 1st accused said that no more than Rs. 4,000 would be

paid and the other Bolubyle people said they agreed to what Krishna Bhatta said. Then Venkatramana said "Let us see in a suit. This won't do" and the Panchayet broke up.

In cross-examination he stated in detail how the value Rs. 20,000 put on the Bolubyle property would be arrived at. He also proved that Venkatramana was aware of the decree in a suit, A. S. 202 of 1867, where the net produce of the property was estimated at much less than it would appear to be at the present time. It also appeared that the witness had advanced Rs. 100 of the money of a temple he is trustee of on a mortgage of the Bolubyle land executed by Sarasvati.

25. The 18th prosecution witness Aitu has a toddy-shop at Katkukke and deposed that on Friday and Saturday, the 3rd and 4th August, he was at Kassergode, attending auctions of toddy-shops, and that on Saturday the 1st accused at about noon called him from the Cutchery and got him to attest a document in a shop at Kassergode. He also deposed that the following Thursday Biranna came to his toddy-shop and that he noticed that he had an injury on his hip.

26. The 19th prosecution witness, Bynki Banta, is the Potail of Katkukke, and he deposed that he too attended the auction at Kassergode and that on Saturday (he first said after 12, but afterwards said at 3) he was called from the Registration Office and went to a shop where a Brahmin whom he did not know executed a bond. He said Krishna Bhatta, 1st accused, told him that the document was a simple bond and that "this was the Brahmin" and so he attested it.

It appears that some 10 years ago 1st accused gave evidence in a criminal case against him.

27. The 20th witness, a Constable, gave some formal evidence and deposed that Venkatramana's body was buried by Holeyas (Pariahs).

28. Mr. A. F. Mathias, the 21st prosecution witness, the Civil Apothecary examined at Kumbla at about noon on the 11th August the body that had been brought from Kandel. When he examined it, it was in an advanced state of decomposition. There was disproportionately advanced decomposition about the neck and upper centre of the chest and this indicated that violence had been used to that part of the body and that possibly death was due to strangulation. The front teeth were all wanting. This was probably due to violence having been used to the mouth which caused earlier decomposition. On dissecting the windpipe, Mr. Mathias found the hyoid bone separated from its cornua, and this detachment of the cornua, he considered to be due partly to decomposition and probably partly to violence. The fact that there were only eight molars and the general development suggested to the Apothecary 17 years as the probable age of deceased.

29. The Public Prosecutor after the examination of his 20th witness, proposed to examine the Police Inspector who had conducted the investigation into the case, and to whom, it was alleged, 3rd accused had made a statement which would be admissible under Section 27, Evidence Act. This was strenuously opposed, and the Court ordered that a formal written application should be made and that, if possible, the application should be supported by an affidavit. The Public Prosecutor accordingly put in a written application though without an affidavit, and after the question had been argued, the Court after taking time to consider the matter passed the following order:—

"In 14 Cal. 245, Mr. Justice Trevelyan after having perused the deposition of a Police Inspector, refused to examine him as he did not consider that he could place implicit reliance on his evidence. In the case now before me, I do not know what the precise information was that, it is said, the 3rd accused gave to the

Inspector. How much of what was said would be admissible in evidence under Section 27 of the Evidence Act is a question open to much argument.

"Besides this, no evidence is so unsatisfactory as a person's memory of what another said. It is within the experience of every one that frequently what a man says has an interpretation put on it that is different from what he meant to convey, and what almost always happens is that what is deposed to is not the words actually used but certain inferences that the hearer drew as to what the speaker meant, and which is afterwards often stated in language quite different from what the speaker actually used, and frequently the speaker is represented to have made a statement altogether different from what he did make. This is my experience and is no doubt the experience of every observant person. I, therefore, say that oral evidence of what a man is supposed to have said is of all evidence the least reliable. It is especially unreliable when the person who heard the evidence was a person with a bias, and every Police Officer has naturally and almost necessarily a bias in the case of a man whom he believes to be guilty of an offence. These are distinct objections in my mind to my calling the Police Inspector as a witness in this case. In addition to these objections, the application to examine him is made only at the very end of the prosecution case. I have examined three Court witnesses in this case, but I did so many days ago, and I stated in Court that if it were necessary I would allow their cross-examination to be postponed so that the defence should not be taken by surprise. In addition to this, the Inspector has been in Court and he heard the Potail's evidence on the point, it is now proposed that he should depose to. These are all very strong reasons for rejecting this application. But on the other hand, if Government had been represented before the Committing Magistrate by competent professional advisers, the Inspector would no doubt have been examined and this application would have been unnecessary. In my opinion in a case like the present, Government should be represented in the investigation before the Committing Magistrate by some competent legal adviser, but this has not been the practice in this District and until it is, applications like the present are sure to be made. After much consideration and while much regretting that an application like the present should have been necessary, I allow the application and will call the Inspector as a Court witness."

30. The Inspector J. M. Pais was then examined as the 4th Court witness. He deposed that he got information of this offence at Bela on the morning of the 7th August from a report (Exhibit G) from Constable Aitu of Perdal Station, and after sending an express, Exhibit L, to the Superintendent of Police left for Enmakaje and arrived there at 10 A. M. the same day, the 7th August. He entered the house and saw the mats &c., and at about 12 noon Gauramma, Sarasvati and Honnakka who had been sent for arrived and were examined by the Inspector. He then went with Gauramma and Honnakka to the river. He saw in the field 16 on Exhibit C the mark as of something having fallen from the path to the field and the foot-prints of someone having gone from the corner of the field, where the mark of something having fallen was, for some little distance to join the path a little further on. The level of field 16 is about 12½ feet below the level of the path at the place from which something seemed to have fallen; from that place, the path makes a rather sudden descent along a very narrow ramp. The Inspector measured with a stick the length of the foot-prints, and then went on to the Dasanna field where he saw the track of something having been dragged across the field as far as the river and the foot-prints (apparently of one person) either in or on either side of the track. The track went nearly to the bund of the field next the river and there

turned east and went east for 30 yards or so, and then up to the river bund. The bund was hard and no mark appeared on the bund, but on the slope to the river there were marks as if of something having slid into the river.

On the 18th August, the 3rd accused Biranna was produced before the Inspector at Nalka, where he was camped about a mile from the Manjalkeri house. Nalka is marked on the village map. The Inspector examined the 3rd accused at Nalka. After that, the Inspector deposed, he and the Potail *followed* the 3rd accused to Manjalkeri, where he showed a cocoanut plant saying that the *Pandavu* was removed from it as he had said before going to Manjalkeri. The Inspector noticed on the 18th that the 3rd accused had an injury on the left hip.

On the authority of the dictum in 11 Bombay 657, the defence was allowed to examine the Inspector as to statements made to him by Sarasvati with a view to *contradicting* Sarasvati. It will be recollected that I had ruled that statements made to a Police Officer could not be proved to *corroborate* Sarasvati. Sarasvati said on the 10th that she forgot to tell the Inspector of her having seen the 2nd accused at Mylangi Venkappa Bhatta's. This is, however, really no contradiction.

In cross-examination the Inspector stated that he did not see, so far as he remembered, any white cloth on Venkatramana's mat. There was a white cloth on the other mat, and he observed no foot-marks on it. The bedding was not, it is to be remembered, produced before the Magistrate, but was called for by this Court.

31. Before the Committing Magistrate the 1st accused stated that he went on the afternoon of the 3rd August from Kudalmerkal to Kassergode. He said he went to Kassergode to execute a personal bond for Rs. 200 in favor of Anekal Krishna Bhatta, and that as soon as he arrived at Kassergode, he bought a stamp paper from the Court Stamp Vendor, and as it was late when the document was written and closed, he got the document registered the next day.

In this Court in answer to the question "Do you wish now to make any "statement about this case," the 1st accused replied "I have nothing more to say."

32. The 2nd accused Naraina Bhatta before the Magistrate denied that he went to Venkatramana's house, and in this Court he said he had nothing to say.

33. The 3rd accused Biranna stated to the Magistrate that the injury he had was caused as he slipped and fell when he was driving cattle. He denied that he pointed out a cocoanut tree near deceased's house from which a *Pandavu* had been taken. He denied that he owed anything to Mohideen Saib.

In this Court he said he had nothing more to say.

34. The 4th accused Madana before the Magistrate made some denials, and before this Court stated that he did not want to make a statement.

35. The defence was then opened under Section 280 Cr. P. C. at considerable length.

36. The 1st defence witness was Anekal Krishna Bhatta. I have recorded in my notes from page 237 in the form of question and answer most of this witness's examination and to understand the way his evidence was given, my notes should be referred to.

He said that on a Thursday 5 or 6 months ago—the Thursday following the Ati Amavase—he paid Rs. 100 to 1st accused Krishna Bhatta and gave Rs. 100 to Mapanna (who had come along with Krishna Bhatta to his house the previous day) instructing Mapanna to give the Rs. 100 to Krishna Bhatta and to take a registered bond from him. They left his house on Thursday morning he said.

He said that 15 days before that the 1st accused came and asked him for a loan of Rs. 200.

He said that 4 or 5 days after that Mapanna gave him a document which he produced (Exhibit VIII).

He said that about a year and ten months ago he attended the Upanayana ceremony of 1st accused's son and he said he knew Gauramma and that she came to the Upanayana. He also said that the 2nd accused's mother's brother's wife came from the Kadangodlu family—the family of Gauramma's husband.

This witness Anekal Krishna Bhatta's wife and the 1st accused are children of two sisters. His wife is Mapanna's sister and the 1st accused is the son of Mapanna's mother's sister. Mapanna is married to his (witness's) uncle's daughter. The 2nd accused's sister is married to the witness's father's brother.

He admitted that he had never lent any money before on a document whether on a plain bond or on a mortgage bond. He stated that he had lent some small sums before, but his answers as to the persons to whom he said he gave the money were not satisfactory.

He stated that 15 days before, when Krishna Bhatta 1st accused came about the loan, he told Krishna Bhatta that he would require a document.

He pays an assessment of Rs. 14 and odd, and he purchased 3 years ago for Rs. 400 a $\frac{1}{6}$th share of certain property but he never got possession of it, and did not know the name of the village in which it was situated.

He said he only once before saw Gauramma and that she was then among more than 50 females, but he said 2nd accused's mother was speaking to her and he asked 2nd accused's mother who the woman was.

In reply to a question asked by the Assessors the witness stated that 1st accused said he wanted the Rs. 200 to give to Mylangi Venkappa Bhatta.

It was manifest from this witness's demeanour that he was much interested in the accused's case.

37. The 2nd defence witness Ramakrishnaya is a Stamp Vendor attached to the Kassergode Munsif's Court. He deposed that the stamp paper on which Exhibit VIII is written was sold by him at 4 or 4. 30 P. M. on the 3rd August to a man who gave his name and address as "Krishna Bhatta of Bolubyle residing "in Sheni," but he could not identify the man to whom it was sold. The paper was the last paper sold on the 3rd August. He knew the hour of sale because two or three days after the sale certain rumors called his attention to the matter. The witness saw the accused some days after the sale. Even then he could not recognize him.

The witness seemed a respectable man. He has been for many years Stamp Vendor and gets Rs. 30 or 32 a month and has some ancestral property and seemed a person who could be relied on.

38. Exhibit VIII is a simple bond for Rs. 200 purporting to have been executed by Krishna Bhatta (1st accused) on the 3rd August 1894. It is in favor of Anekal Krishna Bhatta *i. e.* the 1st defence witness. It recites that "yesterday" Rs. 100 were paid in cash, and that Rs. 100 "which you got paid to "me in the presence of the Sub-Registrar through your brother-in-law Mapanna "Bhatta"—in all Rs. 200 were received. Rs. 8 per cent. is the rate of interest, and the term of the bond was one year. The two attesting witnesses are Bekal Subraya and Aitu Baidya. The document purports to have been written by Stanik Narayana. The document was registered on the 4th August.

39. The 3rd defence witness, Stanik Narayana, is the man who wrote Exhibit VIII.

He almost at once turned out to be a hostile witness, and stated that he wrote the document Exhibit VIII on the day it was registered. He was then cross-examined as a hostile witness at great length—see my notes, pages 264-284. He stated that he wrote the document in the afternoon, that he could not tell at what hour, and that it was on Saturday and that he did not know the date. He stated that he was simply a writer to Subraya and that he only wrote as dictated to him, and that he knew very little about English date (see notes, page 277).

In cross-examination by the Public Prosecutor, the witness gave a clear chronological statement of what he said happened on the 3rd and 4th August. He said that on Friday, a Brahmin came and gave a draft and two stamp papers to Subraya, and said "a document must be written as here," *i. e.* according to a draft, and that Krishna Bhatta who was in his lodging "would come now," and that he had sent him with the papers, and the document and application (for gun-license) should be written. Subraya corrected the draft and gave it to witness to copy, and he said he could not read it and Subraya dictated it and he wrote on, he thought, plain paper. Subraya then dictated a draft application and witness wrote, and the Brahmin left with the two drafts and the two stamp papers, saying he would show them and come back. That day the Brahmin did not return. The next day (Saturday) the 1st accused Krishna Bhatta came in the afternoon to the shop with the papers. Two men, the Brahmin who came on Friday and another man, accompanied him. Krishna Bhatta (1st accused) said "This draft is all right, why could you not have written it yesterday? Write it now." Subraya gave the papers to the witness and left the shop, and witness wrote the document, Exhibit VIII, by which time Subraya had returned, and told him to read the document, which he did, and Krishna Bhatta signed it and asked Subraya to attest it—which Subraya did. Another witness was necessary, and Krishna Bhatta went out and brought back a man, a Billavar, whom the witness had seen in Court, and he attested the document, Exhibit VIII, which witness then closed, and wrote the application for gun-license and gave both to Krishna Bhatta and he left with the papers. Witness thought that the two men who came with Krishna Bhatta left with him, but he was not sure. After that, Subraya began to get another document written by witness and said to date it the 4th. The original draft was lying near witness, and witness seeing it said "Is it not the 3rd?" and Subraya said "If that was dated the 3rd it could be corrected," and left the shop and returned with Krishna Bhatta, who said "By its being dated the 3rd it does not "matter; yesterday I sent the draft and stamp papers, you could have written it yes-"terday. Now it is not possible to get it altered as it is already registered" and after some time Krishna Bhatta left. When asked "What became of the 1st draft?" the witness said "He (*i. e.* Krishna Bhatta) took it away with him."

This witness was a young man of 23 or so, seemed a very simple person, and was evidently uneasy in the witness-box.

40. The 4th defence witness Krishna Bhatta deposed that he saw Krishna Bhatta, 1st accused, on Friday, the 3rd August, purchase two stamp papers from the Munsif's Court Stamp Vendor at Kassergode and that he went with him to Subraya's shop, where Subraya dictated to Narayana who wrote a document. The witness said he was asked to stay to be an identifying witness at registration, but had to go to Mangalore and left at 1 or 2 galiges to sunset and got to Mangalore on Sunday.

He said he was present at the Upanayana of 1st accused's son. He said both 2nd accused and Gauramma attended the Upanayana. He also said that there was no Panchayet about the Bolubyle property.

In cross-examination it appeared that on Wednesday afternoon he gave evidence at the Munsif's Court, and he stated that he remained on Thursday and Friday at Kassergode to get some documents from his Vakil, and that he only got them on Friday at 6 or 7 galiges before sunset. He had been at Kassergode since the previous Sunday and he had seen his Vakil on Monday and he said the copies would be ready in 2 or 3 days but he should pay the fees and he, witness, said he would borrow the money. He contradicted himself as to the day on which he said he borrowed; on Friday he said he paid the fees, Rs. 15, and got the documents. When he was waiting after having got his documents, the 1st accused, he said, came. The witness went to Kavu that evening, and Kavu is only a league from Subraya's shop, and on Sunday he got to Mangalore and he went that day, he said, to a Vakil. The case he was interested in only came on the next Wednesday. He left Mangalore on Saturday and got to his village on Sunday, and heard of the murder and of 1st accused's arrest, but he did not go and tell the Police that he had seen the 1st accused at Kassergode. The witness was divided from his brother and usufructuarily mortgaged his property to him, and his brother had usufructuarily mortgaged his share and the witness's to another man, and he and his brother were jointly tenants of the property. The witness's brother had some function to perform in the Katkukke temple of which 1st accused is one of the Moktessors. He lives near 1st accused's house, and the 1st accused is married to his brother's daughter.

This witness's name was not in the list of witnesses given to the Magistrate.

The witness seemed to me to be totally unreliable.

41. The 5th defence witness Shankara Bhatta deposed that a partition deed between him and his brother was made on Wednesday, the Ati Amavase, and registered on that day, and that after registration he went to his sister's house in Edanad (village No. 84 on the Kassergode Taluk map), and on Friday he started to return to Kassergode and at the Madur river he met the 1st accused, and crossed the river with him and went with him to Kassergode, and was there told by Subraya that the deed could be got in 4 days more. It seems authority to get the document from the Registration Office had been given to Subraya. When he was at Subraya's, the 1st accused, the witness said, came to the shop, and he left saying he would go home and he went home but not till the next day Saturday. He lives at Katkukke near the 1st accused's house. On Sunday he heard of the murder and in 7 or 8 days he heard of 1st accused's arrest.

In cross-examination he admitted that though the Inspector was at Nalka, a mile or a mile and a half from his house, he did not go and tell him of what he had seen and he admitted he did not tell the Potail. The reason he gave for going to Edanad was not satisfactory. He said he went there, because he heard his divided paternal uncle's daughter had fever. The distance from Kassergode to Edanad was, he said, 2 leagues, but from the Taluk Map it would appear to be somewhat more. He had no satisfactory reason for going back to Kassergode. He did not want the document for any particular purpose that Friday, and he has not yet got it back. In re-examination he said he went to Kassergode that Friday as it was near Edanad, but it is a considerable distance away. The witness is related to 1st accused being his Santanagar.

I thought this man's evidence was unreliable.

42. The 6th defence witness Shankara Narayana Bhatta, an old man, deposed to various relationships. He had two daughters who were married more than 15 years ago. He stated that Gauramma and 2nd accused were present at the marriages. His grand-daughter was married 5 or 6 years ago and he said Gauramma was present, but he could not remember if 2nd accused was.

At the marriages he said there were 200 or 250 persons present. The witness gave no particular reason for recollecting Gauramma and 2nd accused's presence. It is obvious that the witness could not really recollect whether they were present or not. It may be they are persons who would have been invited, but, as the witness himself said, of those who are invited some come and some do not. The 2nd accused is the witness's nephew.

In re-examination it was thought to be shown that there were circumstances which would have specially drawn the witness to the presence of Gauramma and the 2nd accused at the marriages, and I admitted further evidence on the point under Section 138, Evidence Act, though I considered it new matter. No important facts were however elicited.

43. The 7th defence witness, Rama Bhatta, is a divided nephew of the last witness. He deposed to various relationships. The object of his evidence was to show that probably Gauramma knew the 2nd accused. His evidence was, I thought, unsatisfactory, and I do not think that it could be relied on on any point.

44. The 8th defence witness, Shankanna Bhatta, is the uncle (father's brother). of 1st accused. He deposed that his elder brother Subraya Bhatta and after him *he* was the manager of the family, and he produced a large number of receipts for payment of assessment and Genichits to corroborate his evidence on these points. He further denied—though in a way that made me doubt from his mere denial if he were telling the truth—that there was any Punchayet between his family and Venkatramana about the Bolubyle property. He also deposed that Gauramma and 2nd accused were present at various ceremonial occasions.

I formed a very unfavorable opinion of this witness. I thought that he was altogether unreliable.

45. The 9th defence witness Krishna Bhatta, 1st cousin of the 2nd accused and undivided from him, also left an unfavorable impression on my mind. His willingness to say *anything* that would help the accused deprived his evidence of any value.

46. The 10th defence witness was the first accused's son, Narayana, a boy of 12 years of age. He stated that the 2nd accused and Gauramma were together at their house on one occasion, but it was clear from his manner he could not be relied on. He denied that the approvers came to his house.

47. The 11th defence witness, Timanna Shastri, did not make the slightest impression on my mind as a witness who could be trusted. He said that on four occasions he saw the 2nd accused and Gauramma together. These occasions were ceremonies attended by two to three hundred people. This story is in itself highly improbable. He is the father-in-law of the 9th defence witness.

48. The 12th defence witness was Pertaji Krishna Bhatta. From the moment he stepped into the witness-box, his demeanour was suspicious and remained so till he left. He spoke to six occasions on which he saw 2nd accused and Gauramma together at various ceremonies. It seemed to me that it would be idle to hear what this man deposed as worthy of serious discussion.

49. The 13th defence witness, Kajihitlu Krishna Bhatta, appeared more unreliable than the others.

50. After the examination of the 13th defence witness, the defence Vakil applied to examine the 1st Assessor as a defence witness on the ground that he was acquainted with certain ceremonies. Meantime, the 1st Assessor intimated to the Court that he would like Subraya the petition-writer called. This was done and Subraya was examined as the 5th Court witness after the examination of the 13th defence witness.

51. The 5th Court witness, Subraya, deposed that he had been a petition writer at Kassergode since 1872. He was shown Exhibit VIII, and he said he had got it written by his writer Stanik Narayana and that he attested it. He gave an account of the circumstances under which it was written—which was almost identical with the account given by Stanik Narayana as the 2nd defence witness. He said that the 1st accused used to come to him to get documents written, and so he knew him. He said that the Brahmin who came on Friday to his shop had, before that, come 3 or 4 times with Krishna Bhatta to his shop, and he said he thought his name was Sham Bhatta or Shankra Bhatta, and that he had not seen him since Saturday, the 4th August. He said that Krishna Bhatta had called the 3rd man, who came to his shop on Saturday, Mapanna Bhatta. He did not, he said, see the 2nd accused at his shop. With regard to the time when the Brahmin came to his shop on Friday, Subraya said that after he had given the papers to Narayana he went to the Dy. Collector's Cutchery as he had to produce money of some Billavers, and he went there at a little after 5 P. M. He said he was confused when examined by the Police, as he thought Krishna Bhatta had got him into a trap. In reply to a question put by Court as to why, after discovering the mistake in the date, he took any trouble in the matter, the witness said "several such mistakes formerly had been made and "were corrected at foot of the document. Sometimes a too early and sometimes a "too late date is entered and they are afterwards corrected."

I was much puzzled by this man's manner. He was not at his ease in the witness box. Was the cause of his uneasiness that he was now telling lies, or was it that he was frightened lest he should somehow get into trouble for the part he had taken in connection with Exhibit VIII?

52. The next witness examined was Venkatramana (6th Court witness), a Constable of Kassergode Station, who, on the 12th August 1894, examined Stanik Narayana and Subraya. This witness said that Narayana told him that on Friday, 3rd August, at 5 P. M. Krishna Bhatta (1st accused), Mapanna and a Brahmin whom he did not know came, and Krishna Bhatta gave a stamp paper of Re. 1 and another of 4 annas, and said he wanted a bond for Rs. 200 and a license-petition written and he wrote them at Subraya's dictation and they were closed at 5.30 P. M. and the bond was registered the next day, and on that day (the 4th), Krishna Bhatta (1st accused), Mapanna Bhatta and Karopadi Naraina Bhatta came, and Mapanna Bhatta had a gun-license petition written, and Naraina Bhatta had a document written. Subraya's story the witness could not recollect in detail, but it was to the same effect. Both said that they could not say anything positively unless they saw the bond, and both seemed in great anxiety.

53. The 18th prosecution witness Billa Aita was then recalled, and identified his signature to Exhibit VIII. This document was produced by the 1st defence witness, and so, after this witness Aita had been examined for the prosecution.

54. The question was then argued whether Section 291, Criminal Procedure Code, entitled the defence to examine an Assessor as a witness. The Public Prosecutor argued that it did not, but, I allowed the Assessor to be examined on the ground that the Section did not explicitly prohibit his examination.

55. The 1st Assessor, Mr. Santa Poi, was then examined as the 14th defence witness. He deposed to certain customs at marriages and other ceremonies among Brahmins, but he had not much personal knowledge of the practices among Havik Brahmins.

56. Gauramma, the 7th prosecution witness, was next recalled under Section 540, Criminal Procedure Code. A very urgent representation that she should be recalled was made to the Court by the defence, and she was sent for from her village. I regretted having to do this, but this was not a case in which I was prepared not to allow considerable latitude to the defence, especially considering the use that had been made of Section 540, Criminal Procedure Code, in examining Court witnesses at the instance of the prosecution.

Gauramma deposed to various relationships in her husband's family and to a number of marriages in the family. She deposed that the Deranta Majalu house was 1¼ miles from her husband's family's house, but she had not, she deposed, been there for many years. Deranta Majalu Shankara Narayana had married her husband's sister Laxumi, but she died long ago.

Gauramma again positively stated that she did not know the Brahmin who came that Friday to her house, and she positively stated that there was no doubt 2nd accused was the man. So far as weight can be added to a deposition by demeanour, weight was added to this witness's. Her manner of answering was, I thought, convincing.

57. At the instance of the defence, Stanik Narayana was allowed to be recalled. He proved Exhibit XLVII to be the gun-license petition he wrote. He also proved Exhibit XLVIII to be a document he wrote, and that it was attested by Potail Bynki Banta, prosecution 19th witness, and by Aitu Baidya prosecution 18th witness and dated 4th August.

58. The 15th defence witness was the 1st Defendant's father Naraina. He deposed that he went to Kassergode with Gauramma, and gave evidence before the Munsif. A copy of his deposition dated 21st June 1894 was filed as Exhibit XLIX. The deposition was in O. S. 77 of 1894 on the file of the Kassergode District Munsif. It appears in cross-examination that he met Gauramma on a hill 3 miles from his house and went from there with her and some others to Kassergode, and that at Kassergode he did not speak to Gauramma. The witness also deposed on other points, but like many of the defence witnesses it was very difficult to say whether what he said was true on any particular point.

59. The 16th defence witness's examination extended over a whole day, but he did not add to my knowledge of the case by a single material fact. As in the case of many of the defence witnesses, it was very necessary to see him giving his evidence to distrust him. He gave vague evidence about some distances, about certain marriage ceremonies and about the 1st accused's character.

60. On the motion of the Public Prosecutor which was supported in by the defence, Mr. Sequeira, who was the Tahsildar of Kassergode in August last, was then examined as the 7th Court witness. He proved that he received the gun-license application of the 1st accused dated the 3rd August, Exhibit XLVII, by post on the 5th August. He deposed that letters are delivered at Kassergode in the morning and that sometimes when by accident a letter is not then delivered, it would be delivered by a Post Office peon in the course of the day. The 4th August was a day on which sales of toddy shops were held at Kassergode and he attended it. If a letter had been delivered to him during this day, he deposed he would have opened it at once or in the evening.

61. The case for the 1st and 2nd accused was then summed up at great length. The Vakil for the 2nd and 3rd accused then addressed the Court. During his address, the charge against the 4th accused under Sec. 365 was drawn up, as it was considered that as against him the charge under Sec. 302 could not be supported on the evidence, and it was considered advisable that there should be a formal charge under Sec. 365 I. P. C. The Public Prosecutor then replied and the Court summed up the evidence (see notes, pages 403-406), and the Assessors after a short consultation stated that each of them considered the first three accused guilty of murder and the 4th accused guilty under Sec. 365 I. P. C.

62. Taking up the important questions that arise in this case chronologically, the first question for decision is whether it is true that Venkatramana was claiming the Bolubyle property from the Bolubyle family. The two chief witnesses on the point are Sayada Krishna Bhatta, the 17th prosecution witness, and the 13th prosecution witness Kunchinadka Sham Bhatta, the father-in-law of Venkatramana. The evidence of these men I have already stated. They said they went to the Bolubyle house along with, and on behalf of, Venkatramana, and that a claim for the Bolubyle property was made, and that an offer of Rs. 4,000 was made by the 1st accused on behalf of the family and was refused by Venkatramana. The evidence of the 13th prosecution witness on this point is perhaps the more important as it came out quite by accident and in reply to questions put by the Court after the close of the re-examination.

To set against the evidence of these two men, there are the statements of the defence witnesses that no Panchayet took place. I could give no weight to the denial of these witnesses, for it seemed to me apparent that they were ready to say anything to support the defence. With a view to discrediting the evidence of S. Krishna Bhatta and of K. Sham Bhatta that an offer of Rs. 4,000 was made, it has been attempted to be shown that the property was worth only some Rs. 5,000 or so, but I do not think that has been established. The evidence that the property was worth some Rs. 20,000 seemed to me to be more probable, and probably with an unexceptional title it might be sold for that or for nearly that figure to a willing buyer.

That Venkatramana did claim the property is rendered by the previous history of the property in a very high degree probable. The prosecution case is that the property was the self-acquired property of Bolubyle Sham Bhatta. This man died in 1856 leaving a widow Sarasamma. This woman, who is still alive, soon after her husband's death claimed the property as her husband's self-acquired property, and her husband's family bought her off for a sum of Rs. 1,200. Later on, her daughter Gauramma—the deceased Venkatramana's mother—sued for and got a decree for possession of the property in the Munsif's Court at Kassergode (Exhibit VII); but on appeal to the Principal Sader Amin, the Munsif's decree was modified and *possession* was not decreed, but Gauramma's right to succeed on Sarasamma's death was declared (Exhibit H). An arrangement was come to between her and the Bolubyle family and Sarasamma sold her rights for a sum of Rs. 999 (Exhibit A). If under such circumstances Venkatramana did not set up his claim as soon as he reached or approached maturity, he would not have been acting as he ordinarily might be expected to have acted. It was sought to be shown that he was not born when Gauramma sold her rights by Exhibit A, dated 14th June 1879, but this was not made out.

I am of opinion that there is no reasonable doubt that Venkatramana was claiming the Bolubyle property from the Bolubyle family, and that probably the Punchayet was held as deposed to by the 13th and 17th prosecution witnesses.

To minimise the effect of this evidence, which of course is only important against the 1st accused, the defence laid stress on the fact that the 1st accused is entitled to only $\frac{1}{12}$ of the Bolubyle property. It is no doubt the case that if the 1st accused were now to separate himself from his family, he would be entitled only to $\frac{1}{12}$ of the Bolubyle property. But that fact standing by itself would give a very imperfect notion of the position the 1st accused holds—and held in July and August 1894—in the Bolubyle family. His father and all his father's family except the 1st accused separated from the rest of the Bolubyle family and their share in the Bolubyle property was given to them. The first accused and the rest of the family, so far as the Bolubyle property is concerned (for movables were, it appears, divided), remained and still remain joint. The first accused has a son, about 12 years of age. His uncle Sankanna Bhatta's only son had died about May 1894 after a long illness. Sanna Krishna Bhatta, the only male representative of the eldest branch of the family, has no son. It is true he is not old—only 28 it is said—and his wife is young, 18 according to some evidence. They have no children. These facts show that although if he now separated from the family the 1st accused would be entitled to only $\frac{1}{12}$ of the Bolubyle property, he was a very important member of the family in July and August 1894 and likely to become more so.

To diminish in another way the force of the evidence against the first accused, with which I have been dealing, the defence laid stress on the fact that Venkatramana was a claimant to a share in the property of his father's, the Kadangodlu family. This is no doubt true. His father-in-law 13th prosecution deposed that after Venkatramana married his daughter, he went with him to the Kadangodlu family house to see about his rights. He also deposed that the Kadangodlu people were willing to give Venkatramana his share, and would have done so at once, but required an indemnity as Venkatramana was a minor. There is no doubt there were differences between Gauramma, Venkatramana's mother, and her late husband's family. She left her husband's family house some 4 years ago or was turned out of it, and went to live with her mother Sarasamma at the Kudukoli house, and she sued her late husband's family for maintenance and about jewels. But so far as we are at present concerned, what we have to ask ourselves is—Is there any reason to suppose that Venkatramana's father's family wanted to do away with Venkatramana so as to keep his share to themselves? If we believe the 13th prosecution witness's evidence, there is no doubt that was not so. The only fact proved in the case that gives any colour to the contention is that no member of Venkatramana's father's family went to Kumbla to see to Venkatramana's body being burnt and to perform the necessary funeral ceremonies after the body had been examined by the Civil Apothecary. But as to this, Venkatramana had lived for many years—in fact, from childhood—with his grand-mother Sarasamma at the Kudukoli house, his mother had left her late husband's house and was suing that family; so that, though none of his Santangars, that is, relations through his father, went to Kumbla to get his body after the Medical Officer had examined it and to have it burnt, it cannot be said I think to throw suspicion on them. There is no evidence indeed when they came to know of Venkatramana's death. Whether they performed any funeral ceremonies or not we do not know. All we know is that Gauramma did not know of their having been performed.

The result is that the evidence of motive remains in my opinion unshaken as evidence against the 1st accused.

63. I do not think that there can be the slightest doubt about the substantial truth of the story told by the approvers of their journey from Katkukke to the Bolubyle house and their residence there.

These two men were examined at very great length, and if the story were a mere invention, or if these men were not really speaking of facts of which they had personal knowledge, it is impossible that their evidence would not have been broken down. So far from its being broken down, the more minutely the details of what happened were gone into, the more minutely did the accounts of the two men agree. It might have been within the limits of possibility to drill the 1st approver, the Brahmin Babu Kampti, to tell a story like what he told and in the way he told it; but it would have been impossible I think in the case of the young Mopla Muse. This part of their evidence is not uncorroborated. Rayappa Shanbhog the 3rd prosecution witness, Ammu the 1st Court witness, and Subunji the 4th prosecution witness corroborate them, and the latter two, at any rate, could, I think, be relied on.

It is said that this expedition to get tobacco and bullocks was a perfectly innocent affair. But the facts of this case show that this going for tobacco and bullocks was a mere pretence, because the tobacco and bullocks were never brought back to Karopadi; and viewed in that light, the expedition on a pretence of getting tobacco and bullocks cannot, I think, be said to have been an innocent affair.

64. For the sake of convenience I am dealing, as I said, with the important averments of the prosecution chronologically, and in this order I now come to the question 'Is it true that the 2nd accused is the Brahmin who went to Venkatramana's house after dark on the evening of Friday the 3rd August?' This is one of the most important questions in this case. If the prosecution could not establish that he is, their case must fail. Three prosecution witnesses Gauramma, and Sarasvati and Honnakka positively depose he is. It is quite impossible they could be mistaken as to identity. The man had been talking to them or in their presence for a considerable time and he had meals at the house. They had no lack of opportunity of becoming thoroughly acquainted with the man's features. They did not show the remotest sign of perjuring themselves when they deposed that the 2nd accused was the man who came to their house. Gauramma, it is true, was stated in a report to the Magistrate by Constable Aitu to have said that she could not identify the Brahmin, but Aitu has explained that that was a mistake and there is not the slightest doubt I think that it was. The evidence that Gauramma knew the 2nd accused before that Friday was I thought worthless, and that she did, receives no corroboration from the inquest-report, in which though the 2nd accused's name is mentioned it is said he has to be identified as the man who went to the house. Gauramma has no reason for falsely charging the 2nd accused, nor have Sarasvati or Honnakka. If he were not the man, there seems no reason for their saying or ever having said he was. I think the evidence of the 2nd accused's identity with the strange Brahmin who came to the house establishes the point beyond doubt.

65. In connection with the question dealt with in the foregoing paragraph, there is the almost equally important question whether the 2nd accused represented that he had come from Sarasvati's husband's house and whether that representation was false. On these points also I think there can be no doubt. There is no reason to doubt the evidence of Gauramma, Sarasvati and Honnakka that he made that representation and he must have made some such excuse as that to be allowed to remain in the house and to be given meals and to sleep near Venkatramana as if he were a friend. I examined as Court witnesses Sarasvati's husband and her husband's brother and they denied that they sent the accused for Sarasvati or that they knew of him or anyone else having been sent or that they even knew the accused. There is no reason not to accept their evidence. It is, I think, beyond

doubt that the 2nd accused did make the representation in question and that it was false.

66. With regard to the alleged circumstances of the actual murder itself, there is only, as direct evidence, the evidence of the approvers, and whether it is to be believed or how far it is to be believed rests on the inherent probability of the various parts of the story taken in conjunction with certain surrounding circumstances. The evidence of the approvers was given in several points with extraordinary vividness, in fact with a vividness that left on my mind at the time the impression—rather a conviction—that they, or the 1st approver at any rate, took a more active part in the murder than they represented. I shall subsequently have to recur to this point in the case. I would now point out how various circumstances in the case almost conclusively show that Venkatramana must have been murdered in some such way as the approvers have deposed to. I have already discussed the treachery of the 2nd accused. That clearly points to foul play. The last thing that was seen of Venkataramana by an independent witness was by his mother Gauramma when she was bolting the outer door of the house. He was then lying on a pyal at the end of the veranda and was talking to the 2nd accused who was lying on the floor near him. Gauramma then went to the room where Sarasvati and Honnakka were and all slept. During the night *they heard nothing*. The fact that they heard nothing during the night taken in connection with other circumstances which show that Venkatramana was probably strangled where he lay, shows that he must have been completely and suddenly overpowered, and that could only have been done by a number of men. He must have been suddenly pounced on, gagged, overpowered and strangled; for, if he had called out or struggled, he would probably have been heard by his mother, sister or wife in their room. The fact that a *Pandavu* was found on the pyal where he lay, and the fact that his bedding was found on the floor close to the pyal, where he slept, apparently trampled on, point to Venkatramana's having met a violent death; and the fact that there were no marks of blood on the pyal point to his death having been probably caused by strangulation. This is corroborated by the fact that Venkataramana's body bore no marks of having been stabbed or of death having been caused in any such way, but the state of the body indicated that he had been strangled. Therefore, even apart from the approvers' evidence, the surrounding facts clearly indicate strangulation as the cause of death, and it is equally clear that there must have been a sufficient number of men engaged in the murder to have at once completely overcome Venkatramana. Before leaving this part of the case, namely the consideration of the probable, actual circumstances of the murder, there is a matter of great importance in connection with the part the approvers say the 3rd accused took in the actual murder, that I had better at once deal with. According to the approvers, there were besides the 1st accused, who was holding a cloth to Venkatramana's mouth and nose, three men holding Venkatramana. It is hardly possible that less than 3 could have overpowered him so completely as he evidently was overpowered. He was so completely overpowered that he could neither call out nor struggle to any extent. If he had called out he would probably have been heard by his mother, sister and wife in their room. If he had made a violent struggle he would have been heard too probably, and the state of the bedding as found next morning showed that there was no violent struggle and probably none at all. The bedding seemed to have been dragged off the pyal and trampled on on the floor. It is clear that Venkatramana was pounced on, gagged and completely overpowered. I doubt if he could have been so completely overpowered by 3 men. The strong probability

is that there were more than 3 men holding him, because one or two men would be wanted to hold his hands. These considerations lead to the same opinion that I formed from the vividness of the evidence of the approvers, namely, that they were not passive spectators of the murder. There is another point in the case that would tend to the same conclusion. According to the approvers, Venkatramana's arms were secured by Biranna's feet being placed on the upper arms. This is in itself highly improbable and is in conflict with the medical evidence; for, when great violence is used to any part of the flesh, there is, it seems, disproportionate decomposition at that place, but there was no disproportionate decomposition in the case of the upper arms of Venkatramana. The conclusion I draw is that the approvers in all probability took an active part in the murder, and there seems to me to be a possibility that the part they assign to Biranna was either not played at all or was played by one of the approvers themselves.

67. In defence it was contended that it cannot be believed that the party or the part of the party that had to get to Karopadi would have gone by the way the approvers say they did. A reference to the map of the Kassergode Taluk that has been filed in this case will show that the route the approvers say they and the 4th accused took to get to Karopadi—namely, from Manjalkeri to the main road and thence to the south along it for some distance and then to the Kandel ferry—was not so much longer than *via* the Kandige ferry by which it was argued they would naturally have returned. Besides, part of the party were, according to the prosecution, making for Kassergode, and the only person who could have known the way to Kandige was Biranna the 3rd accused, and probably he wanted to get home as soon as he could himself; so that, there does not appear to me to be anything improbable in the approvers' evidence that they all (except Biranna who stopped at his own house adjoining the road) went together to Hamed Kunhi's house and then separated. This man, Hamed Kunhi, the 9th prosecution witness, is probably a desperate character, but that would have been exactly the man whose assistance the 1st accused would have sought and his evidence in this case was I thought unshaken. His story is, as I have already stated, that he took the two approvers and 4th accused to the Kandel ferry and ferried them over the river shortly after sunrise on Saturday the 4th August.

68. Early in the morning of Saturday the 4th August, Gauramma rose, opened the room-door and found the outer door of the 'Dalli Chavadi' (enclosed veranda) which she had bolted over-night open. She went to the pyal where her son had slept and the state of his bedding at once aroused her suspicions. She called out to her daughter, and Sarasvati then came out and she too was alarmed, and their alarm was increased by seeing a long pole lying in the yard.

69. During the course of this trial, I sent for the bedding that had been used by Venkatramana and the bedding that had been used by the 2nd accused. My object in doing so was to see how far the state of the bedding as found the next morning corroborated or conflicted with the account the approvers gave of the way the murder was committed. Gauramma and Sarasvati arranged in Court the bedding in the way so far as they recollected that they found it. The 2nd accused's bedding had not been disturbed, but Venkatramana's, in place of being on the pyal, was just below the pyal in a way that suggested its having been pulled off the pyal. There was some difference in the way the witnesses arranged the bedding as to represent the way they thought they found it. According to Gauramma, it was crumpled up and apparently trampled on. Sarasvati represented

the mat as having been folded and trampled on. The only possible reason for the discrepancy is that either one or other forgot exactly how she found the bedding, or that one of them, Gauramma probably, turned over the mat and then gave it an appearance of having been folded over.

70. Gauramma and Sarasvati at once commenced to search for Venkatramana. Sarasvati went to one or two huts near their house and afterwards on the advice of a neighbour, she went to her grand-mother Sarasamma's at the Kudukoli house and there gave an alarm, in consequence of which one of the men of the Kudukoli house,—Kudukoli Shenkara Bhatta, the 13th prosecution witness—at once went for Venkatramana's father-in-law.

71. Meantime, Gauramma and Venkatramana's wife Honnakka after failing to get any information near their house went, as they deposed, towards the river, and on the way they say they found deceased's Langoti. A reference to the plan Exhibit C is necessary to understand this part of the case. They went as far, it would appear, as the place marked 17 on the plan and then went south going to the houses shown as 19 and 23 on the plan. They then went to the river and along the river bank, and, as they depose, they saw in the Dasanna field (No. 20 in the plan Exhibit C) the track of something having been dragged across the field. Gauramma deposes that she went into the field and examined the track. On the way back to the Manjalkeri house, the marks of something having fallen into another field were seen. From their house they went to the Kudukoli house. After they got there, Kudukoli Shankara Bhatta returned with Venkatramana's father-in-law Kunchinadka Sham Bhatta. Both of these men set out for the Potail's and got a report written for him and signed by him at the Kurnam's house to which the Potail was brought. This report, Exhibit F, they took to the Perdal Police Station, reaching the Station at about 6 or 7 P. M., and got back to their house the next morning, having slept for the night at a village on the way back.

It is contended in defence that Gauramma did not really find the deceased's Langoti on the way to the river, and that she did not really see the track across the Dasanna field. In the 1st report, Exhibit F, sent by the Potail to the Police which Kudukoli Shankara Bhatta and Venkatramana's father-in-law took to the Perdal Station on the 4th August, nothing is said about the Langoti or about the track across the Dasanna field, and it is most probable that Gauramma said nothing about these matters to Shankara Bhatta or Kunchindka Sham Bhatta. Gauramma's evidence on these points is thus not corroborated by a statement made shortly after the time she says she found the Langoti and saw the track. But in the circumstances of this case little weight can be given to such an omission. By the time she got to Kudukoli house, she was probably physically much exhausted and was in a state of intense alarm and grief. She lay on the floor, according to the evidence, sobbing. It is to be noted that nothing is said in the first report even about the pole which Sarasvati and Gauramma undoubtedly saw in the yard.

Another omission that is relied on by the defence is that the Langoti is not shown in the list of property prepared on the 4th August by Constable Aitu. Constable Aitu deposed that he forgot it. I think this is probably the case.

That Gauramma went to the river is, however, corroborated by the fact, about which there is no doubt, that she did not go to the Kudukoli house along with Sarasvati, but only arrived at the Kudukoli house after Sarasvati got there.

The Potail deposes he saw the track on the 5th August and so does Constable Aitu, and that the track was really seen there is borne out by the fact that persons were sent to search the river. Indeed, the conduct of every one shows they had no doubt the body was to be found in the river.

The defence suggestion is that the track across the Dasanna field is part of false evidence of this case. But why should any one have made the track as false evidence? Venkatramana's friends could not have foreseen that the body would be found in the river. If it had not been for the track across the Dasanna field, it is not likely that the river would have been *the one* place that was searched to find the body.

In this connection I must refer to the delay there was in Kudukoli Shankara Bhatta and Kunchinadka Sham Bhatta getting to the Perdal Police Station and to the delay there was in the Potail arriving at the Manjalkeri house. Kunchinadka Sham Bhatta and Kudukoli Shankara Bhatta only got to the Perdal Station at 6 or 7 P. M., on the 4th August. The distance from Manjalkeri to Perdal is said to be only some 6 miles, but it must be recollected that the country about there is very hilly and the rivers were in flood. Constable Aitu, though he left the Perdal Station early on the morning of the 5th, did not get to Kudukoli, he deposes, on his way to Manjalkeri till about 12.30 P. M. The Potail explains that after he got the report written at the Karnam's, he went back to his house and dressed and then started for Manjalkeri but only got as far as Nalka, where he stopped for the night and next morning after taking Conjee he went to Kudukoli. I do not think that any unfavorable inferences can be drawn from these delays. The Potail is an oldish and slow-moving man, and probably he was not anxious to take any responsibility on himself or to be at the Manjalkeri house before the Police arrived. After Sarasvati's arrival at the Kudukoli house, Kudukoli Shankara Bhatta went to Kunchinadka Sham Bhatta's house and then back again and it was probably not far from noon when he started for the Potail's. He had to bring the Potail to the Karnam's and he then had to get the report written and then to go to Perdal. It is not to be surprised at that he did not get there till about 6 or 7. I see no reason to suppose that there was intentional delay to allow evidence to be concocted.

I consider that it is put beyond reasonable doubt that Gauramma and Honnakka saw the track across the Dasanna field in the morning of the 4th August, and that they found Venkatramana's Langoti on the way to the river.

72. There is not the least doubt that on the evening of the 8th August almost at sunset, Kudukoli Shankra Bhatta and Keshava Shastri found a body in the river near Kandel about 8 or 9 miles down the river from Manjalkeri. These two men depose that it was Venkatramana's body. Both knew him well and Kudukoli Shankra Bhatta intimately, for he had long lived at the Kudukoli house. It is not only that these men depose that the body was Venkatramana's, and that Keshava Shastri deposed that as soon as they had by the aid of a bamboo dragged the body towards them, he recognised that it was Venkatramana's, and that there could be no doubt about it, but their depositions receive corroboration of the strongest possible description from their conduct. They took the body from the river, carried it up the bank and sat watching it all that monsoon night till next morning, when as soon as it was light one of them, Keshava Shastri, went off to Enmakaje. It is impossible, I think, for a moment to suppose that if these two young Brahmins had not been certain that the body was Venkatramana's, they would have acted in that way.

Besides these two witnesses Gauramma and Sarasvati, Venkatramana's mother and sister, depose that the body was Venkatramana's. They saw the body 24 or almost 24 hours after Kudukoli Shankra Bhatta and Keshava Shastri first saw it, and in these 24 hours the body had extensively decomposed. As long as the body was in the water of the river decomposition would have been comparatively slow, but as soon as it was put on the bank and was exposed to the air decomposition would have been rapid. Notwithstanding the state of decomposition the body was in, these women say they identified the body. I do not think there is any reason to discredit them. Sarasvati identified the body chiefly by the form of the chest. His mother treated with unintentional scorn the suggestion that she could not recognise the son she had brought up, and no doubt she knew the form of every limb.

The body was taken down the river in a boat to Kumbla on the coast and after examination by the Civil Apothecary of Kassergode, who had been sent for to Kumbla, the body was buried not burnt. Keshava Shastri who had gone to Kumbla explained why this was done. His explanation was that as Venkatramana had been murdered and before the body could be burnt certain ceremonies should, according to their customs, be performed and should be performed by the 'Santanagars'. Venkatramana's 'Santanagars' were not at Kumbla and were many miles away and therefore the body was buried. This explanation is, I think, correct. It is true that this explanation was not given in the lower Court; and in the arguments in this case, much stress was laid on the fact that Keshava Shastri was only examined as the 16th prosecution witness. He was, however, examined in the ordinary course in which he would be examined in the way the evidence in this case was laid before the Court. Each witness was, as a rule examined in the order in which he first appeared on the scene. It is to be regretted that the explanation was not brought out in the lower Court, but I think the explanation given in this Court is correct. I should here say that the prosecution in this case was, I think, conducted with a fairness and straightforwardness that reflects much credit on those responsible for the conduct of the prosecution in this Court, and I have no doubt that if any application had been made to have the evidence on this point put before the Court at once the request would have been complied with.

The evidence of the identification of the body is in my opinion overwhelming.

73. The medical evidence in this case to which reference has already been made is not important. It appears that when violence is used to any part of the flesh, that part decomposes more rapidly than it otherwise would. There was disproportionate decomposition on the neck and centre part of the chest when the Civil Apothecary examined Venkatramana's body at Kumbla on the 11th August, and this indicated strangulation as the cause of death. There were no indications of violence of any other kind. No bones were fractured.

74. As I have already said, the evidence that 1st accused was in Kassergode on Friday the 3rd August, I can only characterize as worthless. Undoubtedly, the stamp paper on which Exhibit VIII was written was bought in his name at Kassergode on Friday evening, but the Stamp Vendor, the 2nd defence witness, cannot say who it was who bought it.

75. Exhibit VIII was undoubtedly presented for registration by 1st accused Krishna Bhatta at Kassergode at about 2 P. M. on Saturday the 4th August. The document sets out in the opening words of the body of the document that it was "executed on 3rd August 1894." There is no evidence that it was executed on that date. The attesting witness Bekal Subraya denies it, so does the writer of the document Stanik Naraina, and Aitu Baidya the 18th prosecution witness says he

attested a bond for 1st accused (no doubt Exhibit VIII is the bond he alludes to) on Saturday and not on Friday. Thus, the two attesting witnesses and the writer of Exhibit VIII deny that it was executed on the 3rd August. Can the evidence of these three persons be false? Have all three of them turned traitors to the 1st accused? Subraya and Naraina made a statement to the Police on the 12th August, which totally differs from what they say now. If that story were true, why did they not adhere to it? It was a very simple story, and if true, it would have been much easier for them to have adhered to it than to have invented their present story, if that be an invention. In the case of a deliberately planned murder such as Venkatramana's undoubtedly was, it is not in the least surprising to find preparations made to try to establish an *alibi*. That is exactly what was to be expected. It may be that the attesting witnesses of Exhibit VIII and possibly the writer knew that a document with a false date was being got up. But if there is anything in the supposition, it is probable that they were not prepared to support a false *alibi* in a case so serious as this. On the 12th August when the writer and Subraya were examined by the Constable they were in a state of anxiety, and they were in a state of anxiety when they were examined here. If, as I think, these men are to be trusted when they say that the 1st accused did not execute the document on Friday, there are two possibilities—either that a third person executed the document forging 1st accused's name, or that the story the attesting witnesses and the writer depose to is true. Which of these may be true it is not necessary to decide. What is important is to decide whether it can be believed that 1st accused did *not* execute the document on Friday. This is, I think, one of the most difficult points to decide in this case. My opinion is that it *cannot* be that, if 1st accused had executed the document on Friday, these three witnesses would not be ready to depose he did. I do not know what reason they could possibly have in giving false evidence against the 1st accused on the point. The story that Narayana and Subraya and Aitu tell that Exhibit VIII and Exhibit XLVII, the gun-license application of the 1st accused, were signed on the 4th and not on the 3rd is corroborated by the evidence of Mr. Sequeira, the then Tahsildar of Kassergode, the 7th Court witness; for, he received the gun-license petition, Exhibit XLVII, by post on the 5th August. His initials and the date and the letters "B. P.", meaning "by post", appear on the petition. In the ordinary course of business the petition must have been posted in Kassergode on the 4th. If it had been posted on the 3rd, the Tahsildar would in the ordinary course of business have received it on the 4th.

76. The line of defence that Venkatramana's murder (if he were murdered at all) was the work of some of his father's family or of some one on their behalf, I have already referred to. It is not supported by any evidence. There is, so far as I saw, no ground even for in any way *suspecting* that any member of that family had anything to say to the murder. If Venkatramana's father-in-law is to be believed—and I think he is to be relied on in that matter—Venkatramana's father's family were willing to give up to Venkatramana his property. There is no reason to suppose that the family would have denied Venkatramana his clear and undoubted rights.

77. There was some evidence that the 1st accused was of good character but it was, I thought, of a worthless kind.

78. In the protracted trial that there has been in this case, extraordinary and, I may add, very able and very persistent efforts were made to shake the prosecution case, but I do not think that in any important point was the attack successful. The prosecution case remained, I considered, unshaken in every essential point. No part

of the case—from whether there was a murder at all down to the minutest detail—was left unassailed. But the result in my opinion was that the more the case was investigated, the clearer it appeared that the prosecution case as presented to this Court was in all essential parts perfectly reliable.

79. The case against the first accused is woven all through the evidence. It no doubt chiefly rests on the evidence of the two approvers. Their evidence, even standing alone, is I think very strong. It is, I think, as strong as the evidence of approvers can be. As I have already said, it is hardly, I think, within the limits of possibility that their story was invented or that they were merely telling a story that was taught to them. In point after point it is corroborated in its bearing against the 1st accused by evidence that there is no reason to set aside. Raya Shanbagha, Ammu, Subunji, Mohidin Sahib, Malikarjuna, and Hammed Kunhi all corroborate the approvers and implicate the 1st accused. It may be that some of these witnesses are not men on whom one would be inclined to put over-much confidence. But the general result of the whole evidence makes the case against 1st accused in my opinion very strong.

And apart from and in addition to the evidence that merely corroborates the approvers' evidence, the prosecution has in my opinion satisfactorily proved a strong motive against the 1st accused, namely, that Venkatramana was claiming the Bolubyle property. And in addition to that there is the evidence that centres round Exhibit VIII. There, there is a document dated the 3rd August and purporting to have been executed on that day by the 1st accused. The two attesting witnesses and the writer deny that it was executed on that day, and I think their evidence denying that is true. If so, the fact is important evidence against the 1st accused.

In my opinion the 1st accused is guilty of the offence of murder with which he is charged.

80. As to the 2nd accused that he was the man who went on Friday after dark to Venkatramana's house, I do not think is open to any doubt. I also consider that it is put beyond any doubt that he made a false representation as to the reason of his going to the house, and that owing to that false representation he was allowed to stop in the house. What stronger evidence to corroborate the approvers' evidence than this could there possibly be? There is also against him the evidence of Subunji and Hamed Kunhi, both of whose evidence was, I thought, unshaken.

I do not think there can be any doubt about the 2nd accused's guilt.

81. With regard to the 3rd accused Biranna, there is not the same amount of corroborating evidence that there is against the 1st and 2nd accused. The corroborating evidence in his case consists in his having a wound on his side, which could have been caused in the way the approvers say it was, and in his having shown a cocoanut tree near the Manjalkeri house from a green leaf-stalk, of which a *Pandavu* had been taken, and thus practically making a confession. These facts put it, I think, beyond any reasonable doubt that the approvers have not substituted Biranna for someone else. It may be said that this is not much to act on. It is, I think, technically sufficient and in my opinion there is not the least doubt he took part in the murder.

With regard to the injury that Birmanna had, it was argued that the injury would in all probability have been on the right and not on the left side of the man who fell, because he would probably have slipped as he was advancing along the path and so would have had his right side injured. But what the approver

say is that the body was put down and Biranna put a cloth round the neck and as he was about to pull the body down the slope, he slipped and fell; so that, under these circumstances, the injury would naturally have been on the left side. It should be here explained that the slope down which, according to the approvers, the body was about to be pulled when Biranna slipped, and down which it was eventually pulled, was very narrow. The Inspector described it was so narrow that a man could hardly stand with his two feet together on the slope. This fact will explain why the body was pulled and not carried down the slope. It would have been impossible almost to have carried the body down that narrow slope.

According to the 10th prosecution witness Mohidin Sahib, the 3rd accused was limping on the morning after the murder. It is argued that this witness cannot be believed, for if Biranna had taken part in the murder, he would have had money to pay the witness's account. The approvers did not say he was paid money, though why he got none does not appear. It seems to me that it may be accounted for by the supposition that he did not take the prominent part in the affairs that the approvers say he did, and possibly he was already under some obligation to 1st accused.

Biranna was undoubtedly not a prime mover in this murder. This must be admitted fully, and while I can have no doubt that he was engaged in the murder, I discredit the story that he took the prominent part in the murder that the approvers say he did. That particular part of their story is, I must point out, absolutely uncorroborated. I feel certain that the approvers had more to say to the actual murder than they admit. This was the opinion I formed at the time of their examination, chiefly from the vividness of part of their account of what happened, and the view is confirmed by a number of other considerations to which I have already alluded. If I am right in my surmise, it may be that it was Biranna—and not they—who was taking a minor part in the commission of the crime; at any rate it would, be the safer course I think to assume so. Looking at the case as a whole, we would say that his being there was probably due to his local knowledge of the place rather than to his being wanted to help in the actual murder, for which men were brought all the way from Karopadi.

82. As to the *exact* part the 4th accused took in the affair, there is only the evidence of the approvers and they say he was outside in the yard. They also say that they, and presumably the 4th accused, were under the impression that the boy was only to be abducted. There can hardly be a doubt that the approvers have in this matter suppressed part of the truth, and that both they and the 4th accused knew very well what was intended. But there is no evidence of it and the only offence with which the 4th accused is chargeable is an offence under Section 365 I. P. C.

In his case Raya Shanbhaga, Subunji and Hamed Kunhi are the three witnesses that corroborate the approvers. I think, at any rate, the evidence of the two last may be relied on, and I do not on a full consideration of the case entertain any doubt about his guilt.

83. The first accused Krishna Bhatta is convicted under Section 302 I. P. C. of the offence with which he is charged, and is sentenced (subject to the approval of the High Court) to death and it is directed that he be hanged by the neck till he be dead.

84. The 2nd accused Naraina Bhatta is convicted under Section 302 I. P. C. of the offence with which he is charged and is sentenced (subject to the approval of the High Court) to death and it is directed that he be hanged by the neck till be dead.

1.—P. No. 171—91.

85. The 3rd accused Biranna is convicted under Section 302 I. P. C. of the offence with which he is charged and he is sentenced to transportation for life.

86. The 4th accused Madana is acquitted of murder and is convicted under Section 365 I. P. C. of the offence with which he is charged, and he is sentenced to 7 years' rigorous imprisonment.

Mangalore,
14th March 1895.

(Signed) **W. C. Holmes,**

Sessions Judge.

Note.—The 1st and 2nd accused were informed that 7 days was the time allowed for appeal.

Mangalore,
14th March 1895.

(Signed) **W. C. Holmes,**

Sessions Judge.

Exd. U. Narasinga Rau.

(True copy).

Sarishedar

To

The Public Prosecutor

IN THE COURT OF SESSIONS, SOUTH CANARA.

SESSION CASE NO. 38 OF 1894.

QUEEN-EMPRESS *Vs.* 1. Krishna Bhatta.
2. Naraina Bhatta.
3. Biranna.
4. Madana.

Copy of Judgment.

3.—P. No. 151—91.

No. CURRENT No. 1502.

SOUTH CANARA DISTRICT MAGISTRATE'S OFFICE.

Mangalore,

21st March 1895.

From

W. H. Welsh, —— Esquire,

District Magistrate of

South Canara,

To

THE CHIEF SECRETARY TO GOVERNMENT,

Judicial Department,

Fort St. George.

Sir,

Under G. O. No. 914 dated 10th April 1877, Judicial Department, I have the honour to recommend that Government may be pleased to sanction a fee of 20 Rupees a day for 45 out of the 49 days for the Public Prosecutor Mr. T. M. Rama Rau or in all Rs. 900 for conducting the prosecution in the trial of 1. Krishna Bhatta 2. Naraiana Bhatta 3. Biranna and 4. Madana in Session Case No. 38 of 1894. During that period his other practice was absolute nil and the Judge remarks that he conducted the prosecution with great fairness. As far as I can judge nothing could have been better and his work involved constant vigilance and [illegible]

2. I would recommend that at the appeal the Advocate-General may be retained in addition to the Government Pleader.

3. In Kasaragod Taluk there have been many trials for murder, rioting with murder, &c., and after protracted proceedings they usually end in an acquittal or when there is a conviction, a reversal in the High Court, so that it is said to be almost proverbial that a rich man may commit murder with impunity in that neighbourhood.

4. The 1st, 2d and 3d accused were charged with murder under sec. 302 I.P.C. and the 1st was charged with abduction under sec. 365 I.P.C. 21 witnesses were examined for the prosecution, 7 on behalf of the Court and 16 for the defence. All the accused were convicted.

The prosecution evidence is mainly that of 2 approvers and of witnesses who corroborate them. The conduct of the arguments in appeal will therefore necessitate going upon voluminous depositions and intricate arguments upon them which one practitioner could hardly manage alone and the case is said to be worthy of the best legal skill procurable. Copy of the judgment is not yet available as it was delivered only on the 14th instant.

Judgment (subsequently) received since the draft was written.

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

For Dt. Magistrate.

4/2

[G. 25]
200—8-2-05.

Jud. Department.

C. No. 1502

FOR ORDERS.

The Dy. Magistrate of S. Canara recommends that a fee of Rs 150, at the rate of Rs 20 a day, be paid to the Local Public Prosecutor for conducting the prosecution in Sessions case No 38 of 1894. The fee recommended appears to be rather large but it is within the limit allowed in G.O. dd 15th Feb. 94, No 373.

2. Mr. Welsh also recommends that at the appeal which will presumably be preferred to the High Court the Advocate Genl. be retained in addition to the Govt. Pleader. This is perhaps not quite necessary.

3. The last sentence of the Dy. Magistrate's letter is incorrect. A copy of the judgment has been received with the current.

DH 28/4/95

* "Cases of special importance" can be deputed to him by Govt. D

If the Public Prosecutor was engaged for 49 days in this case Rs 900 does not appear to be a very large fee & she is only Rs 20 p. diem for 45 days and the Govt states that the case was a very difficult and troublesome one.

As regards the proposal to entrust the Advocate Genl to appear in the appeal there seems no need for it. It would be if it is submitted better and cheaper to get the Pub Prosecutor of S. Canara down to instruct the Govt Pleader.

H
20/4/95.

The proposed fee may be passed

Yes
HS
22/4/95

Re payment of fees to a Public Prosecutor, S. Canara

FOR ORDERS

H Rr
(Fromes)

Please put up precis of standing orders relating to duties of Law Officers of Govt.
D
4.4.95

It was in the file under cover of G.O. dtd. June 94, No 1629 & I have now placed it inside
Sorry I forgot with
H
4/4/95

Order. dt 26th April 1895, No 861.

Sanction is accorded to the payment of the proposed fee of Rs 900 to the Public Prosecutor for the services rendered in connection with S. Canara Sessions Case No. 38 of 1894 & the Govt consider it unnecessary to obtain the orders of Government thereon as the proposed fee is authorized by rule 3 of the Rules framed under Act XXIV of 1887.

by local
X to depute the Public prosecutor to assist the Govt Pleader

(Govt orders)
X
25.4.95

The D.C., S. Canara & the Acc[t] Genl (Rs)

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Jud. Cf. 861. 26/4/95. Draft in file. Ack, body returned 29/4.

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