

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 870.

Dated 26th Apr 1895.

INDEXED.

[Despatch Abstract.]

PETITION FOR MERCY.

Declining to interfere with the sentence of death passed on convict No.703, K. Kunhunni Nair in South Malabar Calendar case No.120 of 1895, and calling upon the District Magistrate of Malabar to report what is ultimately done about the prosecution of the defence witnesses, apparently contemplated in paragraph 6 of the Judgment of the case.

BACK PAPERS.

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

FURTHER PAPERS.

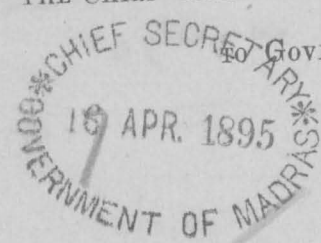
G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
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CURRENT NO 1893

Judicial (1895) DEPARTMENT.

From Major The Honble R.T. Lawley
of THE PRIVATE SECRETARY TO THE
RIGHT HONORABLE THE GOVERNOR,

To THE CHIEF SECRETARY
GOVERNMENT,
18 APR. 1895 DEPARTMENT.



Dated 15 April 1895.
Received 17 April 1895.

ENCLOSURE.

Subject.

TRANSFERS a petition from V. Ryzar Ambias
praying that His Excellency will be
pleased to exercise in this case the
prerogative of mercy & discharge the
prisoner.

1894

Order
Mis

Para IV of C. P. Rules

will be removed.

19.4.95

Note.
This is a petition for mercy
- unintelligible without the judgments
of the Sessions & High Courts.
To The Madras for the prisoner. O.T.O.

Order Ref ce 19/4

The following urgent
telegram will be despatched
to the Supt of the Central Jail
Cannanore.

Telegram.

211. Has Kaviat Kanhanai
Naik, prisoner in South Malabar
Sessions case twelve of 1895,
appealed against sentence of
death, or is he going
appeal.

(From C. P. Rules)

W.O.

19.4.95

Petition from V. R. K. Kumbhar
Vakil for prisoner Kariat
Kumbhar, in the High Court
Madras.

DATED 12th February 1895.

The murder took place
on Feb. 20. 1895.

The petition was
filed on April

TRANSFERRED to the Chief Secretary to
Government for disposal.

(By Order.)

P. J. Lawley Major
Ag. Private Secretary.

GOVERNMENT HOUSE,
Colacannund.
15 April 1895.

CURRENT No. 1898



Cs. Int.
Pr. 13. ad. To

His Excellency the Right Hon'ble
Berby Baron Venlock G.C.B.
Governor of Fort St. George.

Memorial submitted on behalf
of Kariat Kumbhar, prisoner
in Calendar Case 12 of 1895 who was
sentenced to death by the Sessions
Court South Malabar on a charge
of murder which sentence has been
confirmed by the High Court in Reference
trial no 22 of 1895.

The prisoner, a junior member
of a respectable Nair Iyad in
South Malabar is alleged to have
murdered a child named Choji
on the 20th Feb 1895 at about 6 P.M.
An elderly Thiga woman named
Kuttiatha (prosecution 3rd witness) along
with her daughter Anniana (pros. 1st wit.)
and mother of the murdered child
and her son Muniri (pros. 2nd wit.)

And half brother of the 1st) lived in the house where the offence alleged to have been committed. They held it on a Kanom of 10 fanams under the prisoner's Karanaven. It is alleged that there was a dispute between the prisoner and prosecution 2nd wit. a little before sunset on the 20th Feb in the garden attached to the house and the prisoner being enraged with the other ran after him with a chopper in hand, when Minari 2nd wit. for the prosecution got inside the house for fear of being killed and bolted the door, and the prisoner finding that he could not succeed in forcing the door open avenged himself by killing the child who was sleeping on the verandah by two or three blows of the chopper.

The reason alleged in the Complaint made by the 1st wit. for the prosecution on the 21st morning to the Police at Calicut at a distance of 14 miles from the scene of offence was that the prisoner was not on terms with them ever since the demise of the paramba in which they live five years ago from the prisoner's Karanaven. Thereupon the Police came upon the spot and the inquest was made at about 12⁰⁰ on the 21st. At the time when

offence is alleged to have been perpetrated the village munsiff of the place was absent at Calicut on Jamabundy business; and he returned home only very early in the morning on the 21st. He then learnt from 6th pros. wit. that the 2^d pros. wit. had murdered the deceased Choyi. To this effect he sent a yodast (Ex. E.) to the Station House Officer at Calicut on the same day soliciting the immediate presence of the police to make the necessary inquiries and also sent a representation (Ex. B) to the Stationary second class magistrate of Calicut. Though the magistrate came to the place at about 4 P.M. the same day he seemed to have not made any inquiry on the adhikari's report. The prisoner was arrested at about 3 P.M. on the 21st.

Before the committing magistrate the Cause alleged for the murder has been improved in the following manner. It was alleged that the prisoner on the 20th at about 12 a.m. went to the house where the offence was committed. There were then only the pros. 2^d wit. and the deceased Choyi, the mother and grandmother.

deceased having gone out to work. The prisoner abused the 2^d pros. witness for not giving him on Uchcharal day (11th Febr) the sweet bread pala ada which is annually given by tenants to their landlords and went away threatening him that he would teach him a lesson that evening; the 2^d pros. wit. after narrating this incident to his mother and sister on their return from their work went to a neighbouring house to get a pot to water his plantain trees and on getting back to his house he heard from his mother that two Cherumars had come there in his absence and had abused her; thereupon he got annoyed, and going to his northern fence abused the Cherumars and got back to his verandah. The prisoner then came with a chopper in hand and began to cut his plantain trees when he implored the prisoner in humble terms not to do so; whereupon the prisoner got enasperated and ran after the 2^d witness telling him that he would cut him also in the manner he cut the plantains. The 2^d witness afraid of being killed got inside the house, but now

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and held it fast from inside with the assistance of his mother and sister who had got in already; and the prisoner not succeeding in forcing the door open avenged himself by murdering Choji a child of 3 years who was sleeping on the verandah. There was ample time to take the child inside.

It is thus that the simple cause as alleged before the police the very morning after the occurrence was improved by changing it altogether before the Committing Magistrate as well as before the Sessions Court. It is improbable that the people who went to Calicut to report the matter to the police and who were none other than the deceased child's mother (pro. 1st wit) and maternal uncle (pro. 2^d wit) of the child and who were on the spot at the time of the occurrence would have told the police that the cause of the offence was their taking a demise from the prisoner's Karanavan five years ago. If what is stated in the Sessions Court were true. In the circumstances of the case there is ample room to think that the story told before the Sessions Judge was an after thought.

Prisoner denied the charge. He Magistrate committed the prisoner to take his trial before the Sessions Judge.

at Calicut. The Sessions Court differing
from the assessors found the prisoner
guilty

It may now be observed that
of the ten witnesses examined for the pro-
secution the 1st the deceased child's
mother, 2^d its maternal uncle, 3^d,
its grandmother, 4th a half brother of the 2^d
all of whom are the closest relatives of
the deceased and are as such directly
interested in the prosecution; 5th pros. wit.
the village munsiff of the place and 6th,
a stranger who gave information to the
5th do not in any way assist the proce-
cution; the 7th the Constable who wrested
the prisoner, 8th the Station House Officer
9th another Constable are likewise interested
in the prosecution; and the 10th the Commit-
ting magistrate

The evidence for the prosecution
if carefully examined will be found
full of improbabilities and discrepancies
and those in places where they could
best be expected. A few of the most
important of such discrepancies may
be pointed out here. It is only the
first four of them that speak of the
occurrence. It has already been re-
marked that they are witnesses who are
directly interested in the prosecution
as they are deeply interested in

Unnori and fathering the act on the prisoner.
 All the first three witnesses say that they
 were inside the house when the child was
 murdered, that they cried out from within when
 the 4th pros witness came to the spot and that on
 hearing the latter's voice the mother of the child
 opened the door and came out; but after coming
 out 1st wit said she saw only Chaudu whereas
 2nd wit said he saw Chaudu at first
 but gaining back his senses after the swoon
 in which all the three fell on seeing the
 child he saw only Cherukaudan and
 another named Kunhi Kaudan at a short
 distance. But this witness before the
 Comminding magistrate said that after he
 recovered his senses he saw Chaudu one
 Perachan, Kunhi Kaudan and Cherukaudan
 there: but before the Sessions Court he modi-
 fied it by saying that Perachan did not
 go there at all. 3rd witness said that no
 one except Chaudu came there that whole
 day, that Cherukaudan had not come
 to the yard but stood at a distance of
 a few yards and that she did not see
 Kunhi Kaudan, Perachan and Delu that
 night. More serious discrepancies are
 observed as to where the 1st and 2nd wits
 were at the time the plantain trees were
 cut by the prisoner and as to who went
 to the village munsiff and who to Calicut.
 Again all these witnesses say that when
 Chaudu's (half brother of the 2nd witness) voice
 was heard they were all inside

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whereas Chauda himself said before the Sessions Court that when he came there they were on the verandah and that he did not put or had not to answer any question at all though later on in his evidence he appears both to have questioned them and answered questions put by them. It may be seen hereafter that Chauda's evidence that they were seen standing out at the time of his arrival is not only fatal to the prosecution but adds much to the theory advanced by the defence.

The improbabilities may likewise appear from the following facts. The motive for the act alleged in the Complaint made to the police is frivolous and it cannot be said that the improvements made therein before the magistrate and the Sessions Court are anywise better. It is in evidence that the prisoner was on good terms with his Karanavan who leased it out to them in the prisoner's presence the consideration for the demise being only a paltry sum of 10 fanams which comes to Rs 3. Certainly, if as the prosecution witnesses say, he wanted spot himself, he could have easily prevented it from being leased out to any one else. Then again, these witnesses say that the refusal to give the sweet bread palada was what provoked him on the 20th Febr. Now it may be seen from the evidence that such bread is usually given only to the Karanavan by the tenant. The Karanavan was seen the day the murderer was there.

and that the prisoner had on no previous occasions during the five years of the tenancy asked for it. It is extremely improbable that the prisoner fully aware of the fact that no one but the Karanavan had a claim to demand the pala ada and that he had not demanded it of them on any previous occasion, could have been enraged on leaving from 2nd witness that as usual he had given the bread to the prisoner Karanavan so as to commit such a dastardly act. Again the prosecution 2nd witness says that when seeing the prisoner cut the plantain trees he approached him and begged of him not to cut away his only means of subsistence, the prisoner threatened to cut him also as he did the plantains and so saying ran after him to kill him with the Chopper in hand. This story on the face of it is improbable.

Again Chaudu 4th pro^s witness whose house, he himself admits is a quarter of a mile from the scene of offence says that he heard a cry distinctly in these words:— 'Kumhumi Thampran has cut and killed my child'. If we bear in mind that all the first three witnesses were inside the house the door of which was bolted from inside when they cried out it is improbable that Chaudu could have distinctly heard the above words.

Thirdly, it is in evidence (witnesses 1, 2, 3) that hearing Chaudu's voice that a woman, without even waiting to see whether the murderer was there or

of a sudden, opened the door and came out. That this is incredible likewise hardly admits of any doubt. Again, the same three witnesses say that to Chaudh they did not ask or say anything and that he did not ask or say anything to them. Silence on the part of both parties is very improbable. Again, according to the prosecution the first three witnesses fell into a swoon on seeing their child and lost their consciousness for a time & this is improbable.

The defence set up by the prisoner from the very beginning to the last was that Munniri the 2nd pro witness himself killed the child and this is clear from the following facts. According to the prosecution theory itself the prisoner had been harassing that Munniri's (2nd wit) family ever since the alleged demise of the house to his mother and to crown all his acts the prisoner destroyed the plantain garden the fruit of their hard labour for several months. This the prisoner says he did to revenge on him whose calf had eaten his plantain trees. On seeing the plantain trees the fruit of their hard labour being thus destroyed they grew desperate but nothing could avail against the prisoner who was a close relative of their landlord; the illiterate youth Munniri (2nd wit) driven therefore to the verge of desperation killed his halfsister's child and avenged himself upon the prisoner by fathering the act upon him. It may be apparently little the

if it is considered for a moment that these people belonged to a class of Thiyas who had hardly any means of livelihood, whose daily earnings would not suffice even to give them Kanji (rice water) twice a day (for it is in evidence that they had not taken in anything that day till 6 P.M. when their Kanji was being cooked, and the medical evidence, also, shows that the child's stomach was quite empty), & who must always view a new birth in their household an additional burden which they could hardly support, the theory for the defence may seem probable. The fact that Muniri as well as the rest of the family were starving all the day strengthens the probability of the above story.

It was observed in the beginning that there is reason to think that the prosecution's evidence was concocted. Some material interpolations observable in the Complaint (Ex A) and in the inquest report (Ex B) only corroborate the fact. In the Complaint the interpolation 'that Chaudu & others came there' is material. The Sessions judge himself took note of the interpolation though he did not make any mention of it in the judgment. And in the inquest report is the interpolation to the effect that Muniri (2nd wit) saw the prisoner cut the child. The only eyewitness of the murder is that 2nd witness and the fact that he saw the act done is an interpolation as the originals of these documents show. The assessors, that the case for the

made out beyond doubt and they were therefore of opinion that the prisoner should be given the benefit of the doubt. The said interpolation supports the opinion of the assessors.

The fact that the village munsiff had signed the inquest report does not go against the prisoner as the adikkari was obliged to support the Police fearing that otherwise he would lose his place. It is also not clear when the interpolation was made whether before or after it was signed by the witnesses.

It is also to be remembered that though the magistrate arrived on the spot on the 21st evening he seems to have left everything in the hands of the police as it is clear from the fact that he did not take any statement from the persons present on the spot. As the evidence for the prosecution is full of discrepancies and as the story told by the prosecution is full of improbabilities, as no sufficient motive is alleged or proved for the murder and as the assessors who are disinterested persons have come to the conclusion that the prisoner should not be convicted on the evidence on the record and that the benefit of the doubt should be given to the prisoner, it is prayed that Your Excellency will be pleased to exercise in this case the prerogative of mercy and discharge the prisoner.

received
13.

12 Feb 95

V. Rye

[$\frac{G}{9}$]
2,000-23-1-05.

Current No. 1955

Judicial DEPARTMENT.

Telegram

From The Supd.

Central Jail, Cannanore.

No. -

Dated 19th } apls
Received 20th }

Enclosures "

SUBJECT.

Informing that the condemned
prisoner's appeal for mercy has
been despatched today.

To await receipt of
Memorandum.

Code
Class.

XS

INDIAN



TELEGRAPHS.

Monthly
Number.

106

To

(Office)

Ootacamund

From

(Office)

CURRENT No. 255
Cannanore

Words.

15

Day.

19

Hour.

23

Minute.

40

Official

Instructions.

1/4 p.m.

To

(Person)

Madras

From

(Person)

Supt.

Central

Jail.

32 Word Form.

condemned prisoners appeal
more dispatched today
delay unavoidable

Recd. from

LN.

Sent to

LN.

At

Hrs.

Mts. by

At

Hrs.

Mts. by

W. B. Ma

Telegraph Master

Nominat Roll of Prisoners No: 703 K K Kunhannu Neer

Prisoner	Sentence	Date of Sentence	Adjudicating Court	Present Age	State of Health	Porter in Jail	Result of Appeal	Remarks
Murder	See 302 D.P.P.	11. 3. 1895	Sessions Judge of South Malabar	28	Good	Good	appeal dismissed	nil

Porter at Tail Prisoner No 19 April 1895

C. J. Barnside, M.A.
Superintendent
Prison at Tail

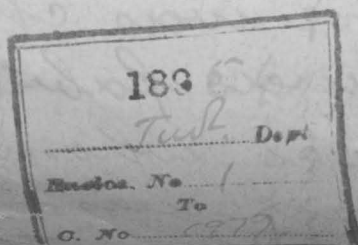
From
The Superintendent
Central Jail
Panneer

Dated 19 April 1895

no
Enc

Subject

Nominal Roll of
Convict no 703
K Kunhannu Nair



To

His Excellency the
Right Honorable
the Governor in Council
Fort St George

The humble Petition
of Convict No: 703. K.
Kunhannu Nair,
prisoner sentenced
to death in Calendar
Case No: 12 of 1895
on the file of the
Sessions Judge of
South Malabar

Most Respectfully Sheweth,

That your humble
Petitioner begs to state that
he was sentenced to death
by the Sessions Judge of
South Malabar and that
the sentence on appeal was
confirmed by the Madras
High Court.

That your humble
Petitioner is not guilty of
the offence he was charged
with as it was fabricated
by his enemies whom
Petitioner once caused
to be the Ab

Spencer No: 703

K K urhanné' haur

Openhead Tail

Ganneville

10

This Excellency the
Right Honorable
the Governor in
Council

Fort St George

Dated 19 April 1895—

no

En

subject

Petition for pardon

175
Tuck D. r.
Encls. No 2
To
G. No 1877

உள்ளகம் என்பது உடம்புக்குள் இருப்பதால்

[illegible]

At my Dear Mr. Wm. Lloyd Garrison Dear

Самовидно 703

Spine and Tail

Pennant

703

G. Fearnside Mus.

afm. bend. 10. 15.

Conhalt
Pa

19. 4

From

Convict No 703
K Kunhanni Nair

Laerbuat Tail

Ganname

58

His Excellency

The Right-Honorable

the Governor

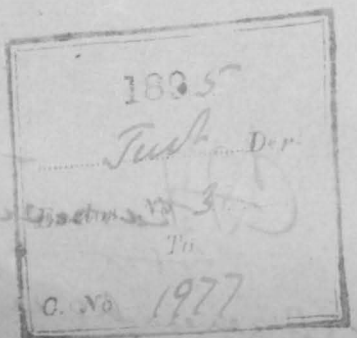
in Council

Fort St George

Dated 9 April 1895

Subject

Prisoner for
pardon



IN THE SESSIONS COURT OF SOUTH MALABAR.

MONDAY, THE 11TH DAY OF MARCH 1895.

PRESENT:—R. S. BENSON ESQ., M. A., L. L. B., BARRISTER-AT-LAW, Ag. Judge.

CALENDAR CASE No. 12 OF 1895.

Queen-Empress Vrs. ... Kaviyat Kunhunni Nair. 703
[Defended by Mr. M. A. Subramania Iyer, 1st Grade
Pleader.]
Offence ... Murder (Section 302 I. P. C.)
Opinion of the Assessors (P. Kuttiraman Kidavu and N. Kondan Nair—Nairs).
Not guilty
Finding of the Judge ... Guilty.
Sentence or Order ... Death, subject to the confirmation of the High Court

Judgment.

In this case the Prisoner, Kaviyat Kunhunni Nair, is charged with having, on the 20th February 1895 at Matavur Amshom, murdered one, Velliangachalil Choyi, an offence punishable under Section 302 I. P. C.

2. The Prisoner is a junior member of a respectable Nair Tarwad, and is first cousin of the Athigari of Matavur. An elderly Tiyan woman named Kuttiyatha, lived in a house and garden which she held on a kanom demise under the Prisoner's Tarwad. This house is 150 yards from the Tarwad house in which the Prisoner generally resided, though he sometimes lived with the Athigari. In the same house, with Kuttiyatha there lived her daughter Unniyanna, and son Unniri, and also the son of Unniyanna, named Choyi, a child of three years.

It is admitted on all hands that just before sunset on the 20th February last the Prisoner and Unniri had a dispute in the garden attached to Kuttiyatha's house, and that the child Choyi was, during that dispute, murdered by three blows of a chopper. The case for the prosecution is that the Prisoner being enraged with Unniri ran after him with a chopper, and when Unniri ran into the house and shut the door and Prisoner was unable to force it open, he avenged himself by killing the child who was in the verandah of the house. The Prisoner's case is that he went and destroyed Unniri's plantains in revenge for injuries done to his garden by Unniri's calf, and that Unniri, in consequence, himself killed Choyi and falsely charged him with the murder.

3. I have not the smallest doubt but that the case for the prosecution is true.

4. Exhibit C is a plan of the scene of offence and the adjacent houses. Unniyanna, 1st Prosecution witness the mother of the murdered child after stating that the house was held on a demise from the Prisoner's Tarwad, narrates what occurred in these words:—

"After getting the demise we planted plantain trees there. The Prisoner, Kunhunni Nair, then told Unniri that he should not plant plantains there and called him son of a bitch. The Prisoner objected to our getting the paramba as he wanted to get the paramba himself to plant trees in. However we planted it up. On the morning of the day my son Choyi died, my mother and I went to Kolapurath house to weave cocoanut leaves, leaving behind us Unnirikutti and Choyi in the house. We left before sunrise. Kolapurath is four gardens distant. We returned home about 4 p. m., and found Unniri and Choyi in the house. Unniri told us that the Prisoner had come there and abused him for not giving him sweet bread on *Ucharal day* (11th February). It is customary for tenants to give sweet bread to their landlords on that day. Unniri said that the Prisoner threatened his life and abused him and went away. Unniri afterwards went to Patinharakuzhi house to get a pot to water the plantains. During his absence two Cherumas, named Kandakutti and Vallangi, came near the fence and abused my mother and Unniri saying 'son of a whore come out and we shall kick you.' They said the same of my mother and afterwards went away. Unniri afterwards returned and my mother told him of the abuse of the Cherumas. Then Unniri went to the northern side of the paramba and called out to know which son of a bitch it was that abused his mother. Then he came and sat in the verandah. The Prisoner's Tarwad house in which he lives, as well as in Chirakalam house, where the Athigari lives, is on the north of our paramba, separated from it by one paramba. The Prisoner came and broke the fence with a chopper and cut down some of the plantain trees in our garden with his chopper. Unniri went into the yard and begged him not to do so. Prisoner said 'stay there you son of a bitch. I will cut you down as I cut the plantains.' So saying he ran to the ridge near the yard and cut down more plantain trees and ran after Unniri with the chopper in his hand. Unniri ran into the house and shut and bolted the door. I and my mother ran inside with him. Choyi, my son, was sleeping in the verandah. I did not take him inside. Prisoner came and kicked at the door and said 'If you do not open the door, son of a bitch, I will now kill your child.' We did not open the door as we were afraid. Then we heard the child cry out in the verandah 'mother'. Unniri climbed up and looked through the trellis work between the wall and the roof, and at once jumped down saying that the child was killed. We cried aloud inside the house. This was a little before lamp lighting time. Hearing our cries Patinhare Kuzi Chandu came to the house running and asking why we cried out. Hearing his voice we opened the door, and on coming to the verandah saw the child struggling in a pool of blood. It was not then dead, but was wounded. It died in 10 or 12 minutes. Choyi's age was 3 years. I swooned away, and so did Unniri and my mother. After about 20 minutes we recovered and afterwards my brother went to the Athigari at Chirakulam, saying that he did not find the Athigari there. He went twice again to find him, but without success. Then I told Unniri to take me to complain. Then he and I set out for the Taluk Cutcherry at Calicut about 10 or 12 o'clock in the night. On the way we were joined by Kunjan and

Kelu. We reached Calicut next day after sunrise, and went to the Police Station and complained."

Unniri (2nd Prosecution witness) and Kuttiyatha (3rd Prosecution Witness) give the same account of what took place. All three witnesses gave their evidence in a perfectly simple and straightforward way and their testimony was in no wise shaken by the severe cross-examination to which they were subjected. The only discrepancy established is that Unniri says that Unniyanna went with him when he went to look for the Athigari, whereas both the women say that Unniyanna did not go. Considering their excitement and distress of mind at the time, I think that Unniri, or the women, might well be confused on this point, and that the discrepancy affords no sufficient ground for discrediting their evidence. Chandu (the 4th Prosecution Witness) lives 230 yards from the scene of offence. Though a half-brother of Unniri he gave his evidence with much reluctance, and seemed anxious to favor the defence by giving his evidence in such a way as to make it appear untrustworthy. This was probably due to the influence of the Prisoner's family whose tenant the witness is. The facts, however, spoken to by the witnesses are all in favor of the prosecution. He says that hearing a cry from Kuttiyatha's house he ran thither and met the Prisoner running away from it with a chopper in his hand, and that he then went on and saw the child lying wounded in the verandah and called to the inmates who came out and told him that the Prisoner had killed the child.

5. The above is the direct evidence against the Prisoner. Unniyanna and Unniri reached Calicut, a distance of 14 miles from the scene of offence, on the following morning and Unniyanna made her complaint to the Police (Exhibit A) at 8 A. M. In it she gave the same account of how the quarrel arose and how Choyi was killed. The Police at once went with her to the spot arriving there at 12 o'clock. One Constable (7th Prosecution witness) at once went to the Prisoner's house, but was unable to find him there or in the neighbouring houses. He at length discovered him at about 3 o'clock on a jungly hill, three quarters of a mile from his house. The Prisoner when he saw the Police ran away but was pursued and arrested after a struggle. This evidence, which is uncontradicted and which there is no reason to regard as untrue, goes far to show that the Prisoner was conscious of guilt. An inquest was held the same afternoon by the Police and the Village Magistrate (5th Prosecution witness). The only witnesses examined were the first four prosecution witnesses, and their statements recorded in the Inquest Report, Exhibit D, the correctness of which is proved by the Village Magistrate, are the same as those now made by them. They gave similar evidence when examined by the Magistrate (10th Prosecution witness) at the spot on the following day. The Magistrate personally tested the possibility of Unniri seeing the murder in the way alleged by the witnesses and found it to be perfectly possible.

6. Turning now to the defence, the Prisoner's statement is as follows:—

"The calf belonging to Unniri and Kuttiya^a ate the young plants in my aforesaid Pallichal Paramba. I drove it to the paramba belonging to Unniri. I

also got into his paramba. 'You son of a bitch, I was telling you, four or five times that your calf was eating up my young plants. Let me see whether you would feel sorry if your vegetations are destroyed.' Saying this I broke with my hand Unniri's four clusters of *padu vazha* and four or five *nendran vazha*. I did this on the evening of Wednesday last about the time of lamp lighting. 'Thamburan, you having thus broke the *padu vazha*, I do not remain here. You give me many sorts of trouble. You eject me from two or three places.' Saying this, Unniri went into his house, dragged Choyi, the deceased child, and brought him to his outer verandah. During this time I was in the northern *kandam* (plot) where Unniri had grown plantain trees. Unniri said, 'Thamburan you had better kill the child.' I told him 'I need not kill your child. I simply wanted to cause damage to your plantations in return for the damage done to my plantations.' After saying this I was about to return home from that plot when Unniri said 'I shall myself kill him.' With a chopper (I think) he cut the neck of Choyi twice or thrice. He cut Choyi holding him erect in the verandah. While he was doing like this Unniri's mother and sister cried out 'Kaviat Kunhunni Tamburan cut and killed the child.' By that time I went to the paramba where I had grown plantains. By that time 10 25 persons hastened thither."

It will be observed that in this statement the Prisoner's case is that Unniri's act was one of sudden impulse, committed without premeditation, and without pre-arrangement with the mother and grand-mother of the child. Yet he says that they when they saw their child murdered before their eyes made no protest or attempt to save it, but instantly fathered the act on him. Such a story must be simply incredible to any one who knows how affectionate even the poorest natives are towards their children. The mother's instinct could not have been so false to itself and to her only son for so slight a motive as to be revenged on the Prisoner for a trifling injury done to the garden. Let us see, however, the evidence by which the Prisoner's plea is supported. The 1st Defence witness is a blacksmith, named Perachan, who lives close to the scene of offence. He supports the Prisoner's statement as to the cause of the quarrel and as to the manner in which Choyi was murdered. The witness is a tenant of the Prisoner's Tarwad and his evidence is certainly false. He contradicts himself and his former statement before the Magistrate repeatedly and his demeanour is as insincere and unsatisfactory as it can be. He now states that he told the Head Constable (the 8th Prosecution witness) on the 21st February the same story as he has told here, and he says that the Magistrate did not examine him at all on that day. At the Preliminary Enquiry, however, he deposed that though the Magistrate and the Police questioned him at his own house regarding the murder on the day after it was committed, he did not tell them any of the facts then deposed to by him showing that Unniri was the murderer. His evidence is completely contradicted by the Head Constable (8th Prosecution witness) and by the Magistrate (10th Prosecution witness). They both depose that they questioned Perachan at his house on the day after the murder and that he then said nothing about seeing Unniri

kill the child, but merely stated that when he ran to the house he found the child murdered and learned from Unniri that it was the Prisoner who had done the deed. The Magistrate did not record the statement, but the Head Constable did, and refreshed his memory by reference to his note book when giving his evidence. It is the fashion to distrust the evidence of Police Officers, but in this case the evidence of the Magistrate removes all possible ground of suspicion.

The Defence 2nd witness is M. Kanaran Nair. He says that he went with Perachan and he gives, more or less, the same account of what happened. His evidence, however, differs in one important point from the Prisoner's statement. The Prisoner speaks of a conversation between him and Unniri after Unniri brought out Choyi, but this witness says there was then no talk between them. The witness admits that he said nothing to the Magistrate or the Police during their local enquiry, though he knew of the Prisoner having been arrested for the murder. The witness was formerly a Peon of the Athigari who is the Prisoner's cousin, and I have no doubt that his evidence is wholly false.

The Defence 3rd witness, Ahmed, says that hearing a cry he ran to Unniri's house, and met him running away from it with a chopper in his hand, and that he then saw Choyi lying dead in the verandah. He is a tenant of the Prisoner's family, and admits that though he knew of the Prisoner's arrest, he did not tell the Police or Magistrate what he knew in the matter. He says that they did not question him, but the Head Constable and the Magistrate both depose that they did question him on the day after the offence, and that he then said nothing about seeing Unniri running away with the chopper, but, on the contrary, stated that he was absent at a certain market until 10 o'clock on the night of the murder. The Head Constable refreshed his memory from his note book when giving his evidence on this matter, but the Magistrate had not recorded the statement.

The 4th witness is a Cheruman, named Nallember. He says that he lives close to the scene of offence in a hut on the land of the Prisoner's tarwad, but the Prosecution witnesses deny that he lives there at all. He gives evidence similar to that of Ahmed, but admits that though he saw the Police next day at Unniri's house, he did not tell them anything as to what he had seen. This is the direct evidence in support of the Prisoner's plea, but reliance is also placed on the fact that, on the morning of the 21st February, the Village Magistrate sent Yadasts (Exhibits B and E) to the Police and the Magistrate reporting that Unniri had killed Choyi on the previous evening. The Village Magistrate, however, when examined as 5th Prosecution witness stated that he only reached his house on the morning of the 21st and then learned the fact from K. Kanaran Nair, the 6th Prosecution witness. The latter could only say that he heard the story from some Moplahs of another Village whose names he did not know. The witnesses knew nothing of the facts themselves and it is clear that no value can be attached to a mere rumour which might have been set going by the Prisoner or his friends to pave the way for his intended defence. Fortunately the prompt arrival of the Police and Magistrate at the scene of offence

prevented the pre-arrangement of a false defence. There is not a word in the inquest proceedings to suggest a suspicion against Unniri, nor do the Magistrate or Police appear to have received any information whatever tending to show that he, not the Prisoner, was the guilty man. Looking at the influence of the Prisoner's family in the locality and the fact that his accusers were poor Tiyan tenants, it is impossible to suppose that the Defence witnesses, if they really knew what they now say they knew, would not have come forward at the inquest presided over by the Prisoner's cousin, or afterwards, when the Magistrate came to the spot, and denounced the real murderer and saved the member of their landlord's family from a false and terrible charge. Had the positions of the Prisoner and of Unniri been reversed, the witnesses might, indeed, have hung back from fear of offending their landlord and the Village Magistrate; but as matters stood they had no possible motive for so doing. There can be no doubt but that their evidence, in all essential points, is wholly false. I shall hereafter consider whether they should not be prosecuted for giving false evidence.

7. The Assessors state that as there was only one eye-witness to the Prisoner's guilt, they feel some doubt, and think that the Prisoner should have the benefit of it. After what I have stated above, I need hardly say that I am unable to accept this strange view.

8. I find that the Prisoner, K. Kunhunni Nair, is guilty of the offence charged against him, viz., that he, on the 20th February 1895, at Matavur Amshom, murdered one Velliyangachalil Choyi, and thereby committed an Offence punishable under Section 302 I. P. C. and I convict him of the said Offence.

9. The murder was a most brutal one, without mitigating circumstances of any sort. The false and wicked defence, which attempted to fix the guilt on an innocent relative of the murdered child, shows that the Prisoner is not a man with any claim to mercy. Subject to the confirmation of the High Court, I sentence the Prisoner, K. Kunhunni Nair, to be hanged by the neck until he is dead. An appeal against this conviction and sentence lies to the High Court, but, if made, it must be made within seven days from this date.

(Signed) R. S. BENSON,
Ag. Sessions Judge.

Case committed by the Second Class Magistrate of Calicut Town, in charge of the Stationary Sub Magistrate's Court, Calicut Taluq.

(True Copy)

(By order)
Quadrassamir
Jest in charge
Sheristadar.

Copy applied for. 16. 4. 95

Copy ready and }
granted } 18-4-95

Forwarded to K. Kunhunni Nair, Prisoner No. 703,
reference to his Petition dated 13 April 1895.
The Super

Duplicate.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Monday, the Eighth day of April,

One thousand eight hundred and ninety-five.

PRESENT:—

The Honourable

Sir Arthur J. Halliday, Bt., Chief Justice.

and

The Honourable Mr. Justice

Best.

Referred Trial No. 22 of 1895.

Kavirat Kunhunnai Bai — Prisoner.

Trial referred by the Court of Session of the South Malabar Division
for confirmation of the sentence of death passed upon the said Prisoner in Case
No. 12 of the Calendar for 1895.

CRIMINAL APPEAL No. 147 of 1895.

Appeal by the Prisoner against the said Sentence.

This case coming on for hearing, the Court delivered the

following

Judgment:- We think the case

against the Prisoner is proved.

There can be no doubt there was

a quarrel between the Prisoner

and the 2^d. witness *Unniy*

*Communicated to Carver no 403
K. Kunhunnai Bai*

1835
Trial Dept
Bridges No 4
To
C. No. 1972

and that the child Choyi
was murdered. The case for the
appellant is that the child was
killed by Uuniri, his uncle,
because the Prisoner had
injured Uuniri's plantain
trees.

The evidence has been care-
fully considered by the Judge,
and we having considered
it, agree with him in finding
that it was the prisoner who
killed the child.

Much stress has been laid
by appellants' counsel on the
apparent interpolation in
Exhibit A to the effect that

"Chandon

"Chandon and others came" - 1st
witness denied before the Sessions
Court that she said "and others".

But even without Chandon's
evidence we think there is sufficient
to warrant the conviction, - further
with regard to the interpolation
in A, we observe that the Head
Constable who wrote it was not
asked for any explanation
when he was in the witness
box - So also with regard to the
interpolation in D to the effect
that Uuniri saw the defendant
cut the child. Even if he did
not actually see, he was in
a position with the 1st and

3^d. witnesses to hear what the
Prisoner said and did — and
the evidence of these three witnesses
alone if believed justifies the
conviction.

The witnesses for the defence
are palpably false and they
have not been relied on ^{by} the
counsel for the Prisoner.

The Prisoner's conduct after
the child was killed compares
unfavorably with that of the
2^d witness for the prosecution
whom he charges with the murder.

The assessors gave the prisoner
the benefit of the doubt on
the

the ground that there was only
one eye witness, apparently
ignoring the fact that 1st and 3^d
witness who were with the 2^d heard
all that was said and done.

We confirm the conviction
and sentence and dismiss
the appeal.

By the court.

R. F. F. F.
By: Registrar,
Appellate Side.

CURRENT NO. 19

Central Jail
Pannau
April 18

no 365

From

Surgeon Captain F. F. Fearnside
M.B.

Superintendent

Central Jail
Pannau

To

The Chief Secretary
to Government
Fort St George

Sir,

I have the honor to forward
herewith, for submission to Govern-
ment, the Petition with copies of
Judgments of the Sessions and High
Courts together with Nominal
Roll of Convict No: 703 K. Kun-
hanni Vair who was sentenced
to death in Calendar Case no.
12 of 1895 on the file of the Session
Judge of South Malabar

I "The Prisoner will not
be executed until a definite rep
is received to the enclosed
Petition from Government"

I have the honor to be,

Sir
Your Most Obedient Servant



Judicial Dept.

CURRENT NO. 1977

From

The Superintendent
Central Jail

Pannam

To
The Chief Secretary
to Government

Thiruvananthapuram

Dated 19 April 1955
Recd 22nd April 1955

no 365
Enc

Subject

Forwarding herewith
for submission to Government
the Petition together
with the connected papers
known Govt. no: 703.
Kunhan Nair, pri-
soner sentenced to death
in S. P. no: 12 of 95 on
the file of the Sessions Judge
South Malabar

CI NO 1955/95

Del. Refce 9/19/4/25 NO 211

Go. 579/95 - 2c

1259/94 - 2c

[G.]
25.

000-8-3-95.

Judicial DEPARTMENT.

C. No. 1898, 1955 + 1977/95.

FOR ORDERS.

I don't see that there can be
any doubt about this case. The
Judge who tried it is a most ca-
pable & careful man. He
H.C. carefully examined the dis-
crepancies as exist in the
evidence - Besides, why did
the Pet. abroad & resist arrest?
Those are damning facts not
explained, or even alluded to,
in either petition. I would dismiss
the petitions.

I should like to know what
was ultimately done about the
humiliation of the defence.

MS
23/4/95

Taken notice of this
MS 23

I agree in thinking the case proved. The
Judge had not the smallest doubt,
of the High Court, after hearing the
evidence, confirmed the conviction. The
evidence for the defence was inadequate

On a petition for mercy from V. R. Nair
a High Court Bench,
Nambiar, on behalf of prisoner K. Kunhan
Nair under sentence of death in C.C. No. 12
of 95 on the file of the Sessions Judge of S. Malabar
the Govt. (by telegram) under the
asked the Supt of the Central Jail
Cannanore, whether the convict had
appealed against
the sentence of death or he was going to appeal
In 1955 he replied that the appeal was
despatched on the 19th inst. & that the order
was made accordingly.

2. The convict's appeal to now received -
1977 & is submitted for orders. It will
be seen that the Supt. has not marked
paper "urgent" as required by the rules.
Current 1977 "the petition" marked
to the convict's own lawyer
Current 1898 is a more detailed peti-
drawn up by his Petitioner in the High
Court & apparently not.

Inspector

A petition from a Rebel District
is an innovation. Another of this
class has come in in a case
from Coimbatore. A telegram
to the Supl. enquiring whether
the Council is appealing and
has appealed ~~has~~ at once
sent.

22/4/95

after this memo has been an-
nounced that he was the murderer
the discrepancies in the verdict
which were carefully considered

24/4

I have no doubt in my own mind
as to the correctness of the verdict.
The law should take its course.

24 Apr.

FOR ORDERS.

VE

[J.
16.
900-5-2-94.

Judicial Department.



C.S.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Govt. 1898, 1955 + 1977/95.

Read the following letter, dated _____, from the
Superintendent of the _____ Jail at _____, forwarding
petition from Convict _____ under
sentence of death in _____ Session Case No. 12 of 1895,
confirmed by the High Court of Judicature.

Read also letter, dated _____ from the Registrar
of the High Court, Appellate Side, forwarding the record of the case.

ORDER THEREON, dated 26th April 1895, No. 870.

Having considered the circumstances of the case as set forth in the foregoing
papers, the Right Hon'ble the Governor in Council sees no reason to interfere with the
sentence of death passed on Convict No. 703 K. Kunhanni Nair.

2. The law will take its course.
3. The ^{Magistrate, Malabar} Judge should report what was ultimately done about
the prosecution of the ^{Magistrate, Malabar} ~~defence~~ witnesses, apparently contemplated
in para. 6 of the ^{Magistrate, Malabar} ~~proceedings~~.
4. It is observed that the supl. of the Jail has not marked the
petition "urgent" & petition for mercy as required by the rules. This is a
serious omission ^{and must not be repeated} ~~is inadmissible~~.

Chief Secretary

(From orders)

25-4-95 25/4/95

To the Superintendent

Inspector

Please see H.S.
remark that the murder took
place on Feb. 20. 1895, against
the P.S. & Co.

not given for copying _____
 not copied _____
 not examined _____
 not signed _____

189.

AD AGAIN G.O., No.
 189

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PERS NOT FILED UP, BEING MRANT FOR DESPATCH
 IN ORIGINAL.

N.B.—

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