

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 887

Dated 30th Apr 1895.

INDEXED.

[Despatch Abstract.]

PETITION FOR MERCY.

Declining to interfere with the sentence of death passed
on convict No.1530, Machimuthu Gounden, in Coimbatore Session
Case No.15 of 1895.

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BACK PAPERS.

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

FURTHER PAPERS.

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

[illegible]

78 "Appeal for Mercy"

His Excellency,
The Governor-in-Council,
Fort Saint George.

The humble petition of convict no
1530 Nakkimuttu Gounder in the
Coimbatore Central Jail.

Dated 26th April 1895

1895	Dept.
226	
Enclos. No. 1	
To	
G. No. 2069	

Prayer.

Praying to consider his case and
to release him from Jail.

50

His Excellency, The Right Honorable,
The Governor-in-Council,
Fort Saint George.

The humble petition of convict no 1530, Nakkimuttu Gounder sentenced to suffer death by the Sessions Judge, Coimbatore in Cal case no 15 of 1895 and now confined in the Coimbatore Central Jail.

When my father stopped the encroachment made upon his land by his enemies, the enemies cut my father's head with the intention of getting the land, tied me wrongfully and gave false evidence that I murdered my father. Further they have stated that enmity ^{existed} between myself and my father. No enmity existed with my father. I will not murder my father at any time. The Sessions Court did not take into consideration my reasons. The Court carefully inquired into the statements of my enemies who murdered my father and sentenced me to suffer death. If I had murdered my father, my mother and sisters will not give evidence in my behalf. I would not have executed a document in connection with my land if there was enmity. Moreover another

another bond was executed by my father
and myself to Seimavavuthan. I cited as
witnesses three rowthers and two cultivators.
As the fact that there was no enmity.
The Court of Sessions did not inquire there.
If inquired, it will be known that there
was no enmity between my father
and myself. I was sentenced to death
unjustly without any enquiry. The persons
who murdered were the enemies and not
myself. I therefore humbly pray
that the benign Government will look
into the records of the Lower court
and release me from the Jail.

(Translation)

Spalden
Superior Assistant

Coimbatore Central Jail
26th April 1895.



E. GAUSLER
22 MAR 95

In the Sessions Court,
Coimbatore Division.

THE 13TH DAY OF MARCH, 1895.

PRESENT:

THOMAS WEIR, Esq.,
Sessions Judge.

SESSIONS CASE NO. 15 OF 1895.

(REGISTER CASE NO. 4 OF 1895,

(Committed by the Stationary 2nd Class Magistrate, Udamalpet,
Coimbatore District).

Queen Empress of India Versus Nachimuthu Goundan, defended by
Mr. E. W. WILKINS, Attorney.

Offence..... Murder, Section 302, I. P. C.

Opinion of Assessors { A Native
Christian & } Guilty.
a Brahmin.

Finding of Judge..... Concurred with the Assessors.

Sentence..... Death subject to confirmation by the High
Court of Judicature, Madras, A. S.

To,

D. W. COWIE, Esquire,
ACTING REGISTRAR, HIGH COURT,

APPELLATE SIDE,

MADRAS.

Sir,

I HAVE the honor to submit my judgment (with records) in the above case
for the orders of the High Court, under section 374 of the Code of Criminal Pro-
cedure.

The accused, Nachimuthu Goundan, is charged with having murdered
his own father one Kuppanda Goundan, under circumstances hereinafter stated.

2. Before proceeding to the evidence of the actual commission of the crime,
it will be convenient to state the following preliminary matters.

3. The deceased, Kuppanda Goundan, and his son, the accused, had sold their land including the field which was the scene of the crime and was called Ramarazu Kâdu, to one Kullama Naik (1st defence witness) on the 10th February, 1893, (Exhibit I).

One of the conditions of the sale was that the vendee, Kullama Naik, undertook to pay off a mortgage debt of Rs. 660 previously contracted by the deceased under Exhibit II to one Venkatarangappah Naik (2nd defence witness).

4. The father—the deceased—and the son—the accused—both joined in the execution of Exhibit I. The father, (deceased) alone had executed Exhibit II, but the son, the accused, had attested it.

5. The father—the deceased Kuppanda Goundan, had brought a suit against Venkatarangappah Naik, the mortgagee, under Exhibit II, alleging that he had received no consideration for Exhibit II and praying for a cancellation of the document. The deceased's wife Rasakkal (3rd defence witness) and her son, the accused, went into the witness-box at the trial of the suit and deposed that the consideration for Exhibit II had been paid. The suit brought by the deceased was accordingly dismissed. An appeal was preferred by the deceased to the District Court, but the decision was upheld in appeal.

6. On the appeal being dismissed, the liability of Kullama Naik—the Vendee under Exhibit I to pay off the mortgagee under Exhibit II was finally established.

7. Kullama Naik as 1st defence witness fully admitted his liability—but said he had not yet paid and had not been asked by the deceased or by the accused to pay.

8. The 2nd defence witness, Venkatarangappa Naik, stated, however, that he had given notice to the deceased and his father some two months ago to pay the amount and had told them he would sue them if he was not paid. He had also placed the mortgage-deed (Exhibit II) in the hands of a Vakil for the purpose of filing a suit, but had not yet brought the suit.

9. It is shown, therefore, that shortly before the time of the fatal occurrence, pressure was being put on the deceased and his son—and perhaps also on Kullama Naik (1st defence witness) to pay off the mortgage due under Exhibit II.

10. The accused, according to his statement (Exhibit E), appears shortly before the fatal occurrence to have asked Kullama Naik to restore the lands after paying the mortgagee. It does not appear, however, how such a request could reasonably have been made—as the accused himself—as already seen—was a party to the sale of the lands to Kullama Naik under Exhibit I. Kullama Naik also deposes that prior to the sale he was in possession of the lands under an usufructuary mortgage from September 1892—and payment of the kist on the land for the past 3 years is spoken to by the Monigar (4th prosecution witness).

11. It is apparent, however, that the accused had, on some ground or other, taken it on himself to oppose the right which Kullama Naik had acquired in the land.

12. Accused's father, the deceased Kuppanda Goundan, according to the case for the prosecution, took a different course—and recognized and fully admitted the rights of the vendee, Kullama Naik.

According to the prosecution evidence, he, the deceased, was taking his meals for the last two years in Kullama Naik's house and he was also practically in the service of Kullama Naik (1st prosecution witness, in cross-examination).

13. The deceased's wife, Rasakkal (3rd defence witness), had also in 1893 applied to the Magistrate for an order of maintenance against the deceased. Deceased was, therefore, it is said, living apart from his family for some time past.

14. Deceased had also been prosecuted along with Kullama Naik's son and servant for forcibly resisting the execution of the decree for costs in the unsuccessful suit brought by him against 2nd defence witness.

15. On all these grounds, the deceased Kuppanda Goundan, and his son, the accused, Nachimuthu Goundan, were, it is said, on bad terms at the time of the fatal occurrence which will now be described.

16. The killing of the deceased is described by three eye-witnesses, viz., 1st, 2nd and 3rd prosecution witnesses.

17. Of these, the 1st witness (Periyana Goundan) was, he says, cultivating the field where the crime occurred as a varam tenant under Kullama Naik.

18. A crop of horse-gram had been raised in the field and was ready for harvesting.

19. The 2nd witness, Mari Naik, was employed for the occasion as a cooly to assist in gathering the crop.

20. The 3rd witness, Nagore Rowtan, was employed also for cooly to cart away the produce.

21. The evidence of these three witnesses is practically the same and is to the following effect.

22. On the morning of Wednesday, 30th January, the witnesses went to the field to gather the crop of gram. They were engaged along with a number of women coolies in plucking the gram-beans, when accused, Nachimuthu Goundan, came to the spot—and told 1st witness to desist from plucking the crop.

1st witness then said, 'What is the good of asking me? I am only a varam cultivator. Go and ask Kullama Naik.'

Accused then said to 1st witness 'Will you not stop?' 1st witness said he would not. Thereupon, the accused went off.

23. Shortly afterwards (one nalgai it is said) the deceased, Kuppanda Goundan, came to the field and was told by 1st witness that his son, the accused, had come and obstructed the gathering of the crop and had gone off.

The deceased said not to mind what his son had said and told those

present to go on with their business. Having said this, the deceased went aside and seated himself under the shade of an acacia tree in the same field.

24. The harvesting of the gram then went on and 1st and 2nd witnesses were loading or lifting the crop into a cart while 3rd witness was in the cart when the accused again came to the spot carrying this time an *aruval* (sickle) in his hand. The accused was going towards the coolies who were engaged in harvesting with the *aruval* in his hand when his father, the deceased, interrupted or tried to stop him, saying 'Why do you go and obstruct the coolies? If you want to get justice you had better refer the matter to any one—do not go and obstruct' or words to this effect.

The accused, thereupon, went angrily towards his father—saying—'by speaking in this way all the field is lost. Do you dare to allow the people to pluck the gram when I have obstructed?' So saying, the accused cut his father on the neck with the *aruval* several times—and almost severed the head from the body. After doing so, the accused moved off—and when he had gone a short distance, he threw down the *aruval* which was dripping with blood. The first three witnesses who, as already said, were loading the cart some little distance off (apparently 30 to 40 yards), then ran after the accused. The accused apparently only walked fast at first, but began to run on seeing the witnesses follow him. The latter, however, overtook him before he had got out of the field, the 3rd witness being the first to seize the accused and the 1st and 2nd witnesses coming up to his assistance.

The witnesses then brought the accused back to the scene of the crime and tied him up with his own cloth close to the corpse.

On the way back, the 1st witness picked up the blood-stained knife which was lying on the ground.

26. The occurrence, above described, is said to have taken place a little before 9 A. M., i. e., before cold-rice time.

27. After the witnesses had tied up the accused, one Rangan, a chuckler, came to the spot. The 1st witness, accompanied by the said Rangan, then went off to summon the Monigar. The Monigar was not found in the first village the 1st witness went to, but was found in an adjoining village.

28. The Monigar (4th witness) deposes that he received information of the occurrence from 1st witness and Rengan at about 10 A. M. He, at once, sent off a short report (Exhibit A) and, while he was writing it, he sent the 1st witness in advance to the field and followed immediately.

29. The Monigar found at the field the corpse of the deceased lying with the head almost severed from the trunk. He also found the *aruval* stained with blood—and he found present at the spot the first three witnesses and the accused and some coolies. He noticed blood on the accused's person, viz., on the head and chest of the accused as well as on his cloth. He examined the 1st, 2nd and 3rd witnesses and also the accused and embodied their statements in his report (Exhibit B). A Mahazar was also taken from the ryots, assembled at the spot, Exhibit C. The latter states that blood was found sprinkled on accused's person.

30. This witness' evidence was not entirely satisfactory as to the time when he completed the writing of his report (Exhibit B). He began his inquiry at the field, he said, at about 11-30 A. M., and continued it until 1-30 or 2 P. M. He finished his report at about 3 o'clock and the Police came about 5 o'clock. The report, however, contains internal evidence that it was not completed until after the Police arrived—viz., the statement towards its close that the writer had given the accused with the sickle *into the charge of the Police*.

When asked to explain this, the witness said that he had only half finished the report when the Police came. The Police Inspector came about 4 P. M., and he then made over charge of the accused and the sickle. He did not actually hand over his report to the Committing Magistrate until 7 P. M., as the latter who had come to the village on receiving the first report (Exhibit A) at 2-15 P. M., was, up to that time, engaged in examining the witnesses.

31. This witness (the Monigar) also said that he did not think it necessary to examine any of the women coolies whom he found at the spot, as the accused had stated positively after he examined the first three witnesses that he committed the murder. This statement was made before any Police Officials had arrived at the spot.

Witness said to the accused—'the first three witnesses (naming them) state you committed the deed—why did you commit and can you have done so?' The accused's reply was 'என்னமோ செய்து போட்டேன்'—'I do not know, I did it.'

32. The circumstance that the accused confessed is, it may be stated, noted in a postscript to the report (Exhibit B). The accused's pleader urged that the postscript was suspicious and was written in a different ink from that used in the body of the report.

The witness explained that he dictated the report to his gumastah—that the latter, when he had reached the last sentence, hastily dated the report—that he (witness) then noticing the omission to mention the confession added it.

33. I can see no reason, on the whole, to distrust this witness' explanation or evidence in general. The fact that the Committing Magistrate himself was on the spot on the very afternoon of the day of the murder—and that he (the Committing Magistrate) at once examined the witnesses—who deposed as they had done to the Monigar and as they have done in the Sessions Court—is sufficient to show that the evidence cannot have been concocted.

The Monigar's explanation of his omission to examine the women-coolies is also, I think, sufficient.

34. The principal witnesses (1st, 2nd and 3rd witnesses) who, as already indicated, were examined by the Committing Magistrate in the evening of the very day of the occurrence have been throughout consistent, in their statements.

35. The above, with the evidence of the medical witness—and the formal evidence of a Police Constable (5th prosecution witness) who conveyed the corpse to the medical witness for *post-mortem* examination is the evidence for the prosecution.

36. The accused made a detailed statement before the Committing Magistrate (Exhibit E).

37. His account of his claim to possession of the field already referred to is confused—and scarcely intelligible. It may be noted, however, that he alleges that the 1st witness, Periyana Goundan, sowed the gram with his permission.

38. His account of the principal incident is as follows. He (accused) was, he says, eating his meals when he got information that certain persons, one of whom, was Kullama Naik (1st defence witness) had come to the field and were gathering the crop with a number of coolies. His father (deceased) was at home. He said to him 'you had better go and obstruct—I will come after meals. When I went, the disturbance had already taken place.'

'My father went first. They cut off my father—afterwards I went near. The three accused persons (meaning it appears one Muthu Goundan, one Kumara-swami Goundan and Kullama Naik) and the 10 or 20 men who were with them caught hold of me and tied me and *took and threw blood on me*. I stayed there with that having been bound. After that—a long while after that—my mother (3rd defence witness) came. She cried saying they have cut my husband and moreover tied my son in this way and put him. Then she went home. That is all.' The Monigar, he subsequently added, came but asked him nothing.

39. This statement, it may be noted, was made to the Committing Magistrate on 31st January, the day after the murder.

40. After the statement (Exhibit E) had been read at the Sessions trial, the Court asked the accused if he could explain why the first three prosecution witnesses gave evidence against him. His answer was that the men were his opponents—that they were mere coolies and were very easily influenced by any one who wished to influence them and that they were easily bribed.

Accused was then asked—why the Monigar (4th P. W.) should say that he, accused, confessed having committed the crime. His answer was 'I and the Monigar are on bad terms with regard to this land.' In the cross-examination of the Monigar nothing had been disclosed to support this last statement.

41. No evidence was called in support of accused's statements as to previous quarrels about the land—or as to the grounds on which accused claimed possession of the field, but besides the two witnesses already referred to, viz., Kullama Naik and Vencatarangappa Naik, the defence examined the deceased's widow, Rasakkal (accused's mother) and the deceased's daughter, Komarakkal, aged 10 years, (3rd and 4th defence witnesses).

42. The evidence of the little girl (4th defence witness) will be noticed first. She says that, on the morning in question, she went with her father to the field. Her father went to the field to obstruct the plucking of the horse-gram. Her father obstructed. Then Mari (2nd Prosecution witness) pushed her father. Her father again obstructed. Then, Kullama Naik (1st defence witness) and two other men told Nagur Rowthan (3rd Prosecution witness) to cut her father and throw him away. Thereupon, Nagur Rowthan taking an aruval from Periyana Goundan (1st Prosecution witness) cut her father. The latter cried out 'all my children will be ruined.' A second cut was then given and witness ran away

home and told her mother (3rd defence witness). There was only a pond and a garden between the field and witness' house. The witness' mother, on being told by witness what had happened, came running to the field; witness came back with her mother. Nagur Rowthan then abused witness' mother. Witness, when she got back to the field, saw her brother, the accused, kept there tied.

43. This witness, it may be noted, fixes the time of the occurrence as very early in the day. The sun rose, she says, after she and her father had gone to the field.

44. The mother, (3rd defence witness) deposed that her daughter (4th defence witness) came running to her at about 7-30 A.M., and told her that deceased was caught and cut; that Mari, Periyana Goundan, Kullama Naik, etc., were collected at the field, that these men had told Nagur Rowthan to take up a sickle and cut her father—that Nagur Rowthan did so; that, seeing this, she got frightened and came away. Witness says she then ran to the field. She was prevented from going near to see her husband. She saw her son (the accused) tied there.

45. The witness professed not to know if her husband had sold the field to Kullama Naik—or of the suit which her husband had brought against 2nd defence witness for the cancellation of the mortgage, but she admitted immediately afterwards that she and her son had given evidence in that very suit that the consideration was paid. She admitted that she had made a complaint to the Magistrate claiming maintenance from her husband. The witness also said that her husband and her son were on good terms—and that her husband was taking his meals in her house up to the time of his death.

46. The question now to be considered is what conclusion does the evidence, as a whole, point to?

47. That the deceased, Kuppanda Goundan, was murdered at or about the time and place described, does not admit of dispute.

48. Two absolutely conflicting versions are put forward as to the circumstances and as to who the actual murderer was and the question is which of these two versions is the true one.

49. I have little hesitation in coming to the conclusion that the account given by the accused and his witnesses is untrue—and that the evidence for the prosecution is substantially true.

50. The story told by the little girl, 4th defence witness, accused's sister, will not bear the test of scrutiny and must, I fear, be regarded as an elaborate tissue of falsehood.

It is difficult also in many ways to reconcile it with the account of the occurrence given by the accused himself in his statement.

51. It may be noted that the following matters are prominently stated in the little girl's evidence.

(1). that her father, the deceased, was living with his family at the time of the occurrence.

- (2). that the murder occurred very early in the morning, *i.e.*, about sunrise.
- (3). that Nagur Rowthan, on the instigation of Kullama Naik and others, was the murderer.

The child also asserts that 1st prosecution witness, Periyana Gonndan, cultivated the gram for them on varam tenure.

52. All the matters, thus stated, are, I consider, opposed to the weight of the evidence and to circumstances established by the evidence.

53. It is not, I think, to be believed that the deceased was living with his family at the time of the murder. Apart from the direct evidence of the existence of unfriendly relations between the deceased and his family (4th prosecution witness' and 1st defence witness' evidence) there is the incontestable fact that the accused and his mother had (whether in good faith or otherwise is immaterial) opposed the deceased in the suit brought by the latter against 2nd defence witness and had given evidence which necessarily had the effect of defeating the suit. There is the further incontestable fact that the deceased's wife (3rd defence witness) had sought to obtain an order of maintenance against the deceased from the Magistrate.

54. These circumstances warrant the conclusion that the relations between the deceased and his family must have been the reverse of friendly, and render it improbable in the extreme that the deceased could have been living with his family at the time of his death.

55. That the deceased was actually living with Kullama Naik—as is asserted on behalf of the prosecution, is also rendered highly probable by another circumstance appearing in evidence, *viz.*, that, when 2nd defence witness sought to execute his decree for costs against deceased and the execution was forcibly resisted by the latter, the son and servant of Kullama Naik were jointly prosecuted along with deceased for resisting the execution of the decree.

56. The matters noticed point therefore strongly to the conclusion that deceased could not have been living with his family at the time of the occurrence and falsify this material portion of the defence.

57. If this conclusion is well-founded, it, in itself, practically falsifies the whole of the defence, the gist of which is that the deceased, acting on his own behalf and that of his family, obstructed the gathering of the crop and, by doing so, met his death.

58. Other reasons for rejecting the story, told by the little girl, are also apparent.

59. The early hour at which the child represents the occurrence to have taken place seems altogether opposed to the circumstances and the probabilities.

All the evidence points to the fact that the reaping of the gram had been going on for sometime, and, if the prosecution story is accepted, a cart had been hired and was in process of being loaded.

A large number of coolies were, according to both versions, engaged in working at the field.

It is not readily to be believed that arrangements on so extensive a scale as are spoken to, could have been in progress—or could have been carried out at or before sunrise.

60. Assuming also for the moment that the deceased was living at the time with his family—it appears altogether improbable that he would have taken his daughter—a child of only 10 years—to the field at so early an hour and for a purpose such as is suggested. In connection with this point, the mother (3rd defence witness) said at first—her daughter went *as usual* to the field and then that she did not know why the child went on that day. The child herself, however, said 'I went with my father only on that day.'

61. It is also difficult, if not impossible, to reconcile the statements of the child, 4th defence witness, with those of her brother, the accused, in certain material points.

62. The child says she went to the field with her father before sun-rise. The brother (accused) says he was eating his meals when he heard of the assembly at the field and he sent his father (deceased) in advance to obstruct.

The circumstance of eating meals (cold-rice time being generally taken to be about 9 A.M.) is, in itself, difficult to reconcile with the early hour spoken to in the child's evidence, but a more important point is that the child in her evidence makes no mention of her brother (accused) having told her father to go to the field.

63. The child also represents that, on witnessing the cutting of her father, she ran home at once—the distance being a field and a pond—and told her mother and came back at once with her to the field. The mother came *running*, the child says. The mother herself says 'I then *ran* there.'

On arriving at the field, they found accused tied and bound.

Now, the interval between the child's running off and returning with her mother, must, according to the evidence just noticed, and having regard to the distance, have been very brief—and it seems scarcely possible to account for the accused having, in the meantime, been caught and secured and bound.

The child was specially questioned on this point. She said her brother, accused, was not there at the time of the cutting of her father. She was asked if she met her brother—coming to the spot when she was running home. She answered with what I could not but consider suspicious smartness—'I ran home another way—so I did not see my brother come.'

64. Moreover, the accused's own statement, as to the time when his mother (3rd defence witness) came to the field, cannot be reconciled with the evidence of the child. He says that, after being bound, etc., 'I stayed there after that—a long while after that—my mother came, etc.'

65. The accused, it may also be noted, makes no mention whatever of the child coming to the field with her mother and seeing the accused bound—as the child says she did.

66. Lastly, it has to be observed, that the statement of the child that Nagur Rowthan slew the deceased on the instigation of Kullama Naik and others is, on the face of it, a highly improbable story. Nagur Rowthan was only a cooly cart-man

and, so far as appears—had no interest whatever beyond his coolly in the matter in dispute. The little girl, no doubt, said he was a dependent or creature of Kullama Naik, but it was not possible to believe this statement—which was obviously the result of tutoring.

67. It has been noticed that the accused's person and cloths were stained or sprinkled with blood. The accused himself, in his statement, admits this apparently damnatory circumstance and tries to explain it by saying that the men who caught and tied him threw blood on him. The explanation is, I consider, one that cannot possibly be believed.

68. It has also to be noticed that the little girl and her mother (3rd and 4th defence witnesses) admit that, although the Tahsildar Sub-Magistrate was encamped on the evening after the murder close to their house and was enquiring into the offence, they gave no information whatever to him of what they knew or professed to know. Their explanation of why they failed to do so, viz., that the Police Constables drove them off and they were afraid, cannot, for a moment, be believed.

69. For the reasons stated, I am of opinion that the case put forward by the defence is altogether false and concocted.

The statement that the deceased was living on friendly terms with his family at the time of the murder—is opposed to proved and admitted circumstances. The account of the murder given by the little girl is, on the face of it, grossly improbable and inadequate—and the account, such as it is, is irreconcilable in material points with that of the accused himself and the conduct of these witnesses in keeping silent until the time of the trial, is inconsistent with their being witnesses of truth.

70. As regards the accused's own statement, it has been seen, that he gives an altogether inadequate and unacceptable explanation of the circumstance of his body being stained with blood.

In the Sessions Court, his explanation as to why the witnesses including the Monigar (who deposes to his confession of guilt) gave evidence against him—was, in my opinion, altogether insufficient.

71. The prosecution evidence against the accused is clear and direct. It was recorded, substantially to the same effect as at the Sessions Trial, by the Committing Magistrate who proceeded to the spot with unusual promptitude on the very day of the murder.

72. On the evidence, it is, I consider, impossible to come to any other conclusion than that the accused committed the offence.

73. The crime—having regard to the near relationship of the parties and the ferocity with which it was committed was an unusually atrocious one.

74. In the circumstances found, there is no opening for passing on the accused the minor sentence of transportation for life.

75. I accordingly—subject to the confirmation of the High Court—sentence the accused, Nachimuthu Goundan, to be hanged by the neck, until he is dead.

(Accused is told to appeal to High Court within 7 days).

I have the honour to be,

Sir

Your most obedient servant,

(SIGNED) T. WEIR,

Sessions Judge.

Postscript.

It may perhaps be noted that a passage in the Village Magistrate's report (Exhibit B) setting out the information of the 1st witness, Periyana Goundan, was sought to be relied on by accused's pleader as suggesting that the deceased, Kuppanda Goundan, did actually interfere at the field and obstructed the coolies who were gathering the crop.

The passage—although somewhat involved in its construction, is, however—I am satisfied, not susceptible of the meaning sought to be attached to it by accused's pleader.

(Signed) T. WEIR,

Sessions Judge.

To,

THE REGISTRAR,
HIGH COURT,
APPELLATE SIDE,
MADRAS.

WITH RECORD.

- „ District Magistrate Coimbatore, with () spare copies.
- „ Superintendent of Police Coimbatore, with () spare copies.
- „ Prisoner.

(True Copy)

By Order

[Signature]
Head Clerk

2nd copy to the Prisoner.

Depd. 21-3-95

1895.

High Court No.

FROM,

The Sessions Judge,
COIMBATORE.

Dated 13th
Despatched 2/ } March 1895.
Received }

No.

Enclosure Record and spare copies of printed
Letter of reference.

SUBJECT:-

Submits for confirmation by the High Court
the sentence of death passed on Nachimuthu
Goundan, Prisoner in Session Case No. 15 of
1895, on the file of this Court.

Copy to the Prisoner.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the Seventeenth day of April,
One thousand eight hundred and ninety-five.

PRESENT:-

The Honourable

Sir Arthur Holmes, Kt., Chief Justice

and

The Honourable Mr. Justice

Parker

Referred Trial No. 25 of 1895.

Nachimuthu Goundan Prisoner. 1530.

Trial referred by the Court of Session of the Coimbatore Division
for confirmation of the sentence of death passed upon the said Prisoner in Case
No. 15 of the Calendar for 1895.

CRIMINAL APPEAL No. 160 of 1895.

Appeal by the Prisoner against the said Sentence.

This case coming on for hearing, the Court delivered

the following

Judgment:- We can see no rea-

son to doubt the truth of the

prosecution evidence. The

counter story put forward

500-6-2-95.

by

by the prisoner at the sessions
was not adduced till a
very late period and was
not even advanced by the
prisoner before the committing
Magistrate. It depends entirely
upon the testimony of his mother
and of the little girl of 10 years
old (his sister) who was dis-
credited by the judge and
Assessors. Had this story been
true it is impossible to believe
they would have taken no
steps to bring their complaint
before the authorities. We
can see no inconsistency be-
tween Exhibit B and the
prosecution

prosecution evidence as to the
presence of Kullama & such.
It is possible he may have
been present when accused
first went to the field - but
not on the second occasion
when he returned and
quarrelled with his father.

For do we see any reason
to doubt the explanation to
the postscript of Exhibit B.

The prisoner and his father
appear to have been on bad
terms for a considerable time
though they united to execute

the sole deed to Kallama Naick.

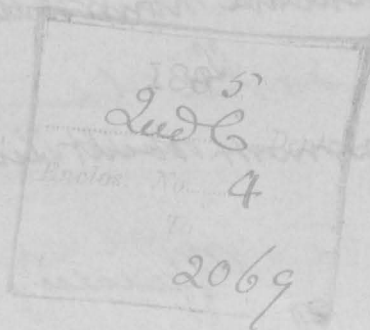
The mother apparently sided with her son against the husband.

We must confirm the conviction and sentence and dismiss the appeal.

By the Court.

At Fort.

Dy: Registrar,
Appellate Sid.



Nominal Roll of Convict No. 1530, Nachimuthu Gounder

Crime.	Sentence.	Date of Sentence.	Adjudicating Court.	Present Age.	State of Health.	Conduct in Jail.	Result of the Appeal to Appellate Court.	Number of previous convictions if any and remarks.
Murder, Sec. 302, S.P.C.	To suffer death. Subject to confirmation by High Court.	13 th March 1895.	Sessions Judge Coimbatore.	20 years.	Good.	Good.	Sentence confirmed.	

Coimbatore Jail Office,
26th April 1895

F. 990-9-94.

Rules 701 and 704.

G. Gounder
Superintendent of Coimbatore Jail.

N^o 905

CURRENT No 2069
Coimbatore Begals
26th April 1895

From

E. H. Gadsden Esq
Super of Begals
Coimbatore

To

The Chief Secretary to Govt
Fort St George
Orissamund

Sir

I have the honor to forward herewith a
petition of appeal from convict N^o 1530 Nachi-
muthoo Gounden sentenced to death by the Sess:
Judge Coimbatore in Case N^o 15 of 1895, whose
Sentence was Confirmed by the High Court on appeal.
A copy of the judgment of the Sessions Court, and
that of the High Court, a Nominal Roll of the prisoner
and a true translation of the petition are also for-
warded.

The prisoner will not be executed until a definite
reply is received from Government to the petition.

I have the honor to be
Sir

Yours most obedient servant

E. H. Gadsden
Super of Coimbatore

From

Judicial Dept

Sp. 1259/94 Se.

The Supr of Jail
Coimbatore

To

The Chief Secretary to Govt
Fort St George
Ort. Criminal

UNDER SECRETARY
27 APR 95
JUDICIAL DEPT

Dated 26th } April 95
Received 27

Regd 27th
N: 905

Enclosures 5

Forwarding petition of appeal
from Convict N: 1530 sentenced to
death by the Lias: Judge Coimbatore

[G.
25.]
100-8-3-95.

Jud. DEPARTMENT.

C. No. 2069

FOR ORDERS.

The evidence for the case is
unusually direct & was
accepted by the Magt almost
immediately - I can see no
reason for disbelieving it. The
Lias: J. seems to have shown
good reasons for disbelieving the
petitioner's evidence. I would
not interfere

RS
27/4/95

I agree. The evidence for the
prosecution is very strong & there
for the Defence cannot be
believed.

RS
28/4

Besides it is clearly an after thought
as if it had been true it must
have come out before the committing
Magistrate. I would dismiss the
petition.

4
28 Apr.

Appeal for mercy from Convict
No 1530 Prachinathan Gounder
under sentence of death in
Criminal Sessions Case No 15
of 1895, which sentence has
been confirmed by the High
Court.

The Supr of the Prison at
Central Jail states that the
sentence will not be carried
out until a definite reply
from Govt is received.

8
27.4.95

RS
27/4/95

FOR ORDERS.

"Supplemental"

To

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

The humble petition of Nachimuthu
Gounden son of Kuppanda
Gounden of Andigoundan,
Adamalpet Taluk, Coimbatore,
but now under sentence of
death and incarcerated in the
Central Jail Coimbatore
under Section 401 of the Criminal
Procedure Code.

Sheweth.

1. That your petitioner was ~~was~~ convicted of the murder of his father and sentenced to death by the Sessions Court Coimbatore and such sentence was confirmed by the High Court (Vide its judgment.)
2. That without going into the facts (which are sufficiently set out in the judgment of the Sessions Judge) the Petitioner contends that the evidence is wholly insufficient to convict him of the Capital Charge and the eye witnesses who speak to the murder

are (as it is apparent) Creatures of Kullama Nair
(Petitioner's enemy and the man who is at
the bottom of all the trouble that has resulted
in the violent death of the deceased) and the
persons who the Petitioner has all along
consistently asserted are the authors of the
Crime.

3. That considering the circumstances under
which the Crime was committed (in an isolated
and out of the way field away from human
habitation and in an unfrequented part)
and that from the nature of the case the Court
had to decide on the two diametrically
opposed theories as to the authors of the deceased's
death (the prosecution asserting that the
accused murdered him, and the accused, that
he was murdered by the prosecution witnesses
at the instigation of Kullama Nair) and
that one or other of the alternative theories
was the only one which the circumstances
pointed to the necessity for independent
corroboration of the guilt of the Petitioner
(if available) is clearly apparent

4. Such independent testimony was available
in the case - the prosecution witnesses admitting
that there were several women who witnessed
the crime. They were not examined and no
reason has been assigned for their non
examination which is on the face of
it highly suspicious.

Part of the defence case
was that the field was
"out of the way" and
"isolated" and "unfrequented"
house

KK

5. Further there is an utter absence of any immediate
 motive for the murder of the deceased by the
 Petitioner. The evidence as to the existence of
 enmity between the Petitioner and his father
 (namely, his giving evidence against his father,
 and his mother suing him for maintenance) had
 reference to a state of things that prevailed for
 a year or two before the occurrence, and there is
 nothing to support the fact that such enmity
 continued at the date of deceased's death. The
 existence of such enmity is only supported
 by prosecution witnesses (who are not
 reliable witnesses) and denied by defence
 evidence.

6. Your petitioners would most impressively
 urge upon your excellency in Council a
 most serious misapprehension of facts
 which has no doubt influenced their lordships
 the Judges of the High Court in dismissing
 petitioners appeal. In their short judgment
 the first and most important point urged
 against the appellant by the Learned judges
 is that "the Counter story put forward by
 the prisoner at the Sessions was not adduced
 till a very late period, and was not even
 advanced by the prisoner before the
 committing magistrate." This a serious
 and very material inaccuracy which cannot

The convict admitted
the commission of the
murder to the V. M. on the
30th inst. on which day the
Magistrate received the post
2.15 P.M.

but have prejudiced the appellate judges in
their decision. The records prove that the
murder was committed on the 30th January 1895,
the village Magistrate was on the scene at once,
the accused was under arrest immediately after the
offence, as alleged by the prosecution, and that the
very next day (31st January) and at the very
first opportunity the Petitioner gave a detailed
statement of his version of the murder to the
Committing Magistrate (Ex E) a statement to
which he adhered to throughout the trial.
There is no question as to this, and your petition
would earnestly pray your Excellency in
Council to satisfy yourself as to this
if necessary by a reference to the High
Court. This being so, one of the chief arguments
on which the learned judges base their judgment
falls to the ground; and the other conclusion
(hinging on the above misapprehension)
are likewise unsound.

7. That it is clear from the medical evidence
(to the effect that the stomach of the deceased
was found empty) that the murder took
place much earlier than is asserted
by the prosecution for its own ends.
The defence witnesses say it occurred
at sunrise (& this is consistent with
the empty stomach) while the prosecution

(in order to make it appear that there was no delay in reporting to the village Magistrate) state it was at 9 A.M. (Report was made at 10 o'clock). All soundans take their first meal (cold rice) at about 7 o'clock in the morning as is admitted by prosecution evidence. The strength which is derived from the fact that an immediate report was made to the village Magistrate is based on an erroneous supposition.

8. That the conduct of the village Magistrate is highly suspicious and his evidence unworthy of credit. His omission to record the important fact that the Petitioner admitted his guilt in the body of his report, and his explanation of the fact of what was clearly an after thought addition made at the end of the report after it had been closed, his gross prevarication and perjury in attempting to fix the time at which the report was written and explanation why it had not reached the Magistrate's hands till 7 P.M. point him as a partisan of Kullama Naikan (a man of admitted wealth and influence in the village). The village Magistrate's further inexplicable omission to examine the other eye witnesses of the murder (the only independent evidence available) is also highly suspicious.

9. The evidence of the 1st, 2nd and 3rd prosecution witnesses (the only direct evidence in the case) is clearly unreliable. They are mere coolies, and underlings of Kullama haik. Beyond this reason for their siding with Kullama haik and accusing the Petitioners of the murder, there is the fact that they were the only persons (besides the women) present at the scene and in order to shield themselves they were forced of necessity to father the crime on Petitioners.

10. That the fact that the relatives of the Petitioners made no complaint to the committing magistrate when he visited the village is easily explained. These relatives were all poor, insignificant women, naturally timid. When the magistrate arrived the Police had charge of the case, and the case against Petitioners had already reached a stage under their hands, when it is very unlikely that any interference from others would have been allowed.

11. That the documentary evidence for defence shows stronger grounds for Kullama haik and his party being the author of the crime than the oral evidence of the prosecution for the Petitioners being the culprit.

12. That even if it is considered proved that the Petitioner had caused his father's death, the Sessions & High Courts ought to have taken into Consideration the fact that the act was clearly a sudden and unpremeditated one done in the frenzy of the moment, and when the Petitioner was beside himself and directed against a man whom the Petitioner has no reason to injure much less to kill, and that under these circumstances, the extreme penalty ought not to have been passed.
13. That your Petitioner could not afford to retain the services of a professional man at the hearing of his case in the High Court, and he fears that the facts favourably affecting him have not been properly placed before the learned judges who have confirmed the sentence passed on him.

For the above reasons
the Petitioner humbly
prays that your Excellency
in Council will be pleased
either to remit the punishment
to which he has been

Sentence, or Commute it
 to one of a less severe
 Kind, and your petition
 will not fail.
 B. D. D. 4. 18. 2. 1001. 101

Examiner
 Superintendent
 Comptroller General
 27th April 1895

Office of the
 Comptroller General
 27th April 1895

Applying against the
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2. That even if the
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For the above reason
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Supplemental appeal for Mercy

To

His Excellency,
The Governor in Council,
Fort Saint George.

The humble petition of convict no
1530 Natchimutha Gounden under
sentence of death in the Coimbatore
Central Jail.



Dated 27th April 1895

1895
Sub. Dept.
Encls. No. 1
To
O. No. 2091

Prayer.

Appealing against the sentence
of death passed on him by the
Sessions Court Coimbatore

N^o 914

From

To

By

Coimbatore Central Jail
27th April 1895

CURRENT NO. 2091

E. H. Gaddan Esq
Super of Jail
Coimbatore

The Chief Secretary to Govt
Fort St George
Coimbatore

In Continuation of this office letter N^o 905 of
26th April 1895 forwarding petition from Con-
-vict N^o 1530 Natchimutha Gounden sentenced
to death, I have the honor to send herewith
a Supplemental petition prepared by the pri-
-soner's attorney.

I have the honor to be
Sir

Your most obedient servant

E. H. Gaddan
Super of Central Jail

Judicial Dept

Urgent

Supplemental appeal for mercy

S.O. 887: 30.4 95 mis

CURRENT NO. 2091

E. H. Gledhill Esq
Super of prisons
Coimbatore

The Chief Secretary to Govt.
Fort St George
Orissamund

For orders

The petition forwarded by
the Supr. with his letter of
26. April 95, No 906, was
disposed of in S.O. 30. April
95

Dated 27th }
Received 29th } April 1895

N^o 914

Enclosure one

Forwarding a Supplemental peti-
tion on behalf of a Convict sentenced
to death prepared by his attorney.

[G.]
000-8-3-95

Genl. DEPARTMENT.

C. No. 2091

FOR ORDERS.

This Supplemental petition
is well put, but it does
not change my view of the
Case.

JS

1/5795

I have no cause for doubt

JS
1/5

nor do I. I wd. dismiss the
petition. How many "supplemental"
appeals to this Govt. are permitted?

W

1 May

The convict's previous petition
will be found under cover
of S.O. 30. April 95, No 887.

This order has not yet issued.
It has been detained pending
the disposal of the present
petition

D

30.4.95

30/4/95

JS

30/4/95

Petition from

FOR ORDERS.

[J.]
[16.]
1,000-5-2-94.

Judicial Department.



PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following letter, dated 26th April 1895, from the Superintendent of the Central Jail at Coimbatore, forwarding petition from Convict No 1530 Nachimuthu Srinivas under sentence of death in Coimbatore Session Case No. 15 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, 30th April 1895, No. 887.

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 1530 Nachimuthu Srinivas.

2. The law will take its course.

(From Orders)
(True Extract.)

29-4-95 29/4/95

Chief Secretary.

29/4/95

submit to C.S. with
fair plans 29/4

To the Superintendent of the Central Jail, Coimbatore
for communication to the Prisoner.
Inspector-General of Jails, Madras with C.S.
Hon'ble the Judges of the High Court, with papers returned.

29/4/95 29/4/95

23/4 Rys-
Rys-

For N. 2091/95

D (only)

Please issue sharp and
give these papers to Jail Referee

120

30/4/95

Letter to Jail Referee

120

30/4

For H. E. The Govt.

on the note for order on (No
2091 (in 5.0 of 30 April 95, No
447) H. E. enquires "how many
supplemental appeals to this
Govt. are permitted"

Seen

W

19 May

2. The number of appeals which
condemned prisoners can
submit to this Govt. has not
been definitely fixed. But a
condemned prisoner can scarcely
submit very many appeals
to this Govt. seeing that, under
Rule 1021 of the Jail Code, the Supt.
of the Jail in which he is con-
tained, on receipt of the orders of
the Govt. on any one appeal
declining to interfere, fixes a day
for the execution of the sentence
and allows the prisoner discretion
as to the submission of an appeal
to the Govt. of India or Her
Majesty only.

3. See regard to appeals from

C195

P.T.O.

ordinary prisoners, Govt
of India is in favor placing
some restriction so as to allow
second appeals only. cases
in which an official reporter
considers such an appeal
desirable (vide para 39 of the
Home Dep't Resolution recorded
in G.O. of 18. Jan'y. '93, No 110).
Rule 697 of the Jail Code. ~~has~~
~~disallows~~ disallows second appeals
except in cases where the
Capt. of the Jail considers
that sufficient ground exists
for the concession.

17/5/95
16.5.55

15/5/95

When given for copying
When copied
When examined
When signed

189

READ AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTERS OF GOVERNMENT.

STATEMENT WITH DITTO.

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

N.B.~

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