

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 963

Dated 9th May 1895

INDEXED.

[Despatch Abstract.]

APPEAL AGAINST AN ACQUITTAL.

Stating that an appeal to the High Court is undesirable against judgment acquitting accused Nos. 2 to 5 in Calendar Case No. 405 of 1894 on the file of the Stationary Sub-Magistrate of Bezwada, but the conduct of the constables who were acquitted by the Sub-Magistrate should be dealt with departmentally, and drawing the District Magistrate's attention to the hand-writing of his letters which is extremely bad and untidy.

BACK PAPERS.

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

FURTHER PAPERS.

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CURRENT NO. 2000.

Histia District Magistrate's office.
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From

J. N. Atkinson Esquire
District Magistrate
Histia.

To

The Chief Secretary to Government.
Judicial Department. Madras.

Sir,

In submitting herewith the material portion of the records in Calcutta Case No 405 of 1894 on the file of the Statutory Sub Magistrate of Berhampore, I have the honor to request that you will direct the Government to direct the Public Prosecutor to present an appeal to the High Court against the order of acquittal of the accused 2 to 5 as the evidence recorded in the case does not warrant an acquittal.

2. The particulars of the case are briefly as follows. A petty officer of the Salt and Stuary Department having received information that illicit arrack would be transported from a village belonging to His Highness the Nizam situated on the frontier of Sirsapor, a British village, within a distance of two miles, guarded the way between the said two villages (belonging to different Governments) and detected illicit liquor being transported.

* submitted by parcel post.

transported by a British Police Constable (accused) This 1st accused was accompanied by 4 other Constables none of whom being in uniform. The Salt and Akbari Inspector charged all the five accused, but the Sub Magistrate ^{has} convicted only the 1st accused in whose possession the arrack was actually found.

It was satisfactorily proved by the prosecution that all the accused were present when the offence was detected and the plea of the accused namely Alibi in the case of 3 and some other plea in the case of the remaining two was held to be unproved. The Sub Magistrate believed the Prosecution and disbelieved the defence but convicted the 1st accused alone acquitting the remaining 4 with the following remark.

"But the prosecution has taken no steps to prove that all the five accused left Tiruvor for Muttazudem for

"a common object namely to smuggle arrack

"or that all of them were present at the arrack shop

"at Muttazudem where the illicit arrack was

"purchased. All of them could meet together

"under several circumstances that evening:-

"Heard and until it is proved that all the accused

"had a common object to smuggle arrack, it

"cannot be said that the possession of arrack is

"the possession of all present. Hence there

"is no evidence to show that the 2nd, 3rd, 4th

"and 5th accused intrinsically aided or

"investigated the 1st accused in the smuggling

"beyond the statements of the 1st and 3rd

"prosecution witnesses that the 2nd accused

"asked the 1st accused to throw down the bottle.

The Stationary Sub Magistrate's decision appears

to be eminently unsatisfactory. He has convicted the 1st accused of the offence. He shows that the defence set up by the remainder is unreliable. That the four persons ^{alleged} were in the company of the 1st accused when he was met by the Akbari Officer and that the 2nd accused afterwards directly instigated the principal offender to throw away the bottle and so destroy all traces of their guilt. Yet he fails to find any common intention or to be satisfied ~~that he is satisfied~~ that the possession of one was the possession of all. The reasons for thinking that his decision is defective and for recommending an appeal are shortly as follows.

There is ^{circumstantial} strongest evidence of the guilt of the whole party. They were all Constables. All the plain clothing. The Police Inspector was to be entertained that evening in the village to which they were going. The day was Sunday and the place extremely favorable for smuggling purposes. The five accused were found walking together from Muttazudem, a village where arrack is cheap, towards Tiruvor, another village where it is dear. One of them was carrying a bottle under his arm. On being questioned he avowed that he was bringing it from Muttazudem and that it contained arrack. On further enquiry after a considerable time had elapsed during which he made as ample time to concoct a story, he professed to have seen another man carrying the bottle. He came close to him, but in spite of the openness of the place he failed to catch him and afterwards he found the bottle under a bush. High

His story was discredited and he was convicted.

The other four Constables, when asked for their explanations gave very unsatisfactory answers. The 2nd Accused professed to have been in bed the whole day: it was proved that he was not at the hospital and the books bear such evident marks of interpolation that they are themselves a proof of guilt. The 3rd Accused also professes to have been on sick leave. yet this does not seem to have prevented him from accompanying the others or from being at his post the following morning although he asserts that he did not go to Muttage ^{on the day in question}. The 4th Accused pleads as a alibi that he was on guard at the Treasury: but this fact does not appear to be conclusively proved. The 5th Accused was admittedly with the 1st Accused from the time he left the village that evening. Exactly where all five were that evening does not appear from the evidence. What does appear and what accordingly seems to be sufficient for recommending the case for revision is—

I That all five were found in company.

II That one of them was carrying a bottle of Arrack

III That none of them could give a satisfactory account of themselves.

IV That their story shows why they should have wished to smuggle Arrack that evening.

V That one of the five has been found guilty of a breach of the Akhari law.

V

That the best appear to have engaged with him in a Conspiracy for the commission of that offence.

VII

That they intentionally aided him in his wrongful design both by their act of walking with him and countenancing him in what he was doing and also by the illegal omission of failing to prevent his smuggling the arrack.

VIII

That they are therefore guilty of abetting him in the commission of the offence.

IX

That they were present at the time the act was committed and therefore fall under Section 114 of the Indian Penal Code.

I have the honour to be
Sir

Your most obedient St.

J. N. Atkinson

District Magistrate.

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MR
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2000
Appeal against an
acquittal

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READ AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

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LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BRING WANT FOR DESPATCH
IN ORIGINAL.

N.B.—

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

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