

20-7-05 ✓
20-4-11 ✓
16-6-14 ✓
14-7-16 ✓
30-9-1855 ✓
24-4-59 ✓

[J]
53
1,000-85-7-96

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 97

DATED 16th Jan. 1895.

INDEXED.

[Despatch Abstract.]

MR. SIDNEY'S FEES

Declining to sanction payment of the fees claimed by Mr. Sidney, Barrister-at-law, Ootacamund, for defending the accused in the Pykara robbery case, and informing Mr. Gillman that, in the opinion of Government the case was not of such an exceptional nature as to justify the course taken by him and that it was his own duty as a Magistrate thoroughly to sift the evidence of the witnesses for the prosecution.

A.

BACK PAPERS.

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

FURTHER PAPERS.

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

From

The District Magistrate
Mylapore.

To

The Chief Secretary to Govern-
ment
Judicial Department
Madras.

G.O. 3069. 12. 12. 94 mis

H.M.

Mr. Sidney's fee

For notes

Mr. Fullman's explanation
Called for on 20. 7. 12 Dec.
1894 No. 3069 just.
S. Jan.

11/9/1

Dated

January 25

Read 4

Byd 7

No. 1687

Enclosure 2

Subject

Pleader's fees

Mr. Sidney

Explaining why the Head Master
may have adopted the unusual
course of engaging counsel for the
defence in the robbery case, &
Submitting copy of judgment
containing full particulars
of the case.



I really can't see why Mr. Fullman
should pay.
With reference to the para
2 of Mr. Fullman's letter,
especially the part marked,
I can't see anything so
peculiar about the case
as at all to warrant the
course he took & remark
that he should have sifted the
case himself, as it is the
business of magistrates to do.

MS

10/1/95

In the Court of the Head District Magistrate of Malacca
Dated at Malacca the 18th day of August 1894.

Complainant
Regina
vs. 1st Royappa. 2nd Kamppan
4th Sonthian alias Chownappa
5th Gnanabai.

Offence: 1st + 2nd for robbery under S. 394 I.P.C.
+ 4th + 5th for receiving stolen property under
S. 411 I.P.C.

Opinion of the Magistrate: - Not guilty

Sentence: Discharged under Section 253 I.P.C.

Judgment

The charge against the first + second accused
is that on the 24th May, they with another, robbed
two coolies of Mr. Mc Leish's Estate, Auckley, Var
of money & that they were carrying, & that in
committing the robbery, they voluntarily caused
hurt to the coolies. The third accused who is
charged with the same offence is not before
the Court. The fourth + fifth accused are
charged with receiving portion of the stolen property
knowing it to have been stolen.

2. The principal evidence against the first
and second accused is that of the two Coolies
who were robbed & who

Story before this Court is as follows. They say that they were sent by their employer with a cheque for Rs 1450 to the Co-operative Bank, & that, after obtaining the money, they left about 3 p.m.

on the 24th May. At a Shola beyond Rayappa's Chuttram on the Dykara bridge road they were waylaid by the first and second accused and a third man of fair complexion. The second accused asked them in Canarese to what estate they belonged and where they were going, and then seized the first witness Lookan and pulled him down. The fair man then beat this witness with a stick (Exhibit A) and rendered him insensible. Meantime the first accused had seized 2nd witness, Kempa, and second accused came up and knocked him senseless with a portion of the stick which had been broken. By the time that the witnesses became conscious, the accused had decamped, having first deprived them of the money they carried, and Lookan of his earrings and some better money that he ^{had} on him.

3. This evidence, if it stood by itself, would be a very convincing description. But it is

rendered entirely untrustworthy, by the previous statements made by the witnesses, especially Lookan in the course of the case.

Before the arrest of the accused, five persons were arrested in June last on suspicion of being concerned in the robbery. They were arrested because they answered to the description given by Lookan, & Kempa of their assailants, & because they were spending money recklessly in an Co-operative arrack shop. These men were placed along with some others and shown to Lookan who identified the Canarese named Thimmurayan & Mariappan. Lookan's deposition on the subject to the magistrate on 13-6-94 was to the following effect: "The man

(Thimmurayan) lifted me up by my legs and threw me down. ... The other man (Mariappan), whom I now point out went to strike Kempa. Then I fell down. I do not know what happened afterwards. Two men, I have pointed out to me on the day in question, were

three men who, are present. It was cloudy
that day, but there was sufficient light.
Kempa does not appear to have made a
deposition to the Magistrate about Thimmaraian
& Maricappan, but he has informed me that
he did identify them as resembling (sic)
the men who had robbed him.

4. Nothing can be more positive than
Lookan's identification. But his statement
proved to be entirely false, as the Police
could not procure a particle of evidence
against the men, and had to ask for their
discharge. It is therefore absolutely impossible
to credit any subsequent identification by
Lookan, however ~~emphatic~~ emphatic he may
be. It is also difficult to trust Kempa who
thought that the men first arrested
resembled the robbers.

5. Another very strong reason for disbelieving
the witnesses is that the first two accused
in the present case are Tamil Pallars
resident in Puliacolum near Coimbatore
whereas those first arrested were Canarese.

to distinguish whether the robbers were Canarese
or Tamils and their action identifying both Canarese
and Tamils on different occasions, goes to show
that they are not sure of their men. Another
point in the evidence of these witnesses is
the noted. Before the Deputy Magistrate they
stated that at the Chola the 2nd accused
addressed them in Tamil, while before
me they say he spoke Canarese. The
object of this change is apparently to justify
to some extent their former identification
of Canarese coolies, but it only serves to
still further weaken the case against the
first and the 2nd accused, who so far as I
have been able to ascertain, speak only
Tamil.

6. There is other evidence intended to connect the
first and second accused with the crime charged,
but it does not strengthen that already commenced
on, as it does not bear upon any of the important
facts in the case. It is to the following effect.

J. Rogers a bandman in the Milgini Volunteer
Rifles says that he saw the first accused

May. Cross examination showed the evidence of this witness to be most suspicious & untrustworthy and I don't believe him.

Then other witnesses have been summoned to speak to the expenditure of money by the two accused since the date of robbery, to a greater amount than they could have lawfully come by. From their evidence it appears that 1st accused spent Rs 100 and 2nd accused Rs 150 since 24th May. These amounts are small compared with the proceeds of the robbery. & moreover the evidence shows that the first accused had had command of money prior to this date. 2nd accused says that he lately inherited some money from his father, which may be true. On the whole I consider this evidence to be most unsatisfactory and decline to attach any importance to it.

7. The Charge against the 4th & 5th accused is that they received portion of the property stolen. To establish a charge of receiving, it is absolutely essential that the property found in the house of the receiver should be identifiable as that stolen or as the proceeds thereof. The purses stolen in the case are not identifiable as are various

accused consequently fails. It may be noted that only Rs 56-12-0 was found in the house of the 4th accused.

8. I accordingly discharge the 4th & 5th accused, and I also direct that the 1st & 2nd accused be discharged, as I consider that the evidence against them is too untrustworthy to frame a charge upon.

9. The Stick (Exhibit A) will be returned to the Police at their request. The other property seized in the case will be returned to the persons from whose possession it was taken.

18-1-84 }
(The accused) }
(Signed) H. W. Gillman
Mag. W.D. Kotto Nayle

(True copy)

H. W. Gillman
Mag. Kotto Nayle

Rs
31-12-84

N^o 1687

Nilgiri Head Asst Magistrate's Office

Coimbatore 21st December 94.

From

H. W. Gillman Esq

as. Head Asst Magistrate

Nilgiris

To

The District Magistrate

Nilgiris

Sir,

I have the honor to reply to your endorsement on Government order N^o 30th Judicial dated 12th Instant, calling on me to explain why I adopted the unusual course of asking Mr Sidney to defend the accused in C. C. N^o 30 of 94 on my file, and to show cause why I should not be required to pay Mr. Sidney's fees.

2. I forward the records in the case for your perusal. The case against the accused rested chiefly on the evidence of two Canarese coolies, named Sooban and Kempam, and it was very necessary, in the interests of justice, that the evidence of these witnesses should be sifted in the most thorough manner. The accused were poor and ignorant peons of Coimbatore District, who could not assist the Court in weighing the evidence against them and were too poor to employ a

3. For this reason, and as the charge was a very grave one, that of highway robbery, I wrote to Mr. Sidney and asked him if he would defend the accused, informing him at the same time that I could not guarantee him any fees. Mr. Sidney willingly undertook the defence, without much hope of remuneration. When he sent in his bill, I said I would forward it for orders but that I could not promise him a favorable reply.

4. Under these circumstances I submit that I cannot be made responsible for Mr. Sidney's fees, & that the Government is perfectly free to refuse to sanction the same, if it considers that his assistance was uncalled for.

I have the honor to be

Sir
Your most obedient servant
(Signed) H. W. Gillman
as H. A. Magistrate

(True copy)

H. W. Gillman
Head Asst Magistrate
in charge
of the District Magistrate's Office

Reg. no. N^o 1082

32
Nilgiri District Magistrate's Office
Coimbatore 2nd January 80

From

H. W. Gillman Esquire
Head Assistant Magistrate
in charge of the District Magistrate's
Office, Nilgiris.

To

The Chief Secretary to Government
Judicial Department
Madras.

Sir.

In reply to para 1 of Government order dated 12th Instant N^o 3069, Judicial, I have the honor to submit a copy of the Head Assistant Magistrate's letter N^o 1687 dated 21-12-1894 furnishing explanation as to why he adopted the unusual course of engaging counsel for the defence in a robbery case. In the circumstances detailed by the Head Assistant Magistrate it is open to

2. With reference to para 2 of the Government order, a copy of the Head Assistant Magistrate's judgment in the case containing full particulars is submitted for perusal.

I have the honor to be,
Sir
Your most obedient servant

H. W. Gillman
Head Assistant Magistrate
in charge.

hs
30-12-94

Judicial DEPARTMENT.

[5]
200-20-0-94.

Papers to be read in Proceedings:—

Again G.O., dated

18 , No.

Again G.O., dated

12 December 1894, No. 3069 JndL

Current No.

of 18 , dated

from

Current No. 32 of 1895, dated 2 January from the Dist. Magistrate, Nilgiris

Order 16 January 1895 No. 7

The Court is not prepared to sanction the payment of the fees claimed by Mr. Sidney

2. Mr. Gillman should be informed that in the opinion of the Court the case was not of such an exceptional nature as to justify the course taken by him, so that it was his duty as a Magistrate thoroughly to sift the evidence of the witnesses for the prosecution

(from orders)

11 Jan. 1895 14/11

The Dist. Magistrate, Nilgiris

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18 JAN 95

Copied 17/11

M.S.

Mr. Sidney fees

C.S. (from orders)

When given for copying _____
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When examined _____
When signed _____ } 189.

READ AGAIN G.O., No. _____ DATED _____
189 ; .

CURRENT No. _____

ENCLOSURES TO C. No. _____

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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

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