

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 998

Dated 13<sup>th</sup> May 1895

INDEXED.

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[Despatch Abstract.]

PETITION FROM CONVICTS.

Rejecting under Paragraph IV of C. Petition rules, petition from Subbana Gounden praying for a remission of the sentence passed on his brothers ~~Armuga~~ <sup>K</sup>Armuga Gounden and Shunmuga Gounden in Coimbatore Sessions Case No. 7 1895, with the remark that orders have already been passed on a petition received from the convicts themselves.

# BACK PAPERS.

| G.O. | No. | Department. | Date.   | G.O. | No. | Department. | Date. |
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|      | 849 |             | 24/4/95 |      |     |             |       |

# FURTHER PAPERS.

| G.O. | No.  | Department. | Date. | G.O. | No. | Department. | Date. |
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|      | 4485 |             | 95    |      |     |             |       |

To

His Excellency the Right Honorable

The Governor in Council,

Fort St. George,

Madras.

*The humble petition of ARUMUGA GOUNDAN and SHUNMUGA GOUNDAN accused in Sessions Case No. 7 of 1895, on the File of the Sessions Court of Coimbatore, now incarcerated in the Central Jail, at Coimbatore, under Section 401 of the Code of Criminal Procedure. (by Sub-bana Goundan Petitioner's brother).*

SHEWETH,

1. That your Petitioners were tried for the murder of one Appaji Gounden by the Sessions Judge of Coimbatore and sentenced to death by such Judge (as will appear from the copy of the judgment herewith submitted.)

2. That on a reference to the High Court of Madras for confirmation of such sentence the High Court commuted the sentence to one of transportation for life (as will appear from its judgment herewith submitted.)

3. That your Petitioners respectfully solicit a perusal of the judgements in the case which set out in detail the essential facts in the case and render a recapitulation of such facts in this petition unnecessary.

4. That the Petitioners submit that the offence of which they have been convicted has not been satisfactorily established by reliable evidence and there are circumstances and features in the case which, when properly considered, tend to detract considerably from the apparent force of the prosecution evidence.

5. No immediate motive for the crime is alleged or proved and no provocation immediately leading up to the commission of the offence is asserted. The evidence of the existence of enmity between the Petitioners and deceased (spoken to by 2nd, 5th, 7th and 8th prosecution witnesses) is of a general, vague and indefinite character, 2nd prosecution witness speaks to quarrels about "some boundary dispute" and complaints and counter-complaints (not proved by documentary evidence) with regard to which he did not allude in his evidence before the Sub-Magistrate. 5th prosecution witness (whose evidence as regards his knowledge of the fact is discrepant) says the enmity was due "to some dispute about land" the details of which he was not acquainted with. 7th prosecution witness says the enmity "was on account of a boundary dispute about fields," and the 8th

prosecution witness says they were at enmity "on account of land and a boundary dispute" and gives details of the complaints and counter-complaints, which, however, (it is important to notice) occurred two or three months before the crime and were amicably settled.

6. The only direct evidence in the case is that of the 1st and 2nd prosecution witnesses. The 1st (a servant of deceased and so an interested witness) gives details of the beating which cannot be reconciled with the Medical evidence in the case, and the wounds found on the deceased, and is otherwise discredited. The evidence of 2nd witness (whose sympathies were strongly on the side of the prosecution, he having gone to the length of engaging 2 Vakils to conduct the prosecution) who deposes to have seen the beating is obviously false, for he admits he could not have seen what took place from where he was owing to the surrounding Cholum which interrupted the view, and his story of climbing a tree and witnessing the occurrence from there is clearly an after thought having been made for the first time before the Police. His evidence is further discounted by many inconsistent statements and variations. The evidence of the 3rd (an interested witness) 4th and 5th prosecution witnesses does not help the prosecution to the extent of affording corroborative evidence of the charge against Petitioners.

7. The evidence of the 7th prosecution witness and his conduct in the case is entirely unsatisfactory. He alleges that he wrote his first report (Exhibit A.) and forwarded it at once immediately on being informed of the occurrence. This report, however, did not reach the Police (3 miles away) till 2 p.m. and the Magistrate (10 miles away) till 6 20 p.m. His second report (Exhibit B) he did not send till 6 a.m. the day after the occurrence. No explanation is offered for these inordinate delays which in a great measure detract from the value of these documents as corroborative evidence of the fact that the occurrence was at once reported to him and the Petitioners implicated in the crime immediately after the occurrence.

8. The Medical evidence (13th prosecution witness) makes it clear that the deceased could not have met his death in the way described by the prosecution 1st and 2nd witnesses. Had deceased been struck with a crowbar in the way described a fracture of the skull would have been the result obviously, and this witness makes the important admission that contusions on the right side of the head (which produced the fatal result) could have been caused by a fall from a height.

9. It is clear from the prosecution evidence (if even entirely credited) that the death of the deceased was not brought about by any premeditated concerted action on the part of the Petitioners. According to the evidence of 1st prosecution witness the Petitioners came to the scene from different directions, and it will appear (and there is nothing proved to the contrary) that it was a mere coincidence that they arrived there about the same time. It is further stated by this witness that the 1st accused came with only a stick (which he did not use) and that the 2nd accused had nothing in his hand. It is clear from this that the accused could not have come there with the object of beating much less of murdering deceased,

and even if it is believed that the deceased met his death at the hands of Petitioners by a blow from the crowbar, the circumstances go to point to the conclusion that in the heat and excitement of a quarrel the crowbar (which unfortunately happened to be handy) was used with fatal effect.

10. Your Petitioners respectfully contend that if the above facts and circumstances are carefully and impartially weighed it will be apparent that the Petitioners ought not to have been convicted of culpable homicide amounting to murder and would beg to refer your Excellency in Council to the latter part of the judgment of the High Court from which it would appear that the learned judges were inclined to the opinion that "the prisoners did not go to the spot armed and it may probably be there was no deliberate intention to cause death." If this was so they ought not to have been convicted of the graver charge and the sentence inflicted is excessively severe.

11. The second Petitioner would further respectfully submit that a distinction should have been drawn between the measure of his guilt and that of his Co-Petitioner. He did not go to the place armed nor was his the hand that inflicted the fatal blow. To hold him responsible for the act of the 1st accused and equally guilty with him and inflict on him the same sentence is contrary to the plain interpretation of the law which clearly recognises and provides for degrees of guilt.

For the above reasons Petitioners pray that your Excellency in Council will either remit the whole or part of the punishment to which they have been sentenced or commute it to one of a less severe kind and your Petitioners will ever pray, &c.

*Yours faithfully*

P.S. The Petitioner (Subbana Gounder, Son of Ravutha Gounder of Vararayapuram, Coimbatore Taluk) understands that the Accused have directly petitioned Government through the Inspector General of Prisons on the 25<sup>th</sup> March 1895 and begs, as a supplement to their Petition, to submit this with the detailed grounds on which their application is based.

Coimbatore

6<sup>th</sup> April 1895

*Yours faithfully*

CURRENT 1791

From

Arumunga Goundan  
Shununga Goundan  
Accused in S.C. 7/4/95  
Committee S. 10/4/95

Date 6/4/95  
Recd 8/4/95  
Recd 9/4/95

Encl 2

Subject

Regd remission of  
redemption of prisoners

For order  
Please see the notes & orders  
in S.O. of 26 April 95. No 849.  
This is a petition from one  
Subbana Goundan, the brother

of the convicts whose cases  
were disposed of in the above  
orders, praying for the miti-  
gation of sentence passed  
upon them. The petition may  
perhaps be requested under  
para IV of the rules (C),  
with the remark that Govt. has  
already passed orders on the petition  
received from the convicts themselves.

8/5/95 11/5/95

X Govt. will receive petitions from  
prisoners only 1/6.

Order 13 May 1895, No 998.  
Para IV of C.R. Rules  
2. Orders have already been  
passed on a petition received from  
the convicts themselves.  
Despatched 9/5/95  
11/5/95

Then given for copying  
Then corrected  
Then examined  
Then signed

189

READ 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.

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

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A = Copy in full.  
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