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DATED 14—11—96

[Despatch Abstract.]

South Canara Sessions Cases No. 15 of 1896

Passing orders regarding the proceedings of Messrs Walsh & Scott and Police Inspector Mr Boyer in connection with ——.

BACK PAPERS.

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2437	S 26-11-95		120 S 7-6-95				
1383	R S 14-8-96		883 S 29-4-95				
4	R S 6-1-96		861 S 26-4-95				
2076	S 7-10-95		672 S 1-4-95				
2022	S 30-9-95		588 S 14-3-95				
1973	S 20-9-95		291 S 11-2-95				
1880	S 7-9-95		2369-70 S 28-9-95				
1742	S 20-8-95						
1345	S 24-6-95						
1282	S 17-6-95						

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Con 2 of 97							
Con 5 of 97							
Con 1289 of 97 (Judl Boyer)							
C no 3645 of 1897			C in 97 of 97				
Con of 98							
23-8-97							

Government {1896} of Madras.

JUDICIAL.

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Read. *Enclosures*

1896.

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G.O., No. 1806, 14th November 1896.

NOVEMBER.

South Canara Sessions Case No. 15 of 1895.

Passing orders regarding the proceedings of Messrs. Welsh and Scott and Police Inspector Mr. Boyer in connection with —.

CONFIDENTIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

Read—again the following paper:—

G.O., Mis. No. 2437, Judicial, dated 26th November 1895.

Read—the following paper:—

From D. W. G. COWIE, Esq., Acting Registrar, High Court, Appellate Side, to the Chief Secretary to Government, dated Madras, 11th November 1895, No. 2297, Judicial.

I am directed to forward, for the consideration of Government, a copy of the decision of the Sessions Court of South Canara in sessions case No. 15 of 1895, together with this court's order directing a retrial of the accused persons. Copies of the orders of this court, dated 5th September and of other proceedings as well as of the District Magistrate's explanation and proceedings in the transfer case, are also forwarded.

2. As the accused have to be retried, the High Court does not offer any remarks upon the merits of the case; but whether the charge be eventually sustained or not the court thinks it right to draw the attention of His Excellency the Governor in Council to the conduct of the local officers concerned.

Enclosures.

IN THE COURT OF SESSIONS, SOUTH CANARA.

Sessions Case No. 15 of 1895.

Present:

W. C. Holmes, Esq.

Queen-Empress.

v.

(1) *Francis D'Mello*, (2) *Mahomed Usman*, (3) *Paul Machado* and (4) *Linga Bhatta*.

(Committed by Mr. A. Devappa Punja, Stationary Magistrate, Udipi.)

Charge.—Against first, second and third.—Wrongful confinement to constrain a person to cause restoration of stolen property, section 348, I.P.C., and grievous hurt to constrain a person to restore stolen property, section 331, I.P.C.

Against fourth.—Abetment of the above offence, sections 109, 348 and 331, I.P.C.

Charges added in this Court.

First added charge—Against first accused.—Hurt to constrain a person to restore stolen articles, section 330, I.P.C.

Second added charge—Against first, second and third accused.—Hurt to constrain a person to restore stolen articles, section 330, I.P.C.

Third added charge—Against all the accused.—Grievous hurt to constrain a person to restore stolen articles, section 331, I.P.C.

Fourth added charge—Against first and second accused.—Wrongful confinement of a person to constrain the person to restore stolen articles, section 348, I.P.C.

Against third accused.—Wrongful confinement of a person to constrain the person to restore stolen articles, section 348, I.P.C.

Against fourth accused.—Wrongful confinement of a person to constrain the person to restore stolen articles, section 348, I.P.C.

Assessors.—Messrs. (1) Bhardwaja Shiva Rao (Saraswati Brahman) and (2) Martin Souza (Roman Catholic Christian).

Opinion of the Assessors.—First assessor found the first and second accused guilty of wrongful confinement to constrain a person to restore stolen articles, section 348, I.P.C., and found the accused not guilty on all other charges.

Second assessor found all the accused not guilty on all the charges.

Finding of the Judge.—First and second accused guilty of wrongful confinement under section 342, I.P.C. All the accused acquitted of all other charges.

Sentence or order.—First and second accused each sentenced to three months' simple imprisonment; third and fourth accused acquitted and set at liberty.

Judgment.—The first three accused have been committed to this court charged under section 348, I.P.C., with having wrongfully confined a man named Shankara Bhatta from the evening of the 26th February last till about the midnight of the 27th February at Tallur village for the purpose of constraining him to restore certain property. They have also been committed, charged under section 331, I.P.C., with having committed grievous hurt to Shankara Bhatta during the night of the 27th February for the same purpose. The fourth accused was committed on charges of having abetted the above offence of the first, second and third accused.

2. The charges on which the accused were committed were not properly framed and did not comply with the requirements of section 222 and section 223 of the Criminal Procedure Code. The charge should, as required by section 222, state such particulars of the time and place of the alleged offence as are reasonably sufficient to give the accused notice of the matter with which he is charged.

The first charge, as framed by the magistrate, mentions the village in which Shankara Bhatta lived as the place where he was wrongfully confined. No doubt a man might be wrongfully confined within the limits of his village, but that is not the allegation, I believe, in this case. The charge should have stated what particular place in the village it was in which it was alleged Shankara Bhatta was wrongfully confined, or, if it were alleged that he had been confined in more places than one, the charge should have mentioned all those places.

The second charge should have stated more definitely than "on the night of the 27th February," the time at which it was alleged the grievous hurt was caused. The place where it is alleged the grievous hurt was caused is entirely omitted from the charge. This is directly opposed to the provisions of section 222 of the Criminal Procedure Code. It is alleged that Shankara Bhatta was beaten three times at three separate places on the night of the 27th, and it cannot be made out from the magistrate's charge to which alleged beating the charge refers.

These are not merely idle criticisms. After the trial in this case had proceeded for nearly three days, the court was unaware what the exact offences were that the accused were being tried for, except one alleged offence for which the court had framed a specific charge itself. The court did not know whether the offences the court *thought* the prosecution was probably trying to prove were the offences which the prosecution *thought* it was trying to make out, nor indeed whether the prosecution had any definite ideas on the matter at all.

The Code requires (section 210) that the charge should be read and explained to the accused and that a copy of the charge should, if required by the accused, be given to the accused free of cost. This shows the object of the charge, namely, that the accused should clearly know what the exact offence is that he is to be tried for. If the charge be not framed with sufficient distinctness, the object of this provision of the Code is defeated. I should not say so much about this were it not that I think in cases where there are private prosecutions, magistrates should be particularly cautious to frame charges correctly. It is extremely unfair to accused persons to be sent to stand their trial before the court of sessions on vague charges and on vague evidence, and when prosecutions are privately conducted—from some cases that have come to my notice—it seems to me that in such cases evidence of a vague and intangible nature is purposely left before the court and that the object of the prosecution is not, as it always should be, that the truth should be ascertained by true evidence, but that somehow or other in the confusion of vague evidence a conviction might be obtained. Magistrates should be on their guard in such cases to prevent confusion and uncertainty. I personally think private prosecutions are, as a rule, objectionable. In this case the police reported the charges to be false and the Head Assistant Magistrate ordered a magisterial inquiry. I think when a magisterial inquiry was considered necessary, it should have been conducted either by a responsible officer of Government or by a vakil who had the confidence of Government.

Besides, when the charges are not properly prepared, there is great waste of time in the Sessions Court. The Public Prosecutor is in doubt what the charges are and cannot properly

open the case, and the case is left for considerable time in a state of confusion until the Judge has gone sufficiently into the details of the evidence to be in a position to frame new charges. Thus the trial, in place of being a trial in the proper sense of the word, has to take to a greater or less extent the form of a preliminary inquiry as well.

3. In the present case a number of new charges had to be framed and added by this court. The court refused to amend the first charge sent by the magistrate though it would appear to be unsustainable, because to amend it as was proposed would have been equivalent to the Public Prosecutor withdrawing from a part of the case as sent up by the magistrate, and as in a recent case in which the Public Prosecutor abandoned the prosecution Government appealed, the court would not allow the withdrawal of any part of the case.

This court refused to add a charge of having caused hurt to Shankara Bhatta's father, because it did not appear that there was either a complaint about that alleged offence or a preliminary inquiry.

This court added a charge against the first accused (for reasons given on page 12 of notes) under section 330, I.P.C., of having caused hurt to Shankara Bhatta for the purpose of compelling the restoration of property by kicking him on the evening of Wednesday, the 27th February, at about 9 o'clock, in the yard of the fourth accused. This charge will be referred to as the first added charge.

This court also added another charge (the second added charge) against the first three accused that they, at about 9 or 10 P.M., near the house of one Subbi, in Tallur village, voluntarily caused hurt to Shankara Bhatta by beating him for the like purpose, section 330, I.P.C.

The third added charge was against all the accused, and was that they at about 10 or 11 P.M. on the night of the 27th February near the Asvatakatta in Tallur village voluntarily caused grievous hurt to Shankara Bhatta by beating or kicking him in a way they knew to be likely to endanger his life for the same purpose (section 331, I.P.C.).

The fourth added charge was for wrongful confinement for the like purpose, section 348, I.P.C. It contained three counts. The first charged the first and second accused with having wrongfully confined Shankara Bhatta at certain places specified in the charge during the night of the 26th and up to about midnight on the 27th February. The second count charged the fourth accused with having joined the first and second accused in the wrongful confinement of Shankara Bhatta from about 2 A.M. on the morning of the 27th February. The third count charged the third accused with having joined the first and second accused in the wrongful confinement from the forenoon of the 27th February.

4. The first accused is the head constable of Kundapur police station. The second and third accused are two constables attached to the station. On the afternoon of the 26th February last, the first and second accused were engaged at Tallur in the investigation of a theft that was alleged to have taken place in the house of Shanti Murthappa, a schoolmaster living at Tallur, a village three miles from Kundapur. The third accused, as it now appears, joined them on the morning of the 27th February. The fourth accused Linga Bhatta's house is next Shanti Murthappa's house, and he interested himself in the investigation into the alleged theft at Shanti Murthappa's. It seems that a woman named Putti had shortly before the 26th February been in occupation of Shanti Murthappa's house, and, owing to some alleged intimacy between Shankara Bhatta and Putti's daughter-in-law, it appears that Shankara Bhatta was suspected of having been concerned in the theft. It is certain that Shankara Bhatta was sent for and questioned about the alleged theft.

5. The prosecution case as presented to this court is that Shankara Bhatta was kept in wrongful confinement during the night of the 26th February and till about midnight on the 27th February, and that hurt was caused to him at two places in Tallur and grievous hurt at a third place close to Tallur and that all this was done with the object of constraining him to restore the stolen property.

6. It is certain that, early in the morning of the 28th February, a cry was raised that Shankara Bhatta had fallen into a well. It is also certain that Shankara Bhatta's body was taken from a well in Shanti Murthappa's yard by the ninth prosecution witness, Kusa Billiya, who had been sent for for the purpose and who got down into the well by means of a bamboo. It is also certain that Shankara Bhatta's father, Ramakrishna Bhatta (first prosecution witness), went to the potail and made a complaint to him about his son having been beaten and the potail came in the morning and an inquest was held and a report made that Shankara leapt into the well and committed suicide, but that as the relations of the deceased questioned this decision, the body was sent to the Kundapur hospital for examination.

7. The second prosecution witness, A. S. Vittal Rao, apothecary in charge of the Kundapur hospital, held the *post mortem* examination of Shankara Bhatta's body. The examination began at about 5-20 P.M. on the 28th February. It was partly conducted by lamp-light.

The following external injuries were found on the body :—

(1) A group of small bruises on the right upper arm near the shoulder joint, the diameter of the whole group being about 1 inch.

(2) A similar group of bruises about 1½ inches in diameter a little lower down the right arm.

(3) A similar group of small bruises on the right scapular region 1½ inches in diameter.

(4) A similar group of small bruises on the lower part of the left side of the back or on the upper part of the left leg. The group was 2 inches in diameter.

The apothecary in reply to questions put by the court said that these injuries must have been caused by some substance having a number of small blunt protuberances.

There were also on the body two small bruises ¼ inch long and very narrow on the arm on the inside of the left elbow, a bruise 2 inches long and ¼ broad on the front of the left leg below the knee, and two other small bruises near the right ankle.

There was also a bruise below the left breast 1 inch long and ½ broad, and a bruise 1 inch long by ⅓ broad below the right breast, and 5 smaller bruises ½ inch long by ¼ broad and ¼ inch distant from one another above the right breast.

Internally it was found, according to the witness, that there was an oblique rupture about ⅓ inch long on the left pulmonary artery—about 2 inches from the bifurcation of the pulmonary arteries. The rupture was below the inter-space between the cartilages of the second and third left ribs.

Both lungs were found congested and the membranes of the brain were also congested.

Everything else was normal.

8. The rupture of the left pulmonary artery might possibly, in the witness's opinion, have been the result of the blow that caused the bruise below the left breast; but as that bruise was between the sixth and seventh ribs and so 3 or 4 inches from the alleged rupture, it cannot be said to be at all probable that that blow caused the rupture.

The congestion of the lungs could not possibly be a result of the rupture of the pulmonary artery. How in this case there can have been *both* congestion of the lungs *and* rupture of the left pulmonary artery has not been satisfactorily explained by the prosecution. The defence theory is that there was no rupture of the artery, but that the artery was cut in the *post mortem* examination, and it is argued in support of the theory that an injury to the artery that was oblique (as the injury was in Shankara Bhatta's case) and not either across or along the line of the artery was unlikely to have been caused by a blow or by external violence. In support of the theory it is further argued that the apothecary did not dissect the body himself, but allowed the hospital sweeper to do so, and in support of the argument it is pointed out that the Pariahs who brought the body did not bury it and this was, it is argued, because the body was touched by a person of the sweeper class. As to this theory of the defence it is not necessary for me to say more for, as will presently appear, it will not be necessary for me, for the purposes of this case, to come to any decision about the cause of the injury to the artery.

The third added charge.

9. The most serious charge in the case is the third added charge.

The prosecution theory is that the four accused took Shankara Bhatta to a hill close to Tallur and there near an Asvatakatta (a seat under a Peepul tree) caused grievous hurt to Shankara Bhatta, that they carried him back to Tallur, and, after keeping the body for a short time resting against a pyal at the entrance to Shanti Murthappa's yard, they threw the body into the well in the yard and then raised a cry that Shankara Bhatta had fallen into the well.

This charge, I find, is not supported by any reliable evidence.

Subbi, an old woman aged 60 with bad eyesight, deposes that, as she was sitting in the verandah of her house one night, she heard a cry "Ayyayyo" in front of her house, that she knew it was Shankara Bhatta's cry and that he was taken by some persons to the hill and she heard Shankara Bhatta there cry out four or five times "Ayyayyo," then a loud cry and after that nothing. After that she states she saw some three or four men carrying him by the back of her house. She says she left her house and stood near a palm tree and saw this.

This woman's evidence did not carry the slightest weight with it. The woman is of the prostitute class and is a servant of the temple of which Ramakrishna Bhatta is a moktessor and she lives on temple land, so that practically no weight whatever can be given to her evidence simply because she gave it. If the prosecution wished to have any weight given to her evidence, the prosecution should have made her tell her story in the minutest detail. In place of that her story was vague and indefinite. Her story is in itself very improbable. It is much more likely that if any one was being beaten near her house, she would have gone inside and shut the door than have paid any attention to the beating. It is highly improbable that she would have gone outside to watch what was going on when the men were, as is alleged, returning; and she said nothing to the police inspector, who investigated the case, about her having done so.

The other witness, whose evidence bears directly on this part of the charge, is Timmanna. He is a nephew of the complainant Ramakrishna Bhatta Timmanna says he was sleeping on the pyal of a temple close to his house, that he heard Shankara Bhatta cry out and that he went first to a tamarind tree and then to a lane and from the lane, he says, he saw the beating that is the subject of the charge now under discussion.

The Magistrate of Kundapur went to Tallur on the 1st March and made inquiries as to Shankara Bhatta's death. The witness says he told the magistrate what he saw, but that the magistrate did not record his statement. It is impossible to suppose that that can be true.

At any rate the prosecution has not called the magistrate to corroborate the witness. The police inspector deposed that the witness showed him the place where he said he stood and that it would have been impossible to have seen from there a beating going on at the Asvatakatta. It was argued for the prosecution that the police inspector was unreliable, but he seemed to me to give his evidence in a perfectly straightforward and satisfactory way. Timmanna told the inspector that after he heard Shankara Bhatta's cry he wakened his mother. Before this court he denied it. Timmanna also told the inspector that he took a stick with him. Before this court he denied it.

In my opinion Timmanna Bhatta's evidence cannot be credited. It is probably totally false. The charge really rests on the evidence of Subbi and of Timmanna Bhatta, and as their evidence cannot be believed the charge must fail. There is, however, some other evidence bearing on the charge to which I shall now refer.

There seems to be no doubt that the fifth prosecution witness Rama Bhatta was sent for on the night of the 27th February. He took with him to Linga Bhatta's house five rings that Shankara Bhatta had given him, but as soon as Shanti Murthappa said they were not his rings, the rings were returned to him. This witness told the inspector that as soon as his rings were returned he was told to go, and that he went home. This was very likely; but in this court he deposed he was told to stop at Linga Bhatta's and that he sat on the chavadi of Linga Bhatta's house while Shankara Bhatta was taken away and that he heard cries and after some time Linga Bhatta, fourth accused, came back and he was told to go and he left. I think it is much more probable that the story he told the inspector was the truth, for it does not appear that the police could have had any object in keeping him at Linga Bhatta's. On the contrary, if the police were going to beat Shankara Bhatta, they would have had every object in sending the witness away.

The rest of the evidence bearing on this charge is also, I think, in all probability untrue. Devadiga Venkata, the third prosecution witness, attended the first accused as a servant when he was at Tallur. He deposed that some one of the three policemen told him to sit on the pyal in Shanti Murthappa's yard, that he did so, that the three policemen took away Shankara Bhatta towards the Asvatakatta, that he heard cries of "Ayyayyo" and that afterwards the police carried Shankara Bhatta back and put him sitting leaning against the pyal, and he was told to go. Before the magistrate he deposed he saw from the road Shankara Bhatta's body thrown into the well, but before this court he denied it, that is to say, he said nothing about it, and said he did not know where Shankara Bhatta was when he left.

Devadiga Venkata's evidence, so far as it has any bearing on this charge, is probably totally false. There is no reason why he should have been made to sit on the pyal, and it is the last thing the police would have been likely to have ordered him or to have allowed him to do. If they were going to beat Shankara Bhatta, the witness would have been sent home. He was examined by Police Inspector Boyer, but told him nothing that he now deposes to in support of the charge of grievous hurt.

Another witness, Venkatesha Prabhu, also deposed that he was in Linga Bhatta's when Shankara Bhatta was taken away and he heard cries and was afterwards told by Linga Bhatta to go and he went. He did not tell anything about this to Inspector Boyer. He told Inspector Boyer that after Putti was brought to Linga Bhatta's, Shankara Bhatta prostrated himself at Putti's feet and asked her to return the jewels and that when the police were questioning Shankara Bhatta, he ran away and threw himself into the well. This story is totally different from what he told this court. He told this court that he did not see Putti at Linga Bhatta's that night at all.

Ramakrishna Bhatta, the father of Shankara Bhatta, in this court deposed that he was asleep on the pyal of Subraya Prabhu's house near Linga Bhatta's, and that he heard Linga Bhatta cry out "Shankara Bhatta died having fallen into a well" and that as he was going to the place, some one cried out "Who is that?" and that he got afraid and went home, told his brother to go to Kundapur and he went to the potail's. There is no doubt that the witness has suppressed almost all that he knew. He told a different story on this point to the Kundapur Magistrate on the 1st March and afterwards to the inspector.

10. It would generally be enough to say that the evidence in support of the charge is unreliable, but in this case I must say a few words about the final part of the theory of the prosecution, namely, that the accused threw Shankara Bhatta's body into the well with the object of representing that he committed suicide. Before this court no witness gave any evidence in support of this theory; but before the magistrate, as I have said, the third prosecution witness, Devadiga Venkata, deposed that he saw this being done. Before this court he denied it.

On the 1st March, Linga Bhatta, the fourth accused, made a sworn statement before the Kundapur Magistrate who went to Tallur to hold an inquiry about Shankara Bhatta's death, and the statement has been filed by the prosecution and marked as exhibit D. He said that after Rama Bhatta left with the rings, Shankara Bhatta went towards the pyal of Shanti Murthappa's house and a moment after the people of the house cried out that something had fallen into the well, and a torch was got and a sound was heard in the water of the well and after that Kusa Billiya descended into the well. Kusa Billiya was examined as the ninth witness before this court. He lives some little distance from Shanti Murthappa's house and there is no doubt that he was

called that night and that he got into the well and took out Shankara Bhatta's body. There is also no doubt that attempts according to native ideas were made to restore animation and that with that object the body was covered with rice. The defence did not call witnesses because probably the defence wanted to have the last of the arguments, so that there is hardly any evidence before this court in support of the theory of suicide. I think I have stated all the evidence there is. The medical evidence is not in my opinion in conflict with the theory. Even if the pulmonary artery were ruptured, the rupture may have been caused by the force of the blow with which the water was struck. The blow would be of very considerable violence as the well was rather deep—perhaps 15 feet or 16 feet to the level of the water. There were roughly dressed logs across half the mouth of the well and the diameter of the well was only 6 feet. It was partly cut in laterite rock, and partly built up of laterite stones, and at the bottom of the well there were some loose laterite stones. The depth of the water in the well was up to Kusa Billiya's neck, *i.e.*, less than 5 feet. Under these circumstances, the difficulty is rather to account for there being so few and so trifling injuries on the body. The injuries that there were in several cases—I refer to the groups of smaller bruises—look very much like injuries caused by coming in contact with the uneven surfaces of laterite stones. There is thus on one side the prosecution theory which is not supported by any evidence on which, in my opinion, any reliance can be placed, and on the other side there is the defence theory of suicide which is supported by some evidence and seems, I think, probable.

The second added charge.

11. This charge rests on the same evidence as the third added charge with which I have just dealt. The evidence is, as I have said, in my opinion, totally unreliable.

The first added charge.

12. This charge is that the first accused kicked Shankara Bhatta in the yard of the fourth accused Linga Bhatta's house.

The charge is supported by the evidence of two witnesses who depose they witnessed the assault. These witnesses are Ramakrishna Bhatta and Venkatesha Prabhu.

Ramakrishna Bhatta is the father of Shankara Bhatta, and he deposed he was sitting on a chavadi in Linga Bhatta's yard, that the first accused came to the yard of the house dragging his son and that he kicked him on the left side two or three times, that his son became unconscious and that he interceded and was told to leave, and he left and went to Subraya Prabhu's chavadi.

Venkatesha Prabhu, the fourth prosecution witness, deposed that he was at Linga Bhatta's and had been questioned by the police about the theft, that first accused came dragging Shankara Bhatta and kicked him on the right side, and he fell down unconscious.

The evidence of these two witnesses was in itself very unsatisfactory. The evidence was chiefly remarkable for the vagueness of the account of what they said happened. Even if the evidence stood alone, the only conclusion possible in my opinion would be that it was not reliable.

But the charge is not supported by the medical evidence. It is in conflict with it. There were no marks on Shankara Bhatta's body of his having been dragged along the surface of a yard and there was no mark either on the right side or on the left side of Shankara Bhatta's body that was in even a remote degree probably caused by a kick or kicks.

Besides, nothing was said about this alleged offence in the complaint that was presented to the Kundapur Magistrate on the 28th February. On the 1st March, when the Kundapur Magistrate examined Ramakrishna Bhatta, the story was first told though not in the exact form now deposed to.

If this charge were really true, that is to say, if the complainant had seen his son dragged and kicked so violently that he became unconscious, would the father have remained quietly seated on a neighbouring pyal? Would he not have at once gone off to the potail and complained? From his subsequent conduct in this prosecution, it may be assumed I think, that he would. Moreover, when towards morning after his son's body had been taken from the well he did go to the potail and made a complaint, nothing was said about this charge. What was said, according to the report, was that Kusa Billiya told him his son had been beaten. If Ramakrishna Bhatta had been an eye-witness to his son receiving two or three violent kicks, it may be assumed he would have mentioned it.

The evidence on this charge is in conflict with the evidence of Venkata Subbi and of Timmanna Bhatta, but I do not attach any importance to that as I altogether discredit these witnesses.

Fourth added charge—first count.

13. There is no reason to doubt that the second accused went on the evening or afternoon of the 26th February to Ramakrishna Bhatta's house and brought him and his son Shankara Bhatta to the head constable, the first accused, at Shanti Murthappa's house. There is also, I think, no reason to doubt that the complainant and his son returned for their meals to their house, but went and slept at Linga Bhatta's house on the night of the 26th February. The

incident about Shankara Bhatta and Ramakrishna Bhatta going from there to a neighbouring pyal early in the morning of the 27th, where Shankara Bhatta was questioned by the fourth accused, Linga Bhatta, is also, I think, true. I also consider that from there Shankara Bhatta went to Shanti Murthappa's house and that he sat on the pyal of the house during the day except when (accompanied by the third accused) he went home for meals. I also think that from there he went to Linga Bhatta's house some time during the night of the 26th and 27th February and that he remained there for some time, that is to say, till he (as I think probable) left and committed suicide.

I think the prosecution witnesses have suppressed the truth about the occurrences at Linga Bhatta's that night and have given a totally false account of what happened. After Rama Bhatta had been given back the rings, he, as I think, left. I think it is very likely that the story told to the Kundapur Magistrate that Putti was sent for and examined that night is true. The police that night continued, I think, to hold their investigation. I also think that it cannot be believed that any serious violence was offered to Shankara Bhatta.

Three main questions arise with reference to this charge:—*First*, was Shankara Bhatta from the evening of 26th February to about midnight on the 27th February kept under restraint by first and second accused? *Second*, was the restraint wrongful? And *third*, was it restraint with the object alleged in the charge, that is to say, to compel the restoration of the stolen property?

As to the third question, I think there is no sufficient evidence to support it. There is no evidence that the accused or either of them said to Shankara Bhatta "unless you deliver up the property you will not be allowed to leave." I do not consider that there are any facts proved from which it could be reasonably inferred that, although such words were not actually spoken, their meaning was conveyed to Shankara Bhatta. It is not in the least likely that the police could have had any expectation that in consequence of mere confinement Shankara Bhatta would have given up the property if he had it.

With regard to the first question, I think the evidence shows that Shankara Bhatta was under restraint. On the evening of the 26th the head constable, first accused, told Shankara Bhatta to return. It is likely that at that time Linga Bhatta had gone off to Gangoli to consult an astrologer. It is also likely that the head constable told Shankara Bhatta to return in case he might be wanted in connection with the information Linga Bhatta might get from the astrologer. Shankara Bhatta came back with his bedding and slept on Linga Bhatta's chavadi. The confinement, if any, would have begun on his return to Linga Bhatta's. Shankara Bhatta slept in the chavadi and it would appear that the head constable and second accused slept on the same chavadi—one on each side of him—and that his father was not allowed to sleep on that chavadi. I think it must be held that Shankara Bhatta was then restrained from going wherever he wished. It seems to me impossible to say that he was sleeping voluntarily on the pyal. He had been ordered by the head constable to come. He was not merely requested but ordered, and there is evidence the second accused threatened him. I think it must be held he was from the time he came under restraint. I think that restraint continued till midnight on the 27th February, when Shankara Bhatta threw himself, as I think, into the well. There is satisfactory evidence that Shankara Bhatta was most of the 27th February on the pyal of Shanti Murthappa's house. There is evidence that the second accused forced him to sit there. The evidence that the third accused sat on a pyal near that on which Shankara Bhatta was sitting is also, I think, true, and I think it is also true that when Shankara Bhatta went home for meals the third accused accompanied him. It is also, I think, probable that Shankara Bhatta was not allowed to go for night meals on the 27th February to his house, and that he was taken from the pyal of Shanti Murthappa's house to Linga Bhatta's yard. I do not consider it proved that he was taken to the Asvatakatta at all. I think it probable he was at Linga Bhatta's till he left to commit suicide.

Taking the view of the case most favorable to the accused, namely, that Shankara Bhatta was kept at Linga Bhatta's and other places so that he might be further examined as to the theft in case of necessity, it is a question whether the restraint was wrongful. It does not appear that the head constable had any power to give Shankara Bhatta a *verbal* order to attend at Linga Bhatta's. Under section 161 he could have examined Shankara Bhatta, or under section 160 he could have by a written order required his attendance. The section (160) does not say for what purpose his attendance could be required, but read with the next section it would appear to mean his attendance could be required for the purpose of examining him. The power given by section 160 is far from clear. The word "attendance" implies waiting; but would it be legal at all or for how long would it be legal to keep a person summoned under section 160 waiting? Does it mean till the examination was finished or till he had leave to depart? If the order under section 160 is not obeyed, it does not appear that the police officer who issued it has any legal power to compel the attendance of the person summoned, that is to say, he could not send a constable and bring him under arrest. It would also appear, as it seems to me, that a police officer has no legal power to retain a person whom he has summoned under section 160. I think the retention in this case was wrongful.

Fourth charge—second and third counts.

14. It is argued that there is no evidence against the third and fourth accused in support of these charges.

The evidence against the third accused is that he sat on one pyal and Shankara Bhatta on another in Shanti Murthappa's yard on the 27th and that he followed Shankara Bhatta to his house and back. It was certainly no offence for the third accused *merely to watch* Shankara Bhatta. So far as I see, it must be held that there is no *evidence* he did more.

There is also, I think, no reliable evidence against the fourth accused. It is argued that there was an admission of guilt in exhibit D, the statement fourth accused made to the Kundapur Magistrate on the 1st March; but that is not so. The alleged admission depends on the meaning of a single word which has been translated "took," but the word does not imply that Linga Bhatta compelled Shankara Bhatta to go with him.

15. The result is that the first and second accused are, with reference to section 238, Criminal Procedure Code, convicted under section 342, I.P.C., of having wrongfully confined Shankara Bhatta and that on all other charges they are acquitted.

16. The first and second accused are men of long service and good character, but it is a matter of so much consequence that police officers should not exceed their powers, that for this reason as well as considering the result in this case that followed the powers being exceeded, I sentence the first accused and second accused to three months' simple imprisonment.

17. I should remark that I think the powers of police officers should be so clearly laid down that there could not be any possibility of their being mistaken. In this case the consequences of this not being done have been most deplorable. One man has committed suicide. The four accused and another man had a false charge of deliberate murder brought against them. The four accused have had to undergo a long trial in this court—the greater part of the charges being probably false. And the first two accused, who seem respectable men, and who have had a long service in the police and have each a good character, are each sentenced to a term of imprisonment.

18. The third and fourth accused are set at liberty.

Mangalore,
20th June 1895.

(Signed) W. C. HOLMES,
Sessions Judge.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the 30th October 1895.

Present:

The Hon'ble Sir Arthur J. H. Collins, *Kt.*, Chief Justice, and the Hon'ble Mr. Justice Parker.

(Criminal Appeals Nos. 296 and 308 of 1895.)

Francis D'Mello, appellant in 296 (first prisoner) and *Mahomed Usman*, appellant in 308 (second prisoner).

Appeals against the sentence of the Court of Session of the South Canara division in case No. 15 of the calendar for 1895.

Criminal Revision Case No. 424 *of* 1895 (*taken up No.* 21 *of* 1895).

(1) *Francis D'Mello*, (2) *Mahomed Usman*, (3) *Paul Machado* and (4) *Linga Bhatta*, accused in calendar case No. 15 of 1895 on the file of the Sessions Court of South Canara.

These appeals and this revision case coming on for hearing on Monday, the 21st instant, after the receipt of the report called for in the order of this court, dated 5th September 1895, and counsel not appearing on behalf of the appellant in criminal appeal No. 308 (second accused in criminal revision case No. 424) and the third and fourth accused not appearing in person or by counsel; upon perusing the petitions of appeal and the record of the evidence and proceedings before the Court of Session, and upon hearing the arguments of Mr. H. G. Wedderburn, counsel, and of the Hon'ble Mr. C. Sankaran Nair, vakil for the appellant in criminal appeal No. 296 (first accused in criminal revision case No. 424), and of the Public Prosecutor in support of the conviction, and the cases having stood over for consideration till this day, the court made the following

Order.—The appellants in these two appeals were the head constable and another constable of the Kundapur police station in South Canara and were charged with two others (another police constable Paul Machado and one Linga Bhatta) with offences under sections 348 and 331 of the Penal Code. The two latter were acquitted, but the two former were convicted of wrongful confinement under section 342, I.P.C., and were each sentenced to three months' simple imprisonment. On the appeals coming on for hearing, it appeared to us that the judgment of the Sessions Court was seriously defective and that many irregularities had taken place. We therefore directed notice to issue to all the four accused to show cause why they should not be retried, and the whole case is now before us.

It appears that in February last a theft had occurred in the house of one Shanti Murthappa at Tallur and the police were endeavouring to detect the offender. For some reason which does not appear, suspicion fell upon the deceased Shankara Bhatta, which suspicion appears to have been intensified by the opinion given by an astrologer that he was the thief. That Shankara

Bhatta was detained by the police on the 26th and 27th February is not denied, and the Sessions Judge finds that he was in wrongful confinement up to the time of his death. This occurred about midnight on the 27th of February, the Judge being of opinion that he then committed suicide by throwing himself into a well. What induced Shankara Bhatta to commit suicide the Judge does not explain, and in his judgment he has ignored, and practically refused to give any weight to, the medical evidence; but the medical evidence is at all events conclusive on this point, namely, that drowning was *not* the cause of death. For some reason, which it is impossible for us to understand or appreciate, the Judge at first refused to allow the question to be put, but the description already given by the witness "that the larynx, trachea and bronchi were normal in appearance and that there were no foreign bodies or disease in them" conclusively shows that death was not caused by drowning (see Taylor's Medical Jurisprudence, 3rd Ed., vol. II, p. 3). The presence of a froth in the pharynx, larynx and bronchial tubes are invariable concomitants of death from drowning. The prosecution evidence was to the effect that Shankara Bhatta had been detained and kicked by the accused, or some of them, in order to make him confess, and that when they found they had gone too far and that the man was dying, they had thrown him—quite unconscious, but with life not quite extinct—into the well, and then raised a hue and cry that he had committed suicide in order to conceal the real cause of his death. The medical evidence was that death was caused by rupture of the left pulmonary artery, the result of external violence to the chest, and the apothecary deposed that the body was covered with masses of bruises and that the injuries were not likely to be caused by a single fall. How this evidence can be reconciled with the theory of suicide adopted by the Judge no attempt has been made to explain.

It was apparently argued that there was no rupture of the pulmonary artery, but only a cut and that this cut was made after death in the *post mortem* examination. The Judge stated that it was not necessary for him to come to any decision upon this point. In this view we are quite unable to agree. The point appears to us to be one of great importance. Besides this, the Judge should have considered how the masses of bruises spoken of by the medical officer could be accounted for.

The Sessions Judge has dwelt upon the discrepancies in the story as told by the prosecution witnesses, and appears to have relied chiefly upon the evidence of Inspector Boyer (eleventh witness), but he has entirely omitted to consider how strongly the medical evidence, unless it can be explained away, supports the prosecution story. The father and friends of the deceased appear to be poor and uneducated rustics and they were placed under every possible disadvantage. It is quite clear that the whole influence and efforts of the superior officers of the police were first directed to prevent any magisterial investigation at all and that when this—through the firmness of the Head Assistant Magistrate—was rendered impossible, the next effort was to prevent, at any rate, a local investigation by the authorities on the spot. Notwithstanding that the Head Assistant Magistrate had refused a transfer, the District Magistrate granted one on the *ex parte* statement of the first accused, forwarded through the Superintendent of Police, to the effect that the Kundapur Magistrate was prejudiced against him. The District Magistrate in his order accepts this statement without calling upon the Head Assistant Magistrate or the Sub-Magistrate for any explanation, and he actually did this on the petition of a public servant, who was at the time evading a warrant and absconding from justice, without requiring that the accused should first surrender to answer to the charge.

In connection with the efforts of the police to burke inquiry into the complaint against members of the force, we find it necessary to refer to the conduct and evidence of Inspector Boyer. He arrived on the 1st of March before the Kundapur Magistrate had completed his local inquiry. On the 2nd of March the Magistrate left, leaving the inspector to go on with the inquiry, but the record shows that he gave positive orders that a charge sheet was to be prepared. Those orders were disobeyed, and on the 8th of March the inspector sent a referred charge sheet to another Magistrate. Mr. Slight, the Head Assistant Magistrate, to whom this was sent, very properly insisted that a magisterial inquiry should be held and refused to transfer the case. Then followed the successful application to the District Magistrate which was supported by Inspector Boyer and by the Superintendent of Police.

We turn now to Inspector Boyer's evidence before the committing magistrate and before the Sessions Court, from which we gather that the inspector was living in the same house with the accused D'Mello at the time he was conducting the inquiry against him. He accompanied the accused's vakil to the court of the District Magistrate on the 18th of March to ask for a transfer. He admits that he saw the accused on that same day and spoke to him. He admits also that the accused had been absconding *from the 15th of March* and that a warrant of arrest had come into his hands on the 16th of March, yet he never arrested him on the 18th of March, and, in fact, the accused was at large until April 5th, on which day he seems to have put in a voluntary appearance before the Sub-Magistrate at Udipi, to whose court the case had been transferred. On March 31st (page 40 of the magisterial record) Inspector Boyer writes to the Udipi Magistrate that "he learns from the Superintendent of Police that it is not unlikely that the head constable would voluntarily appear before the court at Udipi to which tribunal the case was transferred. The warrants were sent to Udipi for execution."

From Inspector Boyer's evidence it appears that, instead of executing the warrant, it was sent to the Superintendent of Police for orders on the 16th of March. It is thus clear that it was

held in suspense from March 16th to 31st. From these facts we find it difficult to refrain from drawing the inference that the Superintendent of Police assisted the head constable to evade a local inquiry and at all events passively connived at his absconding after the warrant had been issued for his apprehension.

There is another point as to which Inspector Boyer's evidence calls for notice as showing the spirit in which this case has been treated. In his deposition before the Udipi Magistrate he speaks of the case against the police as "simply a farce." Now even adopting the view most favourable to the defence, Shankara Bhatta was moved to commit suicide after he had been several hours in illegal confinement, there being nothing more tangible against him than the pronouncement of an astrologer, in our opinion such an occurrence is by no means a farce, but an event of very serious import demanding the strictest investigation.

We are fully sensible of the difficulties attending a retrial after so great a lapse of time, but the case is so serious and the Judge has lost sight of so much that was important in the evidence that we feel it our duty to direct that the case be further investigated. We set aside the present convictions and direct that the accused be retried.

The retrial will take place before Mr. Holmes' successor in the office of Sessions Judge of South Canara, and the Sessions Judge will of course be at liberty to add any charge which may seem to him expedient.

(By the Court.)

(Signed) C. G. TODHUNTER,
Dy. Registrar, Appellate Side.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Thursday, the 5th day of September 1895.

Present:

The Hon'ble Sir Arthur J. H. Collins, *Kt.*, Chief Justice, and the Hon'ble Mr. Justice Parker.

(Criminal appeals Nos. 296 and 308 of 1895.)

In criminal appeal No. 296—*Francis D'Mello* (first prisoner), appellant.

In criminal appeal No. 308—*Mahomed Usman* (second prisoner) appellant.

Appeals against the sentence of the Court of Session of the South Canara division in case No. 15 of the calendar for 1895.

These appeals coming on for hearing on Wednesday, the 4th instant: Upon perusing the petitions of appeal and the record of the evidence and proceedings before the Court of Session, and upon hearing the arguments of the Hon'ble Mr. C. Sankaran Nair, vakil for the appellant in criminal appeal No. 296, and of the Public Prosecutor in support of the conviction in both cases and the appellant in criminal appeal No. 308 not appearing in person or by counsel and the case having stood over for consideration till this day, the court made the following

Order.—The appellants in these two cases were charged under several counts with hurt and grievous hurt to one Shankara Bhatta for the purpose of constraining him to restore certain stolen articles, and also with wrongful confinement of the said Shankara Bhatta. The appellants are the head constable of the Kundapur police station and a Mussalman constable attached to that station. They have been convicted by the Sessions Judge of wrongful confinement only under section 342 of the Penal Code and were each sentenced to three months' simple imprisonment. Of the graver charges they were acquitted.

The complaint of Ramakrishna Bhatta, the father of the deceased Shankara Bhatta, was received by the Second-class Magistrate of Kundapur on the 28th of February and referred by him to the police inspector for report. The Second-class Magistrate was on the spot on the evening of the 1st of March before the police inspector had arrived, and he began his inquiries under section 176, Criminal Procedure Code. He took statements from the father of the deceased, the schoolmaster, who is alleged to have lost certain jewels, and from Linga Bhatta (fourth accused) who has been discharged. After his arrival the police inspector appeared on the spot and on the 2nd of March the Magistrate left and ordered the police inspector to complete the inquiry.

On the 4th March the Head Assistant Magistrate ordered the Second-class Magistrate to hold a careful inquiry into the matter and not to leave more than was necessary in the hands of the police inspector. This order was received by the Second-class Magistrate on the 5th of March. On the 6th the father of the deceased, Ramakrishna Bhatta, asked that the inquiry should be withdrawn from the police inspector on the ground that the accusation was made against the police. On the 8th of March the police inspector referred the charge as false. On the 13th March the Head Assistant Magistrate, Mr. Slight, refused to accept this recommendation and very properly ordered a magisterial inquiry. His order states that the first accused, the head

constable, had objected to the inquiry being held before the Kundapur Sub-Magistrate, but the objection was overruled by the Head Assistant Magistrate who ordered the Sub-Magistrate to inquire into the case as a charge of murder.

Warrants were issued for the accused one—three on the 14th March. The first accused, the head constable, then absconded. The police reported on the 16th of March that they could not find him or arrest him. The complainant Ramakrishna Bhatta thereupon requested that the warrant issued for the arrest of the head constable might be entrusted to some one other than a policeman, since no police officer would execute it and he represented that the head constable was concealed in the overseer's house at Kundapur. On the 18th March the Second-class Magistrate resolved to go on with the case against the other two constables. On the 20th March an order was received from the District Magistrate transferring the case to the Udipi Sub-Magistrate. This order had been passed on the 18th and was passed on a petition presented on the 17th by the head constable who was then absconding, but who appeared before the District Magistrate by a vakil Mr. Mascarenhas. The order was passed *ex parte* without calling for any explanation from the Sub-Magistrate and without notice to the complainant. On the 31st March the police inspector wrote from Kundapur to the Udipi Sub-Magistrate that he had forwarded the warrant received on the 16th for execution to the Superintendent of Police for orders and had received it back with an endorsement from the Superintendent of Police that it was not unlikely that the head constable D'Mello would voluntarily appear before the court of Udipi to which the case had been transferred. The Magistrate at Udipi on the 3rd of May committed the case to the sessions on the ground that there was ample evidence of torture against the first and second accused and that the third accused and other police constables had acted under their orders and that the fourth accused, one Linga Bhatta, had abetted the same. He thought that the deceased had drowned himself in the well because the pain of the torture to which he was subjected was unbearable and in order to avoid the liability to being tortured further. The Sessions Judge in acquitting the accused of all the graver charges has wholly ignored the medical evidence, the effect of which is to show that death was certainly not caused by drowning. The body of the deceased Shankara Bhatta appears to have been covered with a mass of bruises, and, as far as the medical evidence goes, the prosecution case would appear to be strongly supported. We are not able to understand why this evidence should have been ignored or on what grounds the Sessions Judge has discredited the evidence of the prosecution witnesses, since he finds that Shankara Bhatta was in wrongful confinement at the time of his death. We consider that notice should go to all the four accused to show cause why the charges against them should not be retried.

We will ask the District Magistrate to send up the petition of the 17th of March 1895, in which the first accused D'Mello requested transfer of the case from the file of the Sub-Magistrate of Kundapur and to explain how he considered it compatible with his duty as a District Magistrate to hear such a petition presented on behalf of a person who was at the time absconding from public justice before he had surrendered in obedience to the law. We will also ask the District Magistrate to explain why the transfer was ordered without notice to the complainant Ramakrishna Bhatta and without giving the Sub-Magistrate of Kundapur an opportunity of explaining anything that was alleged against him.

With reference to the letter of the inspector of police, dated 31st March 1895, to the Second-class Magistrate of Udipi, page 40 of the magisterial record, a copy of which will be sent to the District Magistrate, we will ask the District Magistrate to report whether there is any ground for supposing that the Superintendent of Police was in communication with the head constable D'Mello while he was absconding and countenanced that officer's evasion of the warrant which had been issued against him.

(By the Court.)

(Signed) C. G. TODHUNTER,
Dy. Registrar, Appellate Side.

From W. H. WELSH, Esq., District Magistrate, South Canara, to the Registrar of the High Court of Judicature, Appellate Side, Madras, dated Camp Kirimanjeshwar, 17th September 1895, No. 531/Magte.

In obedience to the order, dated the 5th instant, in criminal appeals Nos. 296 and 308 of 1895, on the file of the High Court, I have the honour to submit the petition * dated 17th March 1895, in which the first accused D'Mello prayed for transfer of the case from the file of the Sub-Magistrate of Kundapur.

* With copy of proceedings dated 18th March 1895.

2. I regret that I overlooked the decision of the High Court in criminal revision No. 413 of 1886. On referring to section 528 of the Criminal Procedure Code it did not occur to me that notice should be given to the complainant Ramakrishna Bhatta. The prosecution appeared to me not a private prosecution but a public one in charge of the Police department, and the Superintendent of Police, who had communicated with me was, I understood, in favour of the transfer prayed for. It did not occur to me to call for an explanation from the Sub-Magistrate of

Kundapur because the only point about which I desired an explanation was why he did not take a written deposition from the complainant when the complainant first came to him about 8–30 A.M. (at page 6, lines 41 and 42 of the printed evidence the time is given as 10 o'clock or 7 o'clock), or shortly after, but waited until a petition had been written about 4 P.M. which gave an opportunity for law touts to suggest inventions. Also I might have asked why he did not finish the investigation under section 176, Criminal Procedure Code. I was then quite prepared to discredit the allegations against the Sub-Magistrate; the Head Assistant Magistrate had evidently attached no importance to them. I merely noted the fact that the accused did question his impartiality. I had not then fully adopted the theory of the police that the murder charge was false, but that the accused could be proved guilty under section 330, Indian Penal Code. I considered that the Sub-Magistrate would be required as a witness for either the prosecution, or the court, or the defence.

3. For instance, the medical evidence did not confirm complainant's testimony on an important point. He had said that deceased's penis was split and was bleeding (at page 12, line 22 of the printed evidence the translation used is "broken"). It seemed that if the Sub-Magistrate had viewed the corpse he might throw light on this point. He was the first official to take complaint's statement and examine the ground. Information whether cries on the hill could have been heard in the village was obtainable from him and also about the situation of the well, the verandahs, &c. He might be able to assist the prosecution by mentioning other facts within his knowledge such as the details of the complaint upon which deceased had been arrested. The fact that the accused were afraid of him made me believe that he would be able to give useful information.

4. I blame myself for not having at once instructed the Public Prosecutor; but it is not usual for the District Magistrate to act in this matter unless the necessity of doing so is specially reported to him. And the actual Public Prosecutor would probably not have been able to attend personally, being otherwise engaged. I afterwards spoke, however, about the prosecution with the Inspector-General of Police. It appeared to me that the proper place for this Sub-Magistrate in this prosecution was as a witness or an aid to the prosecution rather than as a committing Magistrate, and as the accused, the persons I thought most concerned, had asked for the transfer it did not occur to me that notice was necessary; but if an order were to be passed, I thought that no time should be lost. It appeared from the Head Assistant Magistrate's order that he and the Tahsildar-Magistrate were otherwise engaged, so I selected M.R.Ry. Devappu Punja, B.L., at Udipi, 22 miles away, where there was another Inspector, M.R.Ry. Srinivasa, and where the intrigues of the Christians of Kundapur would have less play. The complainant subsequently moved that the police should not be allowed in court, so they ceased to conduct the prosecution and reports were not made to the magistracy. Though cited as a witness the Sub-Magistrate was never actually examined.

5. With reference to the last paragraph of the order of the High Court, I am of opinion that there is no ground for supposing that the Superintendent of Police countenanced the head constable D'Mello's evasion of the warrants. With respect to the question about communication the petition of the absconding accused was submitted through the Superintendent of Police by means of the pleader. The Superintendent of Police must have seen the Inspector and may have also seen the pleader; and the pleader of course knew how to communicate with the absconding accused as well as with those in custody. The pleader's knowledge would not have helped towards execution of the warrant. It is possible to evade a warrant transferred from station to station in the present strength of the force unless a determined effort is made to execute it by interruption of the ordinary course of duty. The pleader verbally applied to me for the release of the accused on bail and was refused. It was likely that the absconding man would surrender as soon as he knew that an application for bail to me or to a superior court would be futile. I do not know how it was that the head constable remained at large till after the 31st March or what steps were taken to execute the warrant; but I presume that I should not await an explanation from the Superintendent of Police before submitting this report, and I have therefore not asked him. I think he understood his duty and the duty of the police in respect of a magisterial warrant. He received one communication, namely, the petition of 17th March, from the absconding man, but I cannot say whether he received more.

6. The order of the High Court was received at camp Wandse in the northern part of the district and the petition was received from head-quarters only yesterday afternoon, so this report could not have been submitted earlier.

The humble petition of F. D'MELLO, Second-grade Head Constable of Kundapur, to the District Magistrate of South Canara (through the Superintendent of Police, South Canara), dated Mangalore, 17th March 1895.

That the petitioner is the head constable in charge of the Kundapur taluk kasba station.

2. That one Ramakrishna Bhatta falsely accused petitioner of having murdered his son when petitioner had been to investigate into a case of theft.

3. That this complaint was entertained by the Acting Stationary Sub-Magistrate of Kundapur, who, on the 1st of March, began some sort of inquiry after visiting the locality and continued with it till the police inspector of the Kundapur division arrived at the scene of offence, when the Stationary Magistrate abruptly left the place, leaving the inquiry into the hands of the police inspector.

4. The police inspector, after holding a full and detailed inquiry into the complaint, was satisfied that the complaint is entirely false and referred the case as false.

5. The complainant thereupon put in an objection petition before the Head Assistant Magistrate, who, without expressing any disagreement with the police inspector's report, has ordered a magisterial inquiry by the Stationary Sub-Magistrate.

6. That petitioner applied to the Head Assistant Magistrate for a transfer of the case, but the Head Assistant Magistrate has not granted petitioner's prayer. Hence petitioner is now obliged to approach your honour with this petition earnestly trusting that the case against the petitioner may be withdrawn from the file of the Kundapur Stationary Sub-Magistrate.

7. That there were not good feelings between the Stationary Magistrate and petitioner for some time before the present case arose.

8. That the Stationary Sub-Magistrate has already betrayed a good amount of animus and bias against petitioner and has evinced a great anxiety to get petitioner into trouble. The Stationary Sub-Magistrate tried to fetter the discretion of the investigating officer—the division police inspector—by asking him to put in a charge sheet and to arrest petitioner, so that the Magistrate may clutch jurisdiction over petitioner.

9. The conduct of the Magistrate at the alleged scene of offence, the great animus betrayed by the Sub-Magistrate, certain expressions given out by the Stationary Sub-Magistrate showing that he wishes to see the ruin of petitioner, and his desire to obtain a charge sheet and to see petitioner disgraced by an arrest, have made a decided impression on the public at large that evidence, true or false, will be accepted by the Stationary Sub-Magistrate who has already assumed petitioner's guilt.

10. That the facts referred to in paragraph 9 will encourge the prosecutor to bring any amount of false evidence against petitioner, while false witnesses will also be very much emboldened to give evidence before a biassed Magistrate. An impartial tribunal is not so much resorted to by false witnesses.

11. Petitioner further submits that the case for the defence will be seriously damaged if it should be in the hands of a biassed Magistrate, who may just in due time exercise a discretion in adjournment, &c., which may prove perfectly mischievous to the defence.

12. That no sooner the Head Assistant Magistrate sent the case to the Stationary Sub-Magistrate he issued a warrant of arrest without any bail clause and without taking into consideration that the case has been referred by a responsible officer.

13. That petitioner will be able to vindicate his character in the judicial inquiry, but what petitioner objects to is that he should be subjected to undeserved disgrace by being arrested in a false case and that he should be made a victim of the animus of a hostile Magistrate.

14. That petitioner will get justice at the hands of any magistrate in the district, except the Kundapur Stationary Magistrate. Now that the steamers are plying petitioner begs to suggest that the inquiry may be ordered to be held by one of the magistrates at Mangalore, so that your honour and also the District Superintendent of Police may watch in what way petitioner has been made a victim.

15. That this petition is humbly submitted through the District Superintendent with a prayer that the District Superintendent may be pleased to forward this petition with such remarks as may be considered necessary.

It is therefore prayed that your honour may be pleased to own that this case may be transferred to the file of any other Magistrate.

Dis. No. 128.

It is observed that the Head Assistant Magistrate in his proceedings, No. , dated 13th March 1895, has ordered a magisterial inquiry and has transferred the same from his file to that of the Stationary Sub-Magistrate of Kundapur. It is impossible to say that the objections of the accused persons to this Magistrate are without foundation. The application for a transfer is therefore admitted. The inquiry will be taken on the file of this court and transferred to the Stationary Magistrate of Udipi for inquiry under Chapter XVIII, Criminal Procedure Code.

18th March 1895.

(Signed) W. H. WELSH,
District Magistrate.

Proceedings of the High Court, No. 2295, dated 4th November 1895.

In the order of this court, dated 5th September, the District Magistrate was requested to send up the proceedings connected with his order of transfer, dated 17th March, and to give explanation upon the following points:—

(1) How he considered it compatible with his duty as District Magistrate to hear a petition presented on behalf of a person who was at the time absconding from public justice before he had surrendered in obedience to the law.

(2) Why he transferred the case without notice to the complainant (deceased's father) and without giving the Sub-Magistrate of Kundapur an opportunity of explaining anything that was alleged against him.

(3) Whether, with reference to the letter of the Inspector of Police, dated 31st March 1895, there was any ground for supposing that the Superintendent of Police was in communication with the absconding head constable D'Mello and countenanced that officer's evasion of the warrant that had been issued against him.

2. To the first question the District Magistrate has given no reply at all, but has merely entered into the reasons which led him to assent to the transfer. Such reasons are obviously beside the question, and from his silence the High Court presumes that the District Magistrate has no explanation to offer. In consenting to receive and hear such a petition from an absconding person the District Magistrate was not only irregular in his procedure, but displayed culpable weakness practically allowing an absconding accused to make terms with constituted authority as to the conditions under which he would appear. Such procedure tends to bring the law into contempt, and the District Magistrate should have refused to hear any petition at all until the accused had surrendered.

3. On the second question the District Magistrate observes that he did not call for an explanation from the Sub-Magistrate because the only point on which he should have desired explanation was why the Sub-Magistrate did not immediately record a written complaint. Mr. Welsh states he was *then* quite prepared to discredit the allegations against the Sub-Magistrate especially as the Head Assistant Magistrate had attached no importance to them, but that he thought the Sub-Magistrate would be required as a witness for the prosecution or for the defence, or might be called as a court witness.

4. As to this the High Court cannot but observe that the District Magistrate's explanation is contradicated by his own order of March 18th. Not a word is said about the necessity of calling the Sub-Magistrate as a witness, nor was any such necessity alleged in the petition of the accused. The remarks which the District Magistrate makes about the evidence could not have been present to his mind at the time for he had not the record before him and disposed of the application without calling for the record. Moreover, it must have been obvious that the fact that the Sub-Magistrate had committed the case would be no reason why the Sessions Court should not call him as a witness if his evidence was thought necessary. At the time the District Magistrate passed his order the Sub-Magistrate had not been cited as a witness by either side; and though afterwards cited, he was not called.

5. The sole ground for the transfer alleged in the petition was that the Sub-Magistrate was prejudiced against the accused and wished to ruin him, and that was the sole ground specified in the District Magistrate's order for granting the transfer. The District Magistrate observed in his order "It is impossible to say that the objections of the accused person to *this* magistrate are without foundation. The application for a transfer is therefore admitted." The High Court finds it impossible to reconcile this language with Mr. Welsh's present explanation that he was *then* quite prepared to discredit the allegations against the Sub-Magistrate especially as the Head Assistant Magistrate had attached no importance to them.

6. The High Court cannot but consider that to pass such an order on the *ex parte* petition of an absconding accused conveyed a most unmerited slur both upon the Head Assistant Magistrate and upon the Sub-Magistrate of Kundapur, and was obviously calculated to defeat the ends of justice. Here again the weakness shown by the District Magistrate is most regrettable.

7. In answer to the third question the District Magistrate states he thinks there is no reason to suppose the Superintendent of Police countenanced the head constable's evasion of the warrant. He states the Superintendent may have seen the pleader of the absconding accused, but that he "thinks he understood his duty."

8. If, however, the Superintendent supported the application for transfer while the accused was absconding it is quite manifest that he did *not* understand his duty; but the District Magistrate has not called for any explanation of the instructions given by the Superintendent to the inspector of police referred to in the letter of March 31st, and the High Court will not now ask him to obtain any further explanation since the court has decided that it is necessary to bring the whole matter to the notice of Government.

(True Extract.)

(Signed) D. W. G. COWIE,
Ag. Registrar, Appellate Side.

Proceedings of the High Court, No. 2296, dated 4th November 1895.

Order—Mis. No. 2437, Judicial, dated 26th November 1895.

Communicated to the District Magistrate of South Canara and the Inspector-General of Police.

2. The District Magistrate will be requested to report whether he has anything to add to the explanation already submitted by him to the High Court in reply to its proceedings, dated 4th November, No. 2295, Judicial, and to obtain the explanation of the then Head Assistant Magistrate (Mr. Slight) of the reasons which led him to leave the inquiry in this case to a Sub-Magistrate instead of taking it up himself. The Inspector-General of Police will be requested to obtain and forward to Government with his remarks a full explanation from the Superintendent of Police upon the allegation made in the third of the points referred to in that proceedings and mentioned in the last paragraph but three of the High Court's order remanding the case for retrial—that he "assisted the head constable to evade a local inquiry and at all events passively connived at his absconding after the warrant had been issued for his apprehension."

* * * * *

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the Inspector-General of Police, with records
for perusal and transmission at early date to District Magistrate.
" District Magistrate, South Canara.

Read—also the following papers:—

From D. W. G. COWIE, Esq., Acting Registrar, High Court, Appellate Side, to the Chief Secretary to Government, dated Madras, 6th December 1895, No. 2516, Judicial.

In forwarding herewith an explanation of the District Magistrate of South Canara, Ref. on C. No. 3636-Magl., dated the 28th ultimo, addressed to Government regarding certain observations contained in the proceedings of this Court, No. 2295, Judicial, dated the 4th idem, forwarded to Government with my letter, No. 2297, Judicial, dated the 11th November, I am directed to state that the unsatisfactory nature of the reasons given by the District Magistrate for his action was commented upon by the Public Prosecutor at the hearing of criminal appeals Nos. 296 and 308 of 1895 and that the High Court has nothing to add.

Enclosures.

Proceedings of the District Magistrate, South Canara, dated 18th March 1895.

Extract from the Proceedings of the High Court, dated 5th September 1895, in C.A. Nos. 296 and 308 of 1895.

From W. H. WELSH, Esq., to the Registrar, High Court, Appellate Side, dated 17th September 1895, Dis. No. 531-Magl.

From W. H. WELSH, Esq., District Magistrate of South Canara, to the Chief Secretary to Government (through the Registrar, High Court, Appellate Side), dated Mangalore, 28th November 1895, Ref. on C. No. 3636-Magl.

I have the honour to report that I received on 26th instant, through the Sessions Judge of this division, copy of the proceedings of the High Court, No. 2295, Judicial, dated 4th November 1895. This has doubtless been brought to the notice of Government.

2. I do not know whether the proper procedure is to wait till Government passes orders upon the matter so brought to its notice; but it seems to be my duty to refer to paragraphs 4 and 5 of the proceedings, where the Hon'ble the Judges have been pleased to make observations which appear to impeach my truthfulness. "The remarks which the District Magistrate makes about the evidence could not have been present to his mind at the time for he had not the record before him and disposed of the application without calling for the record;" and it is said that my explanation is contradicted by my own order, as the reasons contained in the explanation are not mentioned in the order of transfer.

3. But the order would naturally refer only to the petition or matter argued judicially before the officer passing it, whereas the explanation asked from the District Magistrate was "why he transferred the case *without notice to the complainant, &c.*" The explanation submitted was that the prosecution was considered a public prosecution in the hands of police. Information received from the Superintendent of Police was present to my mind for he had visited me and given an account of the *post mortem* certificate and the statements as recorded by the police which of course was not evidence that could be referred to in an order, but which showed what testimony the Sub-Magistrate might be expected to give and how the officer in charge of the prosecution viewed the application for transfer.

4. I beg to enclose copy of this office letter, No. 531, dated 17th September 1895, to the High Court with copy of order and extract from their order in C.A. Nos. 296 and 308, dated 5th September 1895.

5. Their Lordships evidently think it probable that I told lies in a futile attempt to account for hasty or mistaken action and invented a long story of motives. They have practically made a charge against me.

6. As a public servant I have a claim that a decision should be come to upon this matter distinct from the decision upon the conduct of the officers generally.

7. The Superintendent of Police came to me to say that three of his men were charged with murder. He gave his reasons for considering the direct evidence of murder to have been concocted. He described the evidence substantially as detailed in his confidential report to the Inspector-General for that week.

8. That report may be sent for *as an indication of what facts could have been present to my mind in that week.* Their Lordships in observing that the record was not before me may have lost sight of the fact that District Magistrates are kept informed of the evidence in grave crimes as it is collected.

9. I said at once that there was a good case against the policemen under section 330, Indian Penal Code, for torture, and that there was some evidence of murder weakened by the fact that some of the statements did not agree with the *post mortem* and that the complaint was not recorded till 4 P.M. of the day on which it was made.

10. But that complaint had been made first in the morning to the very Magistrate whom the first accused rightly or wrongly impeached as the inventor of the charge, though the Magistrate was a Native Christian like himself.

11. I say that in the interests of justice I at once considered that the Magistrate should be a witness. It was not reported whether he had viewed the corpse or not. If he could have given evidence about that, his testimony might have furnished an important link; but it was undesirable to set the parties thinking what he might be called to prove or to indicate to either side gaps in the evidence which might be supplied otherwise (for instance by fabrication). Therefore it was not mentioned in the reasons for the transfer order.

12. It was impossible to say off-hand that the objections made by the first accused D'Mello to his fellow-casteman were without foundation, and therefore I gave that as the reason for the transfer order. Though I was then quite prepared to discredit the one-sided allegations, yet there was no time to go into them. It could merely be noted that the accused did say something against the committing Magistrate. The inquiry was one which I thought should be pushed forward at once, and the desirability of being able to call the Magistrate to whom complaint was first made and who went to the scene of offence in the first instance and made some inquiries on the spot as a witness seemed of importance. Therefore transfer was made forthwith, not to Mangalore as prayed by the pleader for the accused, but to the Magistrate of the next taluk.

13. I would ask Government to consider what motive I could have for inserting in the explanation called for by the Hon'ble the Judges anything which would be contradicted by the copy of the order of transfer which I submitted as an enclosure though it was not called for, and which may have been the source from which the Judges ascertained the reason given for transfer.

14. It should not be forgotten that I took interest in the prosecution. The Local Government prosecutor was of course instructed at sessions and the Government Pleader at Madras to oppose the appeal.

From W. H. WELSH, Esq., District Magistrate of South Canara, to the Chief Secretary to Government, dated Mangalore, December 1895.

In obedience to G.O., dated 26th November 1895, No. 2437, Judicial, I have the honour to forward Mr. Slight's explanation.

2. With reference to the inquiry whether I have anything to add to the explanation on High Court Proceedings, dated 5th September, Judicial, a few lines are submitted herewith. I have already addressed Government with respect to paragraphs 4 and 5 of High Court's proceedings, dated 4th November, No. 2295, Judicial, in this office letter, Ref. on C. No. 3636, submitted through the Registrar of the High Court.

3. Therein a decision was claimed upon the charge of untruthfulness made by their Lordships in paragraphs 4 and 5. If Government is pleased to decide, with or without a formal inquiry, that their Lordships were right in making that particular remark against me personally, then I presume that all further explaining is at an end.

4. If, however, my explanation is believed, I would submit, with all deference, that their Lordships have not treated me with that generous consideration which their officers used to expect.

5. It appeared from the foot-note to the Government Order under reply that certain papers from the Inspector-General's office were to be expected at an early date, but as they have not come this is submitted without waiting for them.

Enclosures.

From A. M. SLIGHT, Esq., District Magistrate, Civil and Military Station, Bangalore to the District Magistrate of South Canara, dated 11th December 1895.

In reply to your letter, dated 4th instant, Ref. on C. No. 3636/A., Mag., I have the honour to inform you that the circumstances which led me to leave the inquiry into the charge against the two constables of Kundapur station in the hands of the Stationary Sub-Magistrate instead of taking it up myself were, to the best of my recollection, as follows :—

2. When I first heard of the case, I was on tour in Udipi taluk. I sent instructions to the tahsildar to go and make a local inquiry as soon as possible. I returned to Kundapur about the 11th of March. I met the tahsildar and discussed the case with him, and from the information then available I found reason to suppose that a serious offence had been committed, and that the Police Inspector Boyer was trying to hush it up, but that the evidence which the Tahsildar had found available would make the case fairly clear and simple if it could be properly recorded without delay.

3. I had only ten days to stay in Kundapur, with a lot of work to do in that time. After that I had to start on a long tour for the settlement of a number of forest blocks round the north of the taluk. Notices of the dates on which all these would be settled had been published some time before, and there were many claims fixed for hearing. That work could not be put off. It would have been impossible to complete the inquiry before starting ; the absconding of the accused and difficulty in getting some of the witnesses would have made it impossible even to begin it. I was not to be back in head-quarters before the end of May.

4. The tahsildar also had to go out on tour for some time on work that could not be put off.

5. It was therefore a question with me whether the programme of forest settlement work should be abandoned, or the inquiry into the case against the police entrusted to the Stationary Sub-Magistrate. If I had given up the forest work then, it would have had to wait till after the monsoon. As it was, some of the blocks to be taken up had been pending settlement a long time, and the whole was only a small portion of the total area notified for settlement. The case of the constables was not one for trial, but only for inquiry with a view so committal. It appeared a fairly clear case, and most of the evidence had already been heard by the tahsildar. The most important thing was to get it recorded without delay. I knew that the Stationary Sub-Magistrate (Mascarenhas) and the Police Inspector (Boyer) were not on very good terms, and I did not think there was any likelihood of the Sub-Magistrate assisting to hush up the matter ; in fact, the petition of the accused that the case should not be heard by that Magistrate was entirely due, I believe, to the personal feeling of the inspector.

6. On these grounds I considered it best to go on with my own work as already fixed and to leave this case to the Stationary Sub-Magistrate. Before leaving I gave him careful personal instructions to make the record of the evidence as full and accurate as possible, and to submit

copies of the depositions to me as soon as they were taken ; but then the case was transferred to the Udipi Magistrate, who knew nothing of the results of the tahsildar's local inquiry, and to whom I had no opportunity of giving information or instructions which might have assisted him in getting at the truth in his inquiry, and the accused gained a great deal of time by the failure to arrest the head constable.

Explanation permitted under G.O., dated 26th November 1895, No. 2437, Judicial, to be added to that called for in High Court's proceedings, dated 5th September, and submitted from Camp Kirimanjeshwar in the north of Kundapur taluk on 17th September, to be in time for the hearing in criminal appeals Nos. 296 and 308 of 1895, which I understood were posted for 25th September.

I see it was wrong to hear a petition on behalf of an accused against whom a warrant was out.

2. I am sorry that at the time of hearing it did not occur to me that it ought not to be entertained. The merits of the case as related by the officer in charge of the prosecution were strong in my mind and the question whether the petition was admissible or not did not come up.

3. The Head Assistant Magistrate had not reported the crime demi-officially or otherwise. All I knew was that he was unable to hold the inquiry ; nor had any information come except through the Superintendent. It seemed to me therefore not weakness but the strong thing to do to take on myself the responsibility of preventing the inquiry from being held in a court which the accused could object to, and the best chance of proving murder seemed to be to call the Sub-Magistrate who had made the local investigation under section 176, Criminal Procedure Code. I believed that little or no further local investigation was needed, and that torture at any rate could be proved by merely calling the witnesses.

4. I assure Government I had not the slightest notion that by granting transfer I was allowing the accused to make terms with constituted authority as to the conditions under which he was to appear. It was the pleader's business to keep out of sight the fact of a magisterial order being disobeyed, and I was preoccupied with the belief that it would help the prosecution to comply with his request.

5. For convenience of reference some of the previous papers have been printed and are submitted herewith.

(Signed) W. H. WELSH,
District Magistrate.

22nd December 1895.

From M. HAMMICK, Esq., I.C.S., Inspector-General of Police, to the Chief Secretary to Government, dated Madras, 25th December 1895, No. 6134.

I have the honour to forward Mr. Scott's explanation as regards his conduct in the "Tallur" case in South Canara called for in G.O., No. 2437, Judicial, dated 26th November 1895.

2. The High Court in its proceedings, dated 5th September 1895, asked the District Magistrate "to report whether there is any ground for supposing that the Superintendent of Police was in communication with the head constable D'Mello while he was absconding and countenanced that officer's evasion of the warrant which had been issued against him." This is the point on which Mr. Scott, the Superintendent, was called upon for explanation. The High Court also in its proceedings dated 30th October 1895 said: "From these facts we find it difficult to refrain from drawing the inference that the Superintendent of Police assisted the head constable to evade a local inquiry, and at all events passively connived at his absconding after the warrant had been issued for his apprehension."

3. Mr. Scott's explanation is most unsatisfactory. I mentioned in a former letter to Government regarding this Superintendent that he was specially unfortunate when committing his thoughts to paper, and this is a marked instance of it, for it is impossible to gather from his letter how much he knew and how much he did not know when he took the course remarked upon by the High Court.

4. The occurrence, viz., the death of the man Shankara Bhatta when in police custody, took place on the 27th February 1895. The police inspector arrived at the scene of the crime on the 1st March. The Magistrate also arrived on the 1st or 2nd *after the inspector* and left the inquiry in the inspector's hands and went off on the 2nd. The inspector put in a referred charge sheet on the 8th March to

the Head Assistant Magistrate. The Head Assistant Magistrate on the 13th March ordered the Stationary Sub-Magistrate of Kundapur to inquire into and dispose of the case. The Stationary Magistrate issued the warrants for the three accused on the 14th March. On the 16th March the inspector submitted the Sub-Magistrate's letter enclosing the warrants to the Superintendent of Police for orders. On the 19th March the Superintendent endorsed the letter with the following order :—

"The warrants must be executed. District Magistrate has transferred the case to the Udipi Magistrate. It is not unlikely that the head constable will voluntarily appear before that court. Warrant might be sent to Udipi for execution." The head constable appeared on the 5th April.

On the 18th March a transfer of the case from the Kundapur Stationary Magistrate was asked for in the District Magistrate's court and the Superintendent was present in the District Magistrate's court when the application was put in for transfer by the vakil of the head constable and the Superintendent then asked the vakil to advise the head constable to surrender without delay.

5. The above are the facts and it certainly must be held that the Superintendent passively connived at the evasion of arrest on the part of the head constable. I think I may say that hardly any other officer in the police would have acted in this manner. Obviously, and the course was so obvious, that I cannot understand Mr. Scott not having followed it. Mr. Scott should have insisted on the warrant being executed and the head constable surrendering himself before he took any step whatever on his behalf. He should have refused to go to court at all or assist the vakil in any way until he saw the constable himself. His conduct was most improper.

6. His defence is apparently that he sympathised with the constable to such an extent in his fear of having to appear before the Kundapur Stationary Magistrate that he felt bound to interest himself in his behalf and obtain a transfer of the case before he insisted on his appearance; but certainly no amount of feeling for the head constable should have permitted him to countenance this evasion of a legal warrant, and I have nothing to say to justify Mr. Scott in his view. It is to be noted also that even here, where the seriousness of Mr. Scott's fault depends to a great extent on the question how far the head constable's fears were legitimate, Mr. Scott takes no pains whatever to explain why it was that head constable D'Mello so feared Mr. Mascarenhas, the Sub-Magistrate appointed by Mr. Slight to inquire into his case. He dismisses it by saying "he did dread as well he might appearing before the Magistrate." It must be remarked also that this very Sub-Magistrate left the inquiry into the case originally in the hands of the inspector which certainly did not look as if he had any special anxiety to work the case unjustly against this head constable.

7. I think this much may be said for Mr. Scott. I believe he did honestly believe that the police would not get a fair trial by the Kundapur Sub-Magistrate. I was in Mangalore myself on the 22nd March, four days after the transfer of the case, and I had then only heard of the case as far as I recollect from Mr. Scott himself. I had conversation with him about the case and the impression I gathered then, as far as I remember, was the case was a false one as against the police and Mr. Scott I remember then was particular in assuring me that the enmity between the local magistrate and the police was such that no fair trial could have been gained from him. I have since then been through the evidence as reported to me carefully, and I shall be very much surprised if the case against the defendants is successful. It is a mass of contradictions and as difficult a case to unravel as any case that has come before me. The original statements so conflicted with the medical evidence that it was impossible to put any faith in them, and I believe that, in spite of all the High Court has said, the only verdict a Judge could have come to was very much that arrived at by Mr. Holmes, viz., that the unfortunate man, who met with his death, died while under *illegal* custody in the hands of the police by what means was not proved.

8. It may also be said for Mr. Scott that he had no direct communication with the head constable D'Mello. He did not know where he was, and, although no

doubt had the Superintendent insisted on the head constable's attendance before him the head constable would have appeared. I do not think it can be said that he actively assisted him. He certainly omitted even to suspend the man from the date of his absconding and ordered the suspension to run from the 5th of April instead of the 14th March, another circumstance which shows how ignorant Mr. Scott is of his duties as Superintendent. The head constable should of course have been suspended from the date of the issue of the warrant. It is clear that Mr. Scott's action all through was the result of the obstinacy with which from the beginning he adhered to the police inspector's view that the head constable was the subject of unfair treatment by the Sub-Magistrate.

9. However in this case I venture, with all due respect to the magistracy, to to say (and I state it here because it is not the only case that I have come across where a similar course has been followed) that the police did not in this case receive the treatment from the Magistrate that they should have received, or that they must receive if the police are to be worked satisfactorily. Here was a case where close to the Divisional Magistrate's head-quarters, still closer to the local Stationary Magistrate's office, a man was found to have been killed while in police custody in the most suspicious circumstances. There could only be three causes for his death, an accident, which was not at all probable, suicide or murder, and in any case the matter was one which called for the most prompt and thorough investigation.

The local inspector, a man who has a high reputation as a police officer, reached the spot with the utmost speed. The Divisional Magistrate never turned up at all, and the Sub-Magistrate, after making a very brief inquiry, left the matter to the inspector. I venture to say that this is not the way in which such matters should be treated. The inspector held an inquiry, and I believe perfectly honestly arrived at the conclusion that the case as against the police was false. His inquiry was as exhaustive as was possible, and, though (as no doubt must almost always be the case) the inspector, after finding the witnesses' stories were not believable, was inclined to look upon the whole case as one concocted against the constables, nothing is, I believe, on record to show that he misbehaved seriously during the inquiry. He has, it seems to me, quite rightly put in a referred charge sheet; for, if he believed the complaint of murder false, I, with very much respect to the High Court, venture to think the course he took was proper, and that he would have done wrong had he charged and arrested men against whom he did not believe he had a case. The Head Assistant Magistrate in his proceedings ordering a magisterial inquiry stated that "arrangements already fixed make it impossible for the inquiry to be held by this court." I do not know what his arrangements were, but here again I venture to think that a charge of murder against police officers, in regard to an inquiry made by them in which *primâ facie* a man had been detained longer than was legal in police custody, was a matter which should have had precedence of almost any other work. I am certainly quite sure that when I was a Head Assistant Magistrate I should have looked on the matter as one demanding my personal and immediate attention, and I should have allowed other work on hand to stand over and inquired into the case myself, and I believe this is what would have conformed to my District Magistrate's views on the subject. Mr. Slight, however, thought differently, and in a proceedings of great brevity handed the case over to the Magistrate who had not thought it worth his while to stay and complete his original inquiry. In all this I venture to think the police should have been differently treated. Cases of this gravity are happily not very frequent, and I venture to suggest that Magistrates might be reminded of their importance when they do occur. I myself am of opinion that in all cases of serious accusation of torture or worse by the police the police themselves are not the officers best entrusted with investigation. If only in such cases a Divisional Magistrate would at once come to the spot and make the investigation himself, or, at all events, have it made by the local inspector under his immediate supervision, the results would be more satisfactory in all cases, and it would not afterwards leave the suspicion that the police officers had hushed up matters.

In a recent similar case in Kistna the magistrates neglected their duty in very much the same way, and although in a recent police order No. 87, *Police Gazette*, dated 26th October 1895, I have ordered the police in all such cases in future to bring the facts immediately before the District Magistrate for his orders, I venture to suggest that if the Government impressed upon the magistracy their duty in such cases it would have a good effect.

10. In the present case I blame Mr. Scott very much for his action in allowing the head constable to evade the warrant against him, and I further blame him, as I have done already, very much for his inactivity all through the case. I distinctly warned him when in Mangalore to do everything to get the case thoroughly sifted. I further endorsed on his weekly report submitting the first report on the case, which reached me only on the 3rd April, and which Mr. Scott might have despatched before the 26th March, that, in my opinion, the case was a very serious one and that the story that the man accidentally fell into the well was not to be believed and that I much doubted the theory of suicide. I warned Mr. Scott then that the case was to be gone into most carefully, and that the inspector, if he was at all inclined to screen his men, was to be taken off the case. I asked also to see the Magistrate's judgment as soon as possible.

I again told Mr. Scott, when he told me in his weekly report, dated 11th May, that the case was committed to sessions, that I wanted particulars of what had happened before the Magistrate and that every step in the case should have been reported. I told Mr. Scott then to submit a full report on the case, and asked him what was his opinion on the conduct of the police. I remarked that it was scandalous that a Superintendent should have treated the case as he had done. All he told me in reply was that Mr. Boyer, the inspector, had not been allowed to be present in the Magistrate's court when the case was going on and so he could say nothing.

Again on the weekly report of the 25th May I asked for information about this case. Mr. Scott gave me the most unsatisfactory replies.

11. Mr. Scott's treatment of the case from start to finish was as unsatisfactory as it could be. He gave me no information as to what he thought of the conduct of the men or the inspector. He failed from the first to realise the gravity of the charge made. He did not visit the scene of the crime until he had to do so in his regular course of inspection, and *when* that was he does not even take the trouble to say in the letter he now forwards as his explanation.

12. At the same time as I have already told Government I believe Mr. Scott's chief fault is his neglect of his office work. I believe that in this case Mr. Scott did keep himself fairly well informed of what was going on. He neglected and he continually neglects to keep me similarly informed. His present explanation shows what he thinks sufficient in this respect. He has given me more anxiety than almost any other Superintendent, and this in a district in which police work is comparatively light. I connot recommend his transfer, and I can only hope that he may profit by whatever action Government may think proper to take in this case.

13. I think, as I have stated above, that the Superintendent did not receive the amount of assistance and directions from the Magistrate that he was entitled to get. Like many other Superintendents he required to be guided and in the old days of early police administration I think the local Magistrates would have done more than they did in this case. Unfortunately the feeling that the Magistrates are as much responsible as anybody for the satisfactory working of the police in their divisions is very much dying out, and, while ready to criticise, they do not assist. I earnestly hope the Government will take this opportunity of drawing the attention of all Magistrates to their duties in this respect.

14. I enclose all the records in the case submitted by Mr. Scott. There are points on which the Inspector Mr. Boyer's conduct in the case will require further notice; but as to this I propose waiting until the second trial is over.

Enclosure.

From S. P. C. SCOTT, Esq., Superintendent of Police, South Canara, to the Inspector-General of Police, dated Camp Beltangadi, 10th December 1895.

In reply to official memorandum, current No. 4989-Genl., dated 7th November 1895, I have the honour to reply as follows:—

Every paper connected with the case has been forwarded under a separate cover. I did visit the spot when I was inspecting the division. In my written order that the warrant must be executed I added (although it was quite unnecessary because every one knew it) that head constable D'Mello would probably surrender as the case had been transferred from Sub-Magistrate Mr. Mascarenhas, who was known to bear ill-will towards him. I learnt this from more than one source, one being head constable D'Mello's vakil. Head constable D'Mello never wished to evade an inquiry by a Magistrate, but he did dread as well he might appearing before Sub-Magistrate Mr. Mascarenhas. When I wrote the order that the warrant must be executed I had no idea where head constable D'Mello was, nor did I at any other time know this. I did not assist the head constable to evade a local inquiry unless the order of transfer was made. I knew that the head constable would conceal himself and evade arrest so delaying the inquiry. I was as anxious as any one for a local magisterial inquiry. I was of opinion that this should have been done in the first instance. Sub-Magistrate Mr. Mascarenhas was at the scene of the alleged offence before the inspector, who was many miles away, could get there. He remained there about twenty-four hours and left the spot directly the inspector arrived. I did what I could to support the application for the transfer of the case as the best means of expediting the local inquiry. I went to the District Magistrate about this and was present when the application was put in by the head constable's vakil. I asked the vakil to advise the head constable as soon as the order was passed to transfer the case from Mr. Mascarenhas to surrender without delay. I did not passively connive at the head constable's absconding after the warrant had been issued for his apprehension. I have not once seen him except when he was in the dock at the Sessions Court from the date the offence is alleged to have taken place up to the date of this letter, neither was I at any time directly or indirectly (except when I sent my advice through his vakil to him as stated above) in communication with him. As his superior officer I thought it my duty to interest myself in his case and to urge the transfer to another court. The transfer could in no way prejudice the case.

I regret I could not answer earlier. I was away in Tellicherry when the official memorandum reached me. It took some time to collect the papers, and with such serious charges against me I naturally took some time for thought.

The papers sent with the official memorandum are herewith returned, also those received with your endorsement dated 29th November 1895.

From M. HAMMICK, Esq., I.C.S., Inspector-General of Police, to the Chief Secretary to Government, dated Madras, 25th March 1896, No. 1330.

With reference to my letter, dated 25th December 1895, No. 6134, relating to the Kundapur murder case, I have the honour to submit the sessions judgment in the second trial and a letter from Mr. Scott in regard to that judgment.

Enclosures.

IN THE COURT OF SESSIONS, SOUTH CANARA.

Session Case No. 15 of 1895 (*re-trial*).

Present:

H. G. Joseph, Esq.

Queen-Empress

v.

(1) *Francis D'Mello*, (2) *Mahomed Usman*, (3) *Paul Machado* and (4) *Linga Bhatta*.

(Committed by Mr. A. Devappa Punja, Stationary Magistrate of Udipi.)

Charge.—Against first, second and third.—(1) Wrongful confinement, section 342, I.P.C., (2) voluntarily causing hurt or grievous hurt, section 323 or 325, I.P.C., (3) causing hurt and grievous hurt and wrongful confinement for the purpose of constraining a person to confess or restore stolen property, sections 348, 330 or 331, I.P.C.

Against fourth.—Abetment of the above offences, sections 109, 323 or 325, 348 and 330 or 331, I.P.C.

Assessors.—Messrs. (1) U. Ananda Rau (Saraswati Brahman) and (2) Constantine Aiman (Protestant Christian).

Opinion of first assessor.—First accused *guilty* under all counts; second accused *not guilty* under section 342, I.P.C., but *guilty* under sections 323, 325 and 331, I.P.C.; third accused *not guilty* on any account; fourth accused *guilty* of abetment of offence under sections 342 and 348 only.

Second assessor.—First and second accused *guilty* on all counts; third accused *guilty* under sections 342 and 348, I.P.C. only; fourth accused *guilty* of abetment of all counts.

Finding of the Judge.—Concurred with the second assessor.

Sentence.—First, second and fourth accused each sentenced to nine months' rigorous imprisonment; third accused sentenced to one month's simple imprisonment.

Judgment.—This case—originally fixed before this court at the June Sessions of 1895—was remanded for retrial by the High Court and taken up at the January Sessions of 1896.

2. On Tuesday, February 26th, 1895, some police from the Kundapur kasba station went to the village of Tallur to inquire into a case of theft alleged to have occurred there in the house of the schoolmaster Shanti Murthappa. The schoolmaster only lately moved into the house in which the theft was committed. It had been previously inhabited by a woman named Putti; it is said that Shankara Bhatta, the son of prosecution fourth witness, had had relations with this woman and that fact is confirmed by the admission of prosecution fourth witness that the house into which she moved was provided for her by him and his son.

Putti was naturally questioned as to the means of entrance into the house and she mentioned the name of Shankara Bhatta as one also acquainted with this, whereupon Shankara Bhatta was also sent for and his father. Shankara Bhatta was "being inquired" by police—they deny that he was under any restraint—until at any rate 8-30 on the succeeding evening, Wednesday February 27th. On that evening the body of Shankara Bhatta was taken out of the well in the compound of Shanti Murthappa. The inquest report (which was drawn up by the first accused, the head constable) says that this occurred at 9 P.M.; the prosecution say at about midnight.

That night—the time cannot be accurately fixed, but it must have been very shortly after the body was taken out—prosecution fourth witness went to the potail (prosecution fourteenth witness's) house and complained that his son had been beaten by police and his life was out The potail refused to stir that night, and in the morning, February 28th, he went to the house of Shanti Murthappa where the body was lying and an inquest was held, and report (exhibit N) drawn up. This report would seem to have been sent with the body to the apothecary at Kundapur; it bears his initials as received at 5 P.M.

3. The inquest was held at daybreak. Tallur is only 3 miles from Kundapur, but there are some rivers to cross on the way. The potail who was questioned by the court as to this inquest report denied having sent it or knowing anything of it being sent; but his own report (exhibit D) which he says was sent off at 7 A.M. bears the Magistrate's date of receipt as 7 P.M. The Ugrani Rama, court fourth witness, who carried this report, says he was sent at 8 A.M. and gave it to the Magistrate at court at 10 A.M. and returned to Tallur at 2 or 3 P.M. The potail says that the Ugrani returned before midday and reported to him that the report had been delivered. On the morning of that day, February 28th, the Kundapur Magistrate (prosecution third and defence sixth witness) received at his house a verbal complaint from prosecution fifth witness Shivaya Bhatta (brother of prosecution fourth witness) and another and instructed them to give this complaint in writing, which was accordingly done, and exhibit C was put in before the magistrate at 4–30. This was a complaint against the police charging them with the murder of Shankara Bhatta.

The Magistrate on receipt of the complaint referred it to the police inspector for report, and wrote to the apothecary to hold *post mortem* and send his report to the inspector direct as the complaint had been referred to him.

Next morning, March 1st, the Magistrate, before he was leaving his house for office (10–30 A.M.), received exhibit E,* an occurrence report (exhibit F is an enclosure to exhibit E); and after concluding his day's work at Kundapur started about 4–30 P.M. for Tallur. On his arrival he made inquiries and examined a few witnesses that evening. Next day, March 2nd, he made an inspection of the locality; and on the arrival of the inspector at 3 P.M., the Magistrate left the inquiry to him and returned to head-quarters.

* It is called a crime report, but it ignores any crime at all.

4. On the 5th March, the Magistrate who had reported to his Divisional Magistrate (the Head Assistant Magistrate) received an order to submit a report without delay, and on that sent an order to police inspector to submit a charge sheet that evening without fail. On the 8th March the Magistrate received a reply from the inspector that he would submit his report shortly, and prosecution fourth witness put in a petition asking that the complaint referred to the police might be withdrawn as they were spoiling the case. On this the Magistrate sent for the inspector, who promised to submit report soon, and was told to do so next day at latest.

The inspector sent no charge sheet nor report of any kind to the Kundapur Magistrate, but on March 8th submitted a referred charge sheet, a document of very great length (which may perhaps account for the delay in its submission), to the Head Assistant Magistrate. On that same day another petition was presented to the Kundapur Magistrate by prosecution fourth witness asking that the four accused now before the court (three police constables and Linga Bhatta) might

be arrested at once and saying that the inspector had served on him a notice that the complaint had been referred as false.

5. The Head Assistant Magistrate refused to accept the police referred charge sheet and ordered a magisterial investigation, and also refused the request of the police inspector to transfer the inquiry to some other magistrate than the Kundapur Magistrate; and on the 14th March the Kundapur Magistrate having received the above order, took up the case on his register file. The case remained before the magistrate until March 20th, when he received an order (from the District Magistrate through the Head Assistant Magistrate) transferring the case to the Udipi Magistrate by whom the case was committed to this court. While the case was before the Kundapur Magistrate, after making vain efforts to procure by any means the arrest of the first accused, he commenced the trial in his absence and examined nine witnesses, in fact the prosecution evidence in the case, so that at the time of transfer the case was really ripe for committal.

6. Thus we have on the record—

I. Statements recorded by the Kundapur Sub-Magistrate on 1st March 1895—

Exhibits V_1, Q, V_{10}. (1) Prosecution fourth witness Ramakrishna Bhatta.

(2) Linga Bhatta, fourth accused.

(3) Shanti Murthappa, also one of the accused before the committing magistrate, but discharged by him; (examined as second court witness and defence fourth witness).

Exhibits V_2 to V_9, V_4 and V_9 being also marked as G and K. II. And the statements of nine witnesses (besides Ramakrishna Bhatta on whose complaint the case was filed) examined by the Kundapur Sub-Magistrate;

Exhibits VI_1 to VI_{10}—VI_4 and VI_9 also marked as H and L. III. Of twelve witnesses examined by the commiting Magistrate (the nine above and three more);

VII_1 to VII_{10},—VII_4 also marked as exhibit J. IV. Of eleven witnesses examined before the Sessions Court at the first trial (one man, a police constable Rasquinha, was omitted from the above list);

before the witnesses were examined in the present trial.

These statements have been filed for prosecution and defence as marked in the margin; and also in this trial for the first time the note-book of the Inspector Boyer was filed (exhibit VIII) as containing his record of the examination which he made of the same witnesses during his inquiry March 2nd—8th.

The above summary is necessary as an introduction to a discussion of the evidence in this case to show (1) the undisputed facts ascertainable from the records, (2) the previous history of the case, and, finally, (3) the very large number of times, under varying circumstances, statements of the prosecution witnesses have been recorded—all those records being now presented to the Court.

7. Now to consider the evidence. The prosecution statement is that from the time Shankara Bhatta (deceased man) was called by the police on 26th February until his body was taken out of the well he was in police custody, and that while the police so detained him he was beaten to try and induce him to give information about the offence committed in Shanti Murthappa's house and restore the stolen property. And it is to this statement that the various counts of charge are directed. The defence reply to this charge is that the police did nothing but examine Shankara Bhatta as a witness (in accordance with the provision of section 160, Criminal Procedure Code); that he was never confined; and that he was never beaten at all for any purpose.

8. The prosecution further say that the police after having ill-used Shankara Bhatta to such an extent that he was really dead—or at least appeared to be so—threw his body into the well where it was found, so that it might be thought that he had committed suicide and their misdeeds be so concealed.

That the body was taken out from the well is undisputed; that it was taken out about midnight and not at 9 P.M. is supported (apart from the direct evidence on the point) by the fact that the potail's reason for not coming out at once—when complaint was made to him by prosecution fourth witness—was that "it was night and dark." This certainly points to midnight rather than 9 P.M. Even a village magistrate, such this man shows himself to be, could hardly have refused to come and inquire into the complaint of murder by the police at 9 P.M. That the inquest report represents the police (*i.e.* the accused's) version of the affair in the first instance is, I think, clear. The potail's denial that he was present at the inquest or knew what was written in the report—as also his similar statement that though he was present on 26th and 27th till 8–30 while Shankara Bhatta was detained by the police, Shankara Bhatta was never even examined in his presence—is palpably false, but I do not think that gives any reason to doubt (rather the contrary) that his statement that he signed (in two places) in that report under the influence of the first accused is true. The witness began (before he denied all knowledge) by saying that first accused "must have written it," and then explained that his reason for thinking so was "there was no one else there who could write." The other witness examined on this

point, Shanti Murthappa, also very unwillingly admitted that it was written or dictated—and finally said it was written—by first accused.

9. The question of how the body came into the well is not one to be decided in this case. For the defence theory of suicide there is absolute y no evidence, except exhibit N—the inquest report—a document clearly drawn up for the especial purpose of suggesting that conclusion—and certain statements said to have been made by the witnesses to Inspector Boyer. Even if he did commit suicide, the only reason for his doing so would be that suggested by the committing magistrate, viz., either because he could not bear the police torture or because he wished to escape more. And this cannot advantage the accused much, except as an answer to a charge of murder—indeed exhibit N would appear to have been drawn up to assist an answer to such a charge. The evidence that the police were seen to throw the body into the well is not, I think, in itself of great independent value in assisting the conclusion they must have done so—based on the fact that there is no other explanation of the body being there except suicide or his having tumbled in by accident.

It is not necessary for the decision of the case to decide the point except in so far as the fact of the body being so found in the well and taken out is coherent with the other prosecution evidence. And with reference to that I think there can be no doubt that the evidence on the point goes in every way to corroborate the other prosecution evidence and so renders the prosecution theory of the way he came into it most probable.

10. So also as to the cause of death. It is not in any way necessary to the decision of the case to find how Shankara Bhatta died. If the evidence of the apothecary Vittal Rao, prosecution fifteenth witness, is to be believed there can be no doubt that the immediate cause of death was a rupture of the left pulmonary artery. The apothecary also considered that the rupture might have been caused by external violence—such as could be inferred from the bruises, &c., which he found on the body of the deceased.

If Surgeon Captain Donovan (Court first witness) is right in his opinion, the rupture *could not* have been caused by any such injuries as could so be inferred. He says nothing but a blow on the front of the upper part of the chest would cause a *rupture* of a pulmonary artery, and that previous general ill-usage would not be a predisposing cause. The examination of Vittal Rao makes it clear that what he saw was a rupture, not a cut, and could not have been caused by him in the course of his *post mortem*; and if that rupture could not have been caused by any of the injuries, marks of which were found on the body, the cause of rupture must be said to be unexplained and unexplainable. I am not myself satisfied that the opinion is altogether correct, but it was given with certitude, and I did not feel called upon to take further medical expert evidence since (as I have already said) the decision of this point is in no way essential to a decision of the charge before me.

Again, as to the medical evidence on the question of drowning, the effect of the evidence is merely this: the absence of froth, &c., in the bronchial tubes and trachea and windpipe, although it is not conclusive proof that the deceased was not drowned, militates very strongly against such a supposition and would argue that he must have been insensible* when he reached the water. So also it may not be a physical impossibility that bruises such as found on the body of Shankra Bhatta could *not* have been caused by his falling round and round and dashing against the sides of the well; but that bruises distributed over the body (inside the limbs, &c.) could have been so caused (or in lifting the body out in a cradle) is so very improbable that the possibility of its so happening may be left out of account.

* As noted above, that Shankara Bhatta was unconscious and not dead if he was thrown into the well by police is quite possible.

11. While writing on this point, I would say that there does not appear to have ever been any reason for supposiug that murder was intended by the police. The worst that could be said would be that the man having died in their hands after they had beaten him, they put the body into well with a view to conceal their offence, fearing no doubt a charge of murder. If the medical evidence had shown beyond doubt that the rupture which was the cause of death might be attributed to the ill-usage said to have been inflicted and which might have been inferred from the result of the *post mortem* examination, then it would have been a question for consideration whether a charge of culpable homicide would have had to be added; but with the evidence before me, I did not consider this necessary or advisable.

12. I have now to consider the effect and credibility of the prosecution evidence on the charges against the accused and their defence. The evidence is that police officers † from Kundapur came to Tallur on February 26th to investigate the theft supposed to have occurred in Shanti Murthappa's house, they sent for Shankara Bhatta and his father, prosecution fourth witness, to the house of fourth accused ‡ Linga Bhatta, for their evening meal, they ordered Shankara Bhatta only to come back after his meal, but that the two men were left there till evening, that when the police allowed them to go away

† *i. e.*, first accused, the station house officer, a Muhammadan constable of the same station, and another constable.

‡ It is urged by both prosecution and defence that the man though a distant relative (a Dayadi) of prosecution fourth witness is on terms of enmity with him.

prosecution fourth witness refused to allow his son to come back alone and returned with him. Prosecution fourth witness slept on an outside (gate) pyal and Shankara Bhatta inside on the house-pyal with first accused on one side of him and second accused on the other.* At about 2 A.M. Linga Bhatta, fourth accused (who it is said had gone away the previous evening to consult an astrologer at Gangoli) came and asked the police to hand over Shankara Bhatta to him for a private inquiry. The police agreed and Shankara Bhatta was taken away to the pyal of Vishwanatha Bhatta. Prosecution fourth witness then went home and fetched his younger brother Shivayya Bhatta (prosecution fifth witness) to Vishwanatha Bhatta's house and there all three (prosecution fourth and fifth witnesses and fourth accused) exhorted Shankara Bhatta if he had committed the theft to confess and give up the stolen property but he denied all knowledge.

* It should be noted here that the prosecution witnesses do not speak before this court of having seen third accused till the next day, Wednesday 27th; butthe accused offers no evidence to snow that he did not come with the other two policemen.

After this the party went† back to the house of Shanti Murthappa, the schoolmaster (prosecution fourth witness says he was kept at a distance by second accused who met him on their way back) and Shankara Bhatta was made to sit on a katte there in charge of third accused. Then Shivayya Bhatta ‡ was taken to fourth accused's yard and beaten. Prosecution fourth witness was watching meanwhile from the shop of Vitla Prabhu (No. 18) first and afterwards from the shop of Subraya Prabhu (No. 16) to which he was moved by the police. No. 16 as will be seen from the plan is farther removed from No. 5 and 1 than No. 18 which is actually at the corner of the compound of No. 1. At midday prosecution fourth witness went for his meal and asked for his son to be allowed to go also, the police said he would be sent later and he was sent in charge of third accused. In the evening prosecution fourth witness again went home for his meals—Shankara Bhatta being detained the whole time in the compound of fourth accused—and coming back after his evening meal (about 9 P.M.) went to the gate pyal of fourth accused; from there he says he saw his son dragged from the katte where he had been sitting during the day to the house pyal of fourth accused, where he was beaten and kicked till he fainted, and then water was given to him and revived with. When his son was so beaten prosecution fourth witness called out and was then driven away from the pyal of fourth accused and went again to No. 16. It would seem that Shankara Bhatta now gave information that he had some rings pledged with Rama Bhatta, prosecution seventh witness. This man was sent for and produced four rings, but Shanti Murthappa said they were not his. The rings were then returned to Rama Bhatta. After this it is said that Shankara Bhatta was taken away by the police—Linga Bhatta and Shanti Murthappa accompanying them—to the east to a distance to a place called Ashvathan katte, No. 9 ("Aswatha" is the Peepul tree; a katte is a raised platform).

† The house of fourth accused No. 5 on plan and that of Shanti Murthappa No. 1 are almost contiguous.

‡ The beating of Shivayya Bhatta is worthy of notice because subsequently when Shankara Bhatta had fainted and water was given to him first accused said that the water had been successful in bringing his uncle round and should therefore be tried with him.

13. Up to this time we have principally the evidence of prosecution fourth witness supported by that of Shivayya Bhatta, prosecution fifth withess, Venktesha Prabhu, prosecution sixth witness, and Rama Bhatta, prosecution seventh witness, so far as they were witnesses of what occurred.

From this time the evidence is—

(1) that of Subbi, prosecution eighth witness, a woman whose house the party would have passed on their way to No. 9. She says that she heard them passing and was able to distinguish the police by their dress. She says there was moonlight; other witnesses say it was dark. As a matter of fact the calendar shows that the new moon was on February 24th, so there would not have been much. She had formerly stated in addition that she heard cries of Shankara Bhatta as he passed and saw the party returning by the back of her house later. When questioned about this, she said that she had no recollection of making such a statement and did not know anything more than she now stated. She was an old woman and the events occurred a year ago. I do not think this difference in her statement need at all argue that what she now says is untrue;

(2) that of Thimmanna Bhatta, prosecution ninth witness. He says that he saw the party pass and followed them watching from two places—first a tree No. 25 on plan, and again from No. 26—and saw Shankara Bhatta being beaten first near the temple at No. 7, and finally at the Ashvathan tree. He says that when so beaten the man cried out for a time, then the cries ceased, then he thought he heard moans and then—silence. And that then the other men lifted him up by the arms and legs and carried him away. He says he saw a group of four or five men. He recognised that some were police by their dress and knew fourth accused and the schoolmaster.

Besides the evidence of these two witnesses, we have only that of prosecution tenth and eleventh witnesses, two men who, having started after dinner that evening to go and see a play, were unable to cross a river in flood—the tide being high—and came back. On their way they heard cries from the Ashvathan tree and going nearer to see what it was, they heard low talking. The only words they could distingnish were "Catch, hold and lift." They say that as they knew the police had come for detection of a crime, they thought this would be their "putting pressure on some one"—and went home.

14. This is the whole of the direct evidence in support of the charges. That Shankara Bhatta had been beaten and beaten severely is proved by the medical *post mortem* examination. Whether such beating is proved to have been inflicted by the police must depend on whether the evidence is believed. Though it is necessarily small in amount and somewhat scattered, I do not think that, taken with the admitted circumstances, it can be considered insufficient. There was nothing in the way in which the evidence was given before me to make me mistrust it. There is also some evidence in corroboration given by the prosecution twelfth witness Devadiga Venkata, who says he was acting as servant to the police after they came to Tallur, but I do not attach much value to his evidence.

15. The only witness who was cross-examined at any length was prosecution fourth witness. This was directed to showing—

(1) That he had stated in his first petition, exhibit C, that the beating was on Tuesday. The words might be taken to mean this—the statement being a loose one. The witness being questioned said the beating was really on Wednesday and that he had not stated to the contrary.

(2) That he said in the same petition that he was "confined" on Tuesday night, whereas his evidence now shows that he was allowed to go home. The witness said his son was "confined;" and he did not choose to leave him.

After this the cross-examination was almost entirely limited to filing the previous statements made by the witnesses.

In the address on behalf of first accused, his vakil by way of contradiction between the former statement of witnesses and those now made only pointed out the two above noted (and a few more of the same kind) and relied on contradictions to be found in statements made to Inspector Boyer with regard to which the witnesses were cross-examined (exhibit VII series) in the former trial before this court. Inspector Boyer was examined as a defence witness. First accused's vakil (and I think with a wise discretion in his client's interest) examined him very shortly and put in his note-book exhibit VIII, as containing the statements made to him. He was warned that the note-book lay under the drawback of not having been previously produced, but contented himself with asking the witness whether extracts from it had not been sent daily to his superiors.

The evidence given by Boyer—

(1) as to his statement taken from Thimmanna is "I do not think that from the place which he pointed out to me he could have seen the place he says he saw" and

(2) with regard to Subbi he says "from inside the tatti of Subbi's verandah she could not have seen outside." In reply to a question by one of the assessors as to whether there was not an entrance through the tatti he said "yes, but from where Subbi told me she was, she could not have seen out." He further stated that Subbi had told him that from the same *front* verandah she had seen the party returning at the *back* of her house.

16. This rather suggests that the witnesses were questioned by the inspector in the manner ordinarily adopted by a vakil in examining an adverse witness—which is hardly calculated to get on the record in a fair light the evidence given.

I am satisfied that the fact that the statements of the witnesses as entered in Mr. Boyer's note-book vary from those made before the various courts which have recorded their evidence is not a reason for distrusting their truth. And this fortunately need not mean that Mr. Boyer wilfully falsified his record of evidence, but he seems to have approached the inquiry in a spirit which rendered it unlikely that he would learn the truth from the witnesses. To mention one point only—he says that during the whole of his inquiry (March 2nd to 8th) he had first accused with him. And I think it is hardly probable that if he had been quite unbiassed he would have considered it his duty—in the interest of the accused—to take the extreme measure of acting on a suspicion which he entertained that the Magistrate to whom the case had been referred by the Divisional Magistrate would not give first accused a fair trial, and, therefore, ignoring his order, and sending in a referred charge sheet to another Magistrate, especially, since the only reasons he is able to give for his suspicion are (1) that the Magistrate repeatedly urged him to complete his inquiry quickly and told him to charge the case, (2) that when the accused first came to his division he gave reports saying that the Magistrate was his enemy. On these reports no inquiry was made and no action taken.

Indeed, looking generally to the way in which the charge against first accused in this case had been dealt with by his departmental superiors, I think that, supposing head constables had reason to believe that charges against them of abusing their powers were likely to be so dealt with by their superior officers, it would be very improbable that they would not take some advantage of that fact.

17. It now remains only to consider how far the evidence brings home to the several accused complicity in the offences charged. With regard to accused one and two, there in no distinction to be made either in the charge against them nor the evidence.

With regard third accused, there is no evidence to connect him with the beating; the only evidence in fact is that he was in charge of Shankara Bhatta during his detention on the 27th February on the katte in fourth accused's compound and conducted him to his meal and back.

Fourth accused is charged with abetment of all the offences.

One of the exhibts, viz., exhibit Q, is the statement made by this man as a witness when examined by the Kundapur Sub-Magistrate on March 1st. I considered it admissible in evidence under section 33, Evidence Act, since (1) the man being now an accused person is incapable of giving evidence; and (2) the statement was taken in the presence of the present accused (who might have cross-examined if they had wished).

The evidence against him shows that he was from the first taking part in the proceedings—that he went (he says himself he was sent) to consult the astrologer at Gangoli; when he came back on the night he had Shankara Bhatta entrusted to him for a time for a private examination. And here I think it is important to notice that on his return from his private examination, prosecution fourth witness is left at a distance, prosecution fifth witness is beaten, Shankara Bhatta is kept in custody while the fourth accused only is at least left to do as he pleased. The proceedings are mostly conducted at his house-pyal, and it is there that the first beating—before the removal to the Asvathana katte—is said to have been inflicted. The evidence that he accompanied the police with Shankara Bhatta to the Asvathana katte and returned with them is not, I think, sufficient.

If the above evidence is to be believed, I do not think it is possible to hold that he did not abet the offences which are found to have been committed.

18. The first assessor found first accused *guilty* under all counts; second accused *not guilty* under sections 342 and 348, because he was obeying the orders of his superior officer, *guilty* under sections 323 and 325 and 331; third accused *not guilty* on any count and fourth accused *guilty* of abetment under sections 342 and 348, not under sections 323, 325 and 331.

The second assessor found first and second accused *guilty* on all counts; third accused *guilty* under sections 342 and 348, and *not guilty* under sections 323, 325 and 331 and fourth accused *guilty* of abetment of all counts.

The duty of obeying an official superior does not extend to the doing of unlawful acts; the plea of obedience to the order of first accused cannot therefore be held to acquit accused two and three for any offence against law they may be found to have committed, but may be considered in extenuation of punishment.

I agree with the assessors in finding *first accused* guilty on all counts of the charge and with the second assessor in finding *second accused* also guilty on all counts, and *third accused* guilty only under sections 342 and 348, and *fourth accused* guilty of abetment of all the offences proved against accused one and two.

To acquit the accused in this case it would be necessary to hold that Shankara Bhatta was only examined by the police as a witness in accordance with the provisions of section 160, Cr. P. C., which would mean not only that the whole of the prosecution oral evidence is found to be concocted, but also that the circumstances do not throw on the accused the obligation of explaining the injuries, the signs of which are found on the corpse, and the fact that the corpse was taken out of the well.

Holding this to be impossible, I can find no sufficient reason to doubt that the offences of illegal confinement and grievous hurt were committed—and committed as shown by the prosecution evidence. If they were so committed the circumstances leave very little doubt that they were committed for the purpose of obtaining information as to the suspected crime or restoration of the stolen property.

Looking to the very slight grounds for suspicion against the unfortunate man at first sight, it seems extraordinary that such measures should be used against him. I am afraid it points to the fact that such measures are not extraordinary—the excessive use of them in the present case being due to the determination of the first accused to obtain detection if possible.

20. Quite apart from the melancholy event—the death of the unfortunate man—the offence of illegally detaining and ill-treating a suspected man is a very serious offence on the part of an officer in the position of first accused. His long service is rather an aggravation than a plea in mitigation in such a case. Still it makes the dismissal from the service—which must necessarily follow on his conviction—for such an offence in itself a heavy punishment.

I do not think I can inflict a less punishment than nine months' rigorous imprisonment. The sentence on second accused is the same. The third accused is guilty only in that he should have known that he ought not to obey any illegal order of his superiors. He is sentenced to simple imprisonment for one month. I can see no reason for making any distinction between the sentence for abetment and principal offence (while, as a matter of fact, the same imprisonment to fourth accused means a very much slighter punishment to fourth accused than to accused one and two). He is sentenced to nine months' rigorous imprisonment.

(Signed) H. G. JOSEPH,
Sessions Judge.

Mangalore,
14th January 1896.

APPENDICES.

I.

THE WITNESSES EXAMINED ARE

Prosecution.

(1) J. L. Boyer, Inspector of Police; (2) K. Rama Rao, Inspector of Police; (3) C. L. Mascarenhas, former Kundapur Magistrate; (4) Ramakrishna Bhatta; (5) Shivayya Bhatta; (3) Venkatesha Prabhu; (7) Rama Bhatta; (8) Subbi; (9) Thimmanna Bhatta; (10) Shesha Shetty; (11) Mahalinga Shetty; (12) Devadiga Venkata; (13) Kusa Billiya; (14) Chikaya Shetty; (15) Vittal Rau, apothecary; (16) Constable Balaya.

Court.

(1) Surgeon Captain Charles Donovan; (2) Shanti Murthappa; (3) Mr. S. P. Scott, Superintendent of Police; (4) Ugrani Rama.

Defence.

(1) C. S. M. Abreo; (2) D. J. Rego; (3) J. L. Boyer, Inspector of Police; (4) Shanti Murthappa; (5) Constable Annappa; (6) C. L. Mascarenhas.

II.

THE EXHIBITS FILED FOR

(*a*) *Prosecution.*

A.		Plan of the place prepared by Inspector Boyer.
B.		Do. do. by Inspector Rama Rao.
C.	28-2-95.	Complaint before the Kundapur Magistrate filed by prosecution fourth and fifth witnesses.
D.	Do.	Potail's report to Kundapur Magistrate.
E.	Do.	Crime report to the Kundapur Magistrate.
F.	Do.	Enclosure to E—report of first accused to Kundapur station house.
G.	19-3-95.	Subbi's deposition (prosecution eighth witness) before the Kundapur Magistrate.
H.	6-4-95.	Subbi's deposition (prosecution eighth witness) before the Udipi (committing) Magistrate.
J.	8-6-95.	Subbi's deposition (prosecution eighth witness) before the Sessions Court.
K.	19-3-95.	Kusa Billiya's deposition before the Kundapur Magistrate.
L.	5-4-95.	Do. do. before the Udipi Magistrate.
M.	28-2-95.	Certificate granted by the Kundapur Civil Apothecary Vittal Rao.
N.	Do.	Inquest report.
O.	29-4-95.	Deposition of Inspector Boyer before the committing Magistrate.
P.	31-3-95.	Inspector Boyer's letter to the Udipi Magistrate.
Q.	1-3-95.	Deposition of fourth accused Linga Bhatta before the Kundapur Magistrate.
R.	1-5-95.	Statement of first accused before Udipi Stationary Magistrate.
S.	Do.	Do. of second accused before Udipi Magistrate.
T.	Do.	Do. of third accused before Udipi Magistrate.
U.	Do.	Do. of fourth accused before Udipi Magistrate.

(*b*) *For defence.*

I.	29-5-95.	Takid to Station-house office of Karkal from the Karkal Sub-Magistrate.
II.	1-6-95.	Report of first accused to do. do. do.
III.	6-3-95.	Petition of Ramakrishna Bhatta to the Kundapur Stationary Magistrate.
VI.	24-3-95.	Petition of Ramakrishna Bhatta to Udipi Stationary Magistrate.
IV1. } IV2. }	28-2-95.	Portion marked in exhibit C.
V1.	1-3-95.	Deposition of Ramakrishna Bhatta before *Kundapur* Magistrate.
V2.	19-3-95.	Do. of Venkatesha Prabhu do. do.
V3.	Do.	Do. of Rama Bhatta do. do.
V4. } (also J). }	Do.	Do. of Subbi do. do.

V5.	19-3-95.	Deposition of Thimmanna Batta before *Kundapur* Magistrate.			
V6.	Do.	Do.	of Shesha Shetty	do.	do.
V7.	Do.	Do.	of Mahalinga Shetty	do.	do.
V8.	Do.	Do.	of Devadiga Venkata	do.	do.
V9.	Do.	Do.	of Kusa Billiya (also Exhibit K)	do.	do.
V10.	Do.	Do.	of Shanti Murthappa	do.	do.
VI1.	5-4-95.	Do.	of Ramakrishna Bhatta before *Udipi* Magistrate.		
VI2.	6-4-95.	Do.	of Venkatesha Prabhu	do.	do.
VI3.	Do.	Do.	of Rama Bhatta	do.	do.
VI4.	Do.	Do.	of Subbi (also Exhibit H)	do.	do.
VI5.	Do.	Do.	of Thimmanna Bhatta	do.	do.
VI6.	31-12-95.	Do.	of Shesha Shetty	do.	do.
VI7.	Do.	Do.	of Mahalinga Shetty	do.	do.
VI8.	5-4-95.	Do.	of Devadiga Venkata	do.	do.
VI8.	Do.	Do.	of Kusa Billiya (also Exhibit L)	do.	do.
VI10.	29-4-95.	Do.	of Potail Chikaya Shetty before *Udipi* Magistrate.		
VI11.	31-12-95.	Do.	of Shivaya Bhatta before *Udipi* Magistrate.		
VII1.	31-5-95.	Do.	of Ramakrishna Bhatta before *Sessions* Court.		
VII2.	7-6-95.	Do.	of Venkatesha Prabhu	do.	
VII3.	8-6-95.	Do.	of Rama Bhatta	do.	
VII4. (also G)	8-6-95.	Subbi's deposition before *Sessions* Court.			
VII5.	7-6-95.	Thimmanna Bhatta's	do.		
VII6.	6-6-95.	Devadiga Venkata's	do.		
VII7.	10-5-95.	Kusa Billiya's	do.		
VII8.	Do.	Chikkaya Shetty's (Potail)	do.		
VII9.	5-6-95.	A. S. Vittal Rao's (Apothecary)	do.		
VII10.	11-6-95.	Deposition of Inspector Boyer	do.		
VIII.	Note-book of Inspector Boyer.				
XI.	Diary extract of the Kundapur Magistrate.				

From S. P. C. SCOTT, Esq., Superintendent of Police, South Canara district, to the Inspector-General of Police, dated Mangalore, 2nd March 1896, No. 352/Genl.

In reply to your endorsement, dated 15th February 1896, on judgment in South Canara session case No. 15 of 1895, I have the honour to report that second and fourth prisoners are said to have appealed and that their appeals are to be heard on 11th March 1896.

First prisoner is said to be preparing his appeal and the third prisoner having been sentenced to only one month's imprisonment has put in an appeal for a revision.

With regard to paragraph 16 of the judgment, I do not understand on what evidence the Judge formed his opinion that the Inspector (Mr. Boyer) "questioned the witnesses in the manner ordinarily adopted by a vakil in examining an adverse witness." Mr. Boyer in his investigation certainly arrived at the proper conclusion, namely, that the accusation of murder was false and that there was some evidence of assault, but that it was not worth much. I think Mr. Boyer's notes of investigation do show in a fair clear light the evidence given. At the first trial the Judge was of opinion that the evidence was not good enough to convict on.

The action of Mr. Boyer in not carrying out the Kundapur Sub-Magistrate's order to put in a charge sheet against the accused requires some explanation. It occurred under the following circumstances:—

Mr. Boyer was on the spot engaged in the investigation and was about half way through it when he got a peremptory order from the Kundapur Sub-Magistrate to send in a "charge sheet." Mr. Boyer was not prepared to do so (the charge was one of murder at that stage of the case) because, as far as he had gone, there was reason to think that the complaint was a wilfully false one. Mr. Boyer should have written to the Sub-Magistrate by return messenger to explain that he could not at that moment comply with the order. So far I think Mr. Boyer was in fault but this seems to me a most trivial error. It is hardly fair to write about the inspector "ignoring" the order.

Having finished his inquiry Mr. Boyer found the charge of murder false and he thought it advisable to send his report to the Head Assistant Magistrate. With the evidence Mr. Boyer had collected he could not possibly have framed a charge sheet. Mr. Boyer was in an awkward position with an order from a Sub-Magistrate who was known to bear ill-will towards one of the accused to charge that accused when there was reason to believe that the case was a false one. Mr. Boyer showed considerable prudence I think in laying the case before the Divisional Magistrate.

The latter part of the 16th paragraph is a little difficult to understand. The Judge implies I take it that the head constable knew that his departmental superiors were ready to back him up in abusing his powers and he took advantage of it. As a matter of fact we have had nothing

to do with the case after the first investigation by the inspector. It was taken out of our hands at once. I was with the Deputy Inspector-General of Police, Southern Range, in camp when the matter was first reported and almost immediately after with the Inspector-General of Police. I had no opportunity before the case was taken up by the magistracy to take any part in it or to influence it in any way.

I am not certain that I understand this part of the paragraph. The Judge wishes to imply something ugly and appears to be afraid to say it in plain language.

From M. HAMMICK, Esq., I.C.S., Inspector-General of Police, Madras, to the Chief Secretary to Government, dated Kavali, 31st July 1896, No. 2995.

I have the honour to submit the copy of the High Court's proceedings in the appeal of F. D'Mello, the head constable convicted in the Sessions Court, South Canara, referred to in my letters, dated 25th December 1895, No. 6134, and 25th March 1896, No. 1330.

Enclosure.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the 18th day of July 1896.

Present:

The Hon'ble Sir Arthur J. H. Collins, *Kt.*, Chief Justice, and the Hon'ble Mr. Justice Benson.

(Criminal Appeals Nos. 49, 50 and 107 of 1896.)

Mahomed Usman, appellant in No. 49 (second prisoner); *Linga Bhatta*, appellant in No. 50 (fourth prisoner); *Francis D'Mello*, appellant in No. 107 (first prisoner).

Appeals against the sentences of the Court of Session of the South Canara division in case No. 15 of the calendar for 1895 (re-trial).

These appeals coming on for hearing after service of notice on the appellants, and counsel not appearing on their behalf: Upon perusing the petition of appeal and the record of the evidence and proceedings before the Court of Session, and upon hearing the arguments of the Acting Public Prosecutor in support of the conviction, the Court delivered the following

Judgment.—We are of opinion that the appellants in these three appeals have been rightly convicted. Looking to the fact that the first and second prisoners are police officers and have been convicted of having caused grevious hurt in order to constrain their prisoners to confess and to restore property, we consider that the punishment of nine months' rigorous imprisonment which the Sessions Judge has imposed is unduly lenient, but having regard to the length of time during which the appellants have been under trial, and to the further consequences which their conviction will entail on the two police officers, we do not think it necessary to take any steps with a view to the enhancement of the sentences. We confirm the convictions and sentences and dismiss these appeals.

(By the Court.)

C. G. TODHUNTER,
Dy. Registrar, Appellate Side.

Order—No. 1806, Judicial, dated 14th November 1896.

The papers read above relate to the proceedings of certain officers in the district of South Canara,—the District Magistrate, Mr. W. H. Welsh, the Head Assistant Magistrate, Mr. A. M. Slight, the Superintendent of Police, Mr. S. P. C. Scott, and an Inspector of Police, Mr. Boyer,—in regard to South Canara sessions case No. 15 of 1895.

2. The facts of this case are given in the judgment of the Sessions Court and the order of the High Court (on appeal) printed above. Shortly stated they were as follows:—In February 1895 a theft occurred in the house of one Shanti Murthappa of Tallur, a village some three miles from Kundapur, the head-quarters of the Head Assistant Magistrate and a Stationary Sub-Magistrate. The police investigated the case and suspected one Shankara Bhatta of the crime. They arrested him on 26th February and he remained in their custody until the early morning of the 28th. A cry was then raised that he had thrown himself into a well in Shanti Murthappa's yard. He was taken from the well dead, and an inquest on his

body was held. The result of the inquest was the drafting of a report that he had jumped into the well and committed suicide, but his relations questioned this verdict and, in consequence, the body was sent to the Kundapur hospital for examination. The evidence of the civil apothecary who conducted the examination showed that Shankara Bhatta did not die from drowning, that his body was covered with a number of bruises which could not have been caused by a single fall, and that the cause of death was the rupture of the left pulmonary artery, an injury probably due to external pressure applied to the chest.

3. Eventually the head constable of Kundapur police station, Francis D'Mello, and two constables of the station who had been engaged with him in investigating the theft case were charged in the Sessions Court under sections 348 and 331, Indian Penal Code, with wrongfully confining and causing grievous hurt to Shankara Bhatta to constrain him to restore stolen property, and a fourth person was charged with abetment of these offences. The trial of the case (calendar case No. 15 of 1895), resulted in the acquittal of the third and fourth accused and the infliction of a sentence of three months' simple imprisonment upon the first and second accused,—D'Mello and one of his constables,—under section 342, Indian Penal Code (wrongful confinement).

4. The first and second accused appealed against the conviction, and the High Court, at the hearing of the appeals, formed the opinion that the Session Court's judgment was seriously defective and that many irregularities had taken place and accordingly called upon all four accused to show cause why they should not be retried. In the end the High Court in the order and proceedings read in G.O., No. 2437, Judicial, dated 26th November 1895 above, directed the retrial of the case, and in its letter in the same Government Order drew the attention of the Government to the case and to the conduct of the local officers in regard to it.

5. The case was retried by a different Sessions Judge as ordered by the High Court in January 1896, and resulted in the conviction of all four accused, the third accused being sentenced to one month's simple imprisonment and the others to nine months' rigorous imprisonment. The conviction and sentences were upheld on appeal by the High Court which remarked that it considered that the punishment of nine months' imprisonment for offences of such a nature was unduly lenient.

6. The High Court's strictures in the order and proceedings passed by it at the hearing of the original appeal upon the conduct of the case by the Sessions Judge will be dealt with in separate proceedings. The matters which are at present for consideration are its remarks against the District Magistrate, the District Superintendent of Police, and Inspector Boyer, and the conduct of the Head Assistant Magistrate (in leaving the case to a Sub-Magistrate instead of taking it up himself) referred to in paragraph 2 of G.O., No. 2437, Judicial, dated 26th November 1895.

7. The case of each officer, with the remarks passed against him and his explanation in answer thereto, will be considered in turn and separately.

First, as regards the District Magistrate, Mr. W. H. Welsh. In the first of its proceedings in G.O., No. 2437, Judicial, dated 26th November 1895, the High Court details certain irregularities which were permitted at the outset of the preliminary inquiry into sessions case No. 15. The Head Assistant Magistrate had rightly refused to comply with the recommendation of the police in a referred charge sheet sent up by them that the case should be struck off the file as false, and, although the head constable D'Mello had asked that it might be disposed of by some other Sub-Magistrate, had ordered the Sub-Magistrate of Kundapur to investigate it. Warrants were issued for the accused on the 14th March and D'Mello then absconded. On the 16th the police reported that they could not find him, although the complainant, the deceased's father, told the Sub-Magistrate that he was hiding in a certain house in Kundapur. On the 17th D'Mello presented a petition through a vakil to the District Magistrate alleging that the Sub-Magistrate of Kundapur was at enmity with him and asking that the Head Assistant Magistrate's order refusing to transfer the case might be overruled and that it might be sent to any other magistrate for disposal. The District Magistrate did not ask the Head Assistant Magistrate to report upon the matter, or the Sub-Magistrate to

explain the allegations made against him, and sent no notice to the complainant to show cause why the case should not be transferred, but on the 18th passed an *ex parte* order directing the transfer of the case to the Udipi Sub-Magistrate. The order merely said:—"It is impossible to say that the objections of the accused persons to this Magistrate are without foundation. The application for a transfer is therefore admitted." The High Court, in the penultimate paragraph of the proceedings already referred to, asked the District Magistrate to "explain how he considered it compatible with his duty to hear such a petition presented on behalf of a person who was at the time absconding from public justice before he had surrendered in obedience to the law," and why he ordered the transfer without notice to the complainant and without giving the Sub-Magistrate an opportunity of explaining the allegations against him. Mr. Welsh's reply and the High Court's remarks thereon are among the papers in G.O., No. 2437, Judicial, dated 26th November 1895 above. Upon receipt of these remarks he wrote his letter of the 28th November 1895 to Government containing a further explanation, and, finally, upon receipt of G.O., No. 2437, Judicial, dated 26th November 1895, submitted an additional statement in continuation thereof. These papers are printed above.

8. His Excellency the Governor in Council has considered the facts of the case and Mr. Welsh's explanations with care and has arrived at the conclusion that the High Court's strictures upon him in its proceedings of the 4th November 1895 are just and deserved. He acted with a want of care and perspicacity in granting the transfer of the case. The High Court's proceedings do not appear to His Excellency in Council to impute any intentional untruthfulness to Mr. Welsh as that officer apprehends, but the remarks in paragraphs 4 and 5 thereof are, in the opinion of His Excellency in Council, warranted by the manner in which Mr. Welsh has succeeded in persuading himself that he granted the transfer for reasons which can scarcely have been in his mind at the time.

9. Next as to the Head Assistant Magistrate, Mr. Slight. In paragraph 2 of G.O., No. 2437, Judicial, dated 26th November 1895, this officer was called upon to explain why he left the preliminary inquiry in this important case to a Sub-Magistrate instead of taking it up himself. His explanation is contained in his letter of the 11th December 1895 read above. His Excellency the Governor in Council is of opinion that in all the circumstances of the case Mr. Slight's action is not deserving of blame. Orders will, however, be now issued that, in the absence of strong reason to the contrary, the burden of proving which shall be upon the Sub-Divisional Magistrate, all cases in which the police are charged with causing hurt to persons in their custody shall in future be investigated by the Sub-Divisional Magistrate himself.

10. Thirdly, as regards the conduct of Mr. Scott, the District Superintendent of Police. The charges against him and his reply thereto are clearly set out in the letter from the Inspector-General of Police, dated 25th December 1895, No. 6134, printed above and need not be further recounted here. His Excellency the Governor in Council concurs with the Inspector-General's opinion that Mr. Scott must have passively connived at the head constable D'Mello's evasion of arrest, and considers that had he so chosen, the ignorance of that officer's whereabouts which he pleads could have been removed. Throughout the case, moreover, there is clear evidence that Mr. Scott weakly relied upon Inspector Boyer at all points, although it should have been apparent to him that there was the strongest suspicion that this officer was doing everything in his power to screen his subordinates. His Excellency the Governor in Council views Mr. Scott's conduct in this matter with great displeasure, and directs that he revert to the grade next below that in which he is now acting and be debarred from promotion therefrom pending the pleasure of Government.

11. Lastly, as regards Inspector Boyer. The concluding portion of the High Court's order of the 30th October 1895 remanding sessions case 15 of 1895 for retrial and read in G.O., No. 2437, Judicial, dated 26th November 1895, makes serious charges against the inspector, and in the last paragraph of his letter, No. 6134, dated 25th December 1895, the Inspector-General of Police promised to deal with

his case as soon as the retrial of sessions case 15 was over. This retrial has now been concluded, but no further communication has been received. The Inspector-General will be requested to frame at a very early date such definite charges against the Inspector as may appear to be warranted by the record (the records sent up to Government are not in all cases entirely complete), to call upon him to show cause why he should not be dismissed from the public service and thereafter to submit the case to Government for orders.

(True Extract.)

for Acting Chief Secretary.

To the District Magistrate of South Canara.
" A. M. Slight, Esq., I.C.S.
" the Inspector-General of Police.
" the Public Department.
Copy to the Hon'ble the Chief Justice with C.L.

Exd. S. J. Pereira.

Disposal No: 5-31/95
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South Canara Dt: Magles Office
Camp Kirimanjeshwar, Dated 17th
September 1895.

From

W. H. Welsh Esqr.,
District Magistrate,
of South Canara.

To,

The Registrar of the High Court
of Judicature,
Appellate Side,
Madras.

Sir,

In obedience to the order dated the
5th Instant in Criminal appeals Nos. 296,
and 308 of 1895 on the file of the High Court
I have the honor to submit the petition* dated 17th March 1895 in which the 1st accused D'Mello prayed for transfer of the case from the file of the Sub Magistrate of Kundapoor.

* with Copy of Proceedings dated 18-3-95.

2. I regret that I overlooked the decision of the High Court in Criminal Revision No: 413 of 1886. On referring to Section 528 of the Criminal Procedure Code

code it did not occur to me that notice should be given to the Complainant Ramakrishna Bhatta. The prosecution appeared to me not a private prosecution but a public one in charge of the Police Department, and the Superintendent of Police who had communicated with me was I understood in favour of the transfer prayed for. It did not occur to me to call for an explanation from the Sub Magistrate of Kundapoor because the only point about which I desired an explanation was why he did not take a written deposition from the complainant when the complainant first came to him about 8½ A.M. (at page 6 lines 41 and 42 of the printed evidence the time is given as 10 O'clock or 7 O'clock) or shortly after, but waited until a petition had been written about 4 P.M which gave an opportunity for lawyers to suggest inventions. Also I might have asked why he did not finish the investigation under

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under Section 176 Criminal Procedure code. I was then quite prepared to discredit the allegations against the Sub Magistrate; the Head Assistant Magistrate had evidently attached no importance to them. I merely noted the fact that the accused did question his impartiality. I had not then fully adopted the theory of the Police that the murder charge was false but that the accused could be proved guilty under Section 330 Indian Penal Code. I considered that the Sub Magistrate would be required as a witness for either the prosecution or the Court or the defence.

3. For instance the Medical evidence did not confirm complainant's testimony on an important point. He had said that deceased's penis was split and was bleeding (at page 12, line 22 of the printed evidence the translation used is "broken."). It seemed that if the

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Magistrate had viewed the corpse he might throw light on this point. He was the first official to take complainants statement and examine the ground. Information whether cries on the hill could have been heard in the village was obtainable from him: and also about the situation of the well, the verandahs &c. He might be able to assist the prosecution by mentioning other facts within his knowledge such as the details of the complaint upon which deceased had been arrested. The fact that the accused were afraid of him made me believe that he would be able to give useful information.

4. I blame myself for not having at once instructed the Public Prosecutor. But it is not usual for the District Magistrate to act in this matter unless the necessity of doing so is specially reported to him. And the usual Public Prosecutor would probably not

not have been able to attend personally being otherwise engaged. I afterwards spoke however about the prosecution with the Inspector General of Police.

It appeared to me that the proper place for this Sub Magistrate in this prosecution was as a witness or an aid to the prosecution rather than as a committing Magistrate, and as the accused, the persons I thought most concerned had asked for the transfer it did not occur to me that notice was necessary. But if an order were to be passed I thought that no time should be lost. It appeared from the Head Assistant Magistrate's order that he and the Tahsildar Magistrate were otherwise engaged, so I selected Mr. Devappa Punja B.I. at Udipi 22 miles away, where there was another Inspector Mr. Shrinivasa and where the intrigues of the Christians of Coondapoor would have less play. The complainant subsequently mov

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that the Police should not be allowed in court, so they ceased to conduct the prosecution and reports were not made to the Magistracy. Though cited as a witness the Sub Magistrate was never actually examined.

5. With reference to the last paragraph of the order of the High Court I am of opinion that there is no ground for supposing that the Superintendent of Police countenanced the Head constable D'Mello's evasion of the warrant. With respect to the question about communication the petition of the absconding accused was submitted through the Superintendent of Police by means of the Pleader. The Superintendent of Police must have seen the Inspector and may have also seen the Pleader. And the Pleader of course knew how to communicate with the absconding accused as well as with those in custody. The Pleader's knowledge would not have helped towards

towards execution of the warrant. It is possible to evade a warrant transferred from station to station in the present strength of the force unless a determined effort is made to execute it by interrupting of the ordinary course of duty. The Pleader verbally applied to me for the release of the accused on bail and was refused. It was likely that the absconding man would surrender as soon as he knew that an application for bail to me or to a Superior Court would be futile. I do not know how it was that the Head Constable remained at large till after the 31st March or what steps were taken to execute the warrant. But I presume that I should not await an explanation from the Superintendent of Police before submitting this report and I have therefore not asked him. I think he understood his duty and the duty of the Police in res[pect] a magisterial warrant. He re[fused]

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one communication namely the petition of 17th March from the absconding man but I cannot say whether he received more.

The order of the High Court was received at Camp Wandse in the Northern part of the District and the petition was received from Head Quarters only yesterday afternoon, so this report could not have been submitted earlier.

I have &c.

(Signed) W. H. Welch
Dt. Magistrate.

(True Copy)

W H Welch
District Magistrate.

Comp'd
M.C.

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Ltte J 1055 1/95

Enclosure No 1.

In a letter from the ~~Collector~~ Dt. Magistrate of South Canara
to the Secretary to ~~the Commissioners of Land~~ Chief Government, Judicial Department Revenue, Madras, dated 28th November 1895

No.

District Magistrate's letter to the High Court No 531 dated the 17th September 1895 in connection with Lepsious case No 15 of 1895.

11/

Extract from the Proceedings of the High Court dated 5th September 1895 in C. A. Nos 296 and 308 of 1895

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We will ask the District Magistrate to send up the Petition of the 17th of March 1895 in which the 1st accused D'Mello requested transfer of the case from the file of the Sub Magistrate of Kundapur and to explain how he considered it compatible with his duty as a District Magistrate to hear such a petition presented on behalf of a person who was at the time absconding from public

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justice before he had surrendered in obedience to the law. We will also ask the District Magistrate to explain why the transfer was ordered without notice to the complainant Ramakrishna Bhatta and without giving the Sub Magistrate of Kundapur an opportunity of explaining any thing that was alleged against him.

With reference to the letter of the Inspector of Police, dated 31st March 1895, to the 2nd class Magistrate of Udipi, p 40 of the Magisterial record, a copy of which will be sent to the District Magistrate, we will ask the District Magistrate to report whether there is

is any ground for supposing that the Superintendent of Police was in communication with the Head Constable D'Mello while he was absconding and countenanced that officer's evasion of the warrant which had been issued against him.

* * * *

(True Extract)

Dt. Magistrate

Comps

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L.H.C. J1055 1/95-

Enclosure No 2

In a letter from the ~~Ag. Collector~~ District Magte of South Canara to the Secretary to ~~the Commissioner of Salt, Abkari and Separate Revenue~~ Chief Government, Judicial Department, Madras, dated 28th November 1895 No.

Extract from the order of the High Court in C.A. Nos 296 & 308 dated 5th September 1895.

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Dist Record

Proceedings of the District Magistrate of South Canara. Dated 18th March 1895.

Read petition dated 17th Instant submitted by D'mello 1st accused in Referred charge Sheet No: 20 dated 8th March 1895 of the Police Inspector of the Kundapur Division, through the Superintendent of Police.

Heard Vakil Mr J. F. Mascarenhas for petitioner praying that the case may be withdrawn from the Stationary Sub magistrate of Kundapur.

—

It is observed that the Head Assistant Magistrate in his Proceedings No — dated 13th March 1895 has ordered a magisterial inquiry and has transferred the same from his file to that of the Stationary Sub magistrate of Kundapur. It is impossible to say that the objections of the accused persons to this Magistrate are without foundation. The application for a transfer is therefore admitted

admitted. The inquiry will be taken on the file of this Court and transferred to the Stationary Sub Magistrate of Udipi for inquiry under Chapter XVIII Criminal Procedure Code.

(Signed) J. W. Welsh.
District Magistrate.

(True copy)

J. W. Welsh

D. Magistrate

Compd

22/

L Ho J 10551/95

Enclosure No 3.

In a letter from the ~~Collector~~ District Magistrate of South Canara
to the ~~Government, Judicial Dept,~~ Chief Secretary to ~~the Commissioners of Land~~
~~Revenue~~, Madras, dated 28th November 1895

No.

HIGH COURT.
RECEIVED
2 - DEC. 95
MADRAS.

Subject.

District Magistrate's order dated 18th March 1895 on petition dated 17th Idem. on behalf of D'Mello praying for transfer of the case against him from the file of the Coondapoor Stationary Sub-Magistrate

Grant-No 2295

Refce on C. No 3636/95 Judl.

(23) SOUTH CANARA DISTRICT MAGISTRATE'S OFFICE,
Mangalore,
28th November 1895.

From

W. H. Welsh, Esquire,
District Magistrate of
South Canara.

See vote on back of this letter WH

To

THE CHIEF SECRETARY TO GOVERNMENT,
Judicial Department,
Fort St. George.
(Through the Registrar, High Court, appellate side,)

Sir,

I have the honor to report that I received on 26th instant, through the Sessions Judge of this Division, copy of the Proceedings of the High Court, No 2295, Judicial, dated 4th November 1895. This has doubtless been brought to the notice of Government.

2. I do not know whether the proper procedure is to wait till Government passes orders upon the matter so brought to its notice; but it seems to be my duty to refer to paragraphs 4 & 5 of the Proceedings, where the Honorable the Judges have been pleased to make observations which appear to impeach my truthfulness. "The remarks which

which the District Magistrate makes about
"the evidence could not have been present
"to his mind at the time for he had not the
"record before him and disposed of the
"application without calling for the record."
And it is said that my explanation is
contradicted by my own order, as the
reasons contained in the explanation are
not mentioned in the order of transfer.

3. But the order would naturally
refer only to the petition or matter argued
judicially before the officer passing it,
whereas the explanation asked from the
District Magistrate was "why he transferred
"the case without notice to the complain-
"ant &c." The explanation submitted
was that the prosecution was considered
a public prosecution in the hands of the
Police. Information received from the
Superintendent of Police was present to my
mind for he had visited me and given

an account of the post mortem certificate
and the statements as recorded by the Police,
which of course was not evidence that could be
referred to in an order, but which shewed what
testimony the Sub magistrate might be expected
to give and how the officer in charge of the
prosecution viewed the application for transfer.

Note
"But as further
Reasons why this
Rule was issued
attached to the
order of
transfer.

4 I beg to enclose copy of this Office
letter No. 531 dated 17th September 1895 to the
High Court with copy of order and extract from
their order in C. A. Nos. 296 & 308 dated 5th
September 1895.

5. Their Lordships evidently think it
probable that I told lies in a futile attempt
to account for hasty or mistaken action and
invented a long story of motives. They have
practically made a charge against me.

6. As a public servant I have a claim
that a decision should be come to upon this
matter, distinct from the decision upon the

conduct of the officers generally.

7. The Superintendent of Police came to me to say that 3 of his men were charged with murder. He gave his reasons for considering the direct evidence of murder to have been concocted. He described the evidence substantially as detailed in his confidential Report to the Inspector-General for that week..

8. (That report may be sent for as an indication of what facts could have been present to my mind in that week. Their Lordships in observing that the record was not before me may have lost sight of the fact that District Magistrates are kept informed of the evidence in grave crimes as it is collected.)

9. I said at once that there was a good case against the policemen under sec 330 I.P.C. for torture and that there was some evidence of murder weakened by the fact that some of the statements did not agree with the postmortem

postmortem and that the complaint was not recorded till 4 p.m. of the day on which it was made.

10. But that complaint had been made first in the morning to the very magistrate whom the first accused rightly or wrongly impeached as the inventor of the charge, though the magistrate was a native Christian like himself.

11. I say that in the interests of justice I at once considered that the magistrate should be a witness. It was not reported whether he had viewed the corpse or not. If he could have given evidence about that, his testimony might have furnished an important link. But it was undesirable to set the parties thinking what he might be called to prove or to indicate to either side gaps in the evidence which might be supplied otherwise (for instance by fabrication). Therefore it was not mentioned in the reasons for the transfer order.

12. It

12. It was impossible to say off hand as that the objections made by the 1st accused as D'mello to his fellow-casteman were without foundation and therefore I gave that as the as reason for the transfer order. Though I was then quite prepared to discredit the one-sided as allegations yet there was no time to go into them. It could merely be noted that the accused did say something against the committing Magistrate. The enquiry was one which I thought should be pushed forward at once and the desirability of being able to call the Magistrate to whom complaint was first made and who went to the scene of offence in the first instance and as made some inquiries on the spot as a witness seemed of importance. Therefore transfer was made forthwith, not to Mangalore as prayed by the Pleader for the accused, but to the Magistrate of the next taluq.

13 I would ask Government to consider what

what motive I could have for inserting in the explanation called for by the Honorable the Judges anything which would be contradicted by the copy of the order of transfer which I submitted as an enclosure though it was not called for, and which may have been the source from which the Judges ascertained the reason given for transfer.

14. It should not be forgotten that I took interest in the prosecution. The local Government prosecutor was of course instructed at Sessions and the Government Pleader at Madras to oppose the appeal.

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

D. W. Welsh
District Magistrate.

Compd
L.B.

Mr. Welch came to me (I think during the Easter holidays.) about the matter of the H.C.'s having, as he said, imputed untruthfulness to him - I told him that, in my opinion, it had not done so, but had merely held that he was muddle-headed, which imputation I held him I thought was deserved. I questioned him carefully as to how far he was certain what was in his mind on March 18, 1895, when he wrote the transfer order; & pointed out how easy it was in a transaction of which practically no record had been kept, for anyone to think that he knew, or thought, at a particular moment what he did not really know, and could not have thought, until a later period - after some conversation, he admitted that he could not be certain that the considerations set forth in his letter of the Regt. of the H.C. of Sept 17, 1895, Nº 531/95 Regt., had been present in his mind on March 18. This is the point in his mind quite clear. I assured Mr. Welch, of course, that I should not think of imputing untruthfulness to him & that he might be at ease on that score.

HS
26/3/96
A.G.
12.3.96

From

The District Magistrate,
South Canara.

To

The Chief Secretary to
Government,
Judicial Department,
Fort St: George.
(Through the Registrar, High Court
of Judicature
Appellate Side

Dated } November Madras.
Received 22-12-95 1895.

Reference on No. 3636/95
Magl.

Enclosures three only.

Subject.

Proceedings of the High Court
No. 2295, Judicial dated 4th
November 1895, paragraphs
4 and 5. Claiming that the
remarks of the Honorable
the Judges impeaching
his sincerity may be sepa-
-rately considered.

34/

Enclosure I to the High Court's letter dated 6th December 95 - No. 2516. Judicial.

with three other Enclosures and with the Ch. Magte's letter enclosed herein.

No. 2516 Jud. 35

5.809

High Court of Judicature,
Madras, 6th December 1895.

From

D. W. G. Cowie Esquire,
ag: Registrar High Court,
Appellate Side, Madras.

To

The Honorable Mr. T. H. Price C.S.I
Chief Secretary to Government
Fort St: George.

Honorable Sir,

In forwarding herewith an Explanation of the District Magistrate of South Canara, Reference on current No. 3636 of 1895, Magisterial dated the 28th ultimo, addressed to Government regarding certain observations contained in the Proceedings of this Court No. 2295, Jud. dated the 4th idem, forwarded to Government with my letter

No

36/ No. 2297. Jnol. dated the 11th November, 80 2437 26-11-95

I am directed to state that the unsatisfactory nature of the reasons given by the District Magistrate for his action was commented upon by the Public Prosecutor at the hearing of Criminal appeals nos. 296 and 308 of 1895 and that the High Court has nothing to add.

I have the honor to be,
Honorable Sir,
Your most obedient Servant,

C.J. Todhunter
1st ag. Registrar,
Appellate Side.
6.12.

38/

2467
26-11-95

5809

Judicial {189} Department.

No.

FROM

THE Ag. REGISTRAR OF THE HIGH COURT OF JUDICATURE AT MADRAS, APPELLATE SIDE.

RECEIVED
-8 DEC. 1895
GOVERNMENT OF MADRAS

Dated 6 December } 1895.
Received 8th
Rep 9th

No. 2516 Jud
Enc 4

Forwarding an explanation of the Dt. Supt. South Canara addressed to Govt. & stating that the unsatisfactory nature of the reasons given by him for his action was commented upon by the Public Prosecutor at the hearing of the Criminal appeal nos 296 & 308/95.

11/12

[G/9]
2,000—2-4-95

Current No.

DEPARTMENT.

139

Omit

dated 12/12

From

Telegram to—
D. Sn
S. Canara

No.

752 x Please return all papers forwarded thro' the Police & with ref order 2437 - 26th Nov when replying to that order —

Dated
Received
Enclosures

SUBJECT.

CURRENT NO. 5886

Code Class. S

INDIAN TELEGRAPHS.

Monthly Number.

To (Office) Madras.

From (Office) Mangalore.

Words. 64 | Day. 13 | Hour. | Minute. | Official Instructions. Dfo. Kna

To (Person) Madras.

SECRETARIAT
14 DEC 1895
GOVERNMENT OF MADRAS

From (Person) District magistrate

Your telegram twelfth am awaiting receipt of papers from inspector general police.

64 Word Form.

F. C 2.

Recd. from LN. | Sent to LN.

At Hrs. Mts. by | At Hrs. Mts. by

MADRAS 13-12-95

Telegraph Master.

C G P—No. 388 T.—22 12 94—2400000.

[G / 9]
5,000—15-8-95.

2437-

Current No. 5886

DEPARTMENT.

To
From
The D. Magte
S. Canara

No.

Dated 13. 12. 95
Received 14. 12. 95
Enclosures

SUBJECT.

Stating, with reference to Govt. Office telegram of the 12th, that he is awaiting receipt of papers from the I. Govt Police

Encl. 6119
Cuo 6041

To await Govt's reply to go.

2437
26-11-95

Disposal No. 128/95 Magl.

Proceedings of the District Magistrate of South Canara, dated 18th March 1895.

Read petition, dated 17th Instant, submitted by D'Mello, 1st accused in R. C. S. No. 20, dated 8th March 1895, of the Police Inspector of the Coondapoor Division through the Superintendent of Police.

Heard Vakil Mr. J. F. Mascarenhas for petitioner, praying that the case may be withdrawn from the Stationary Sub-Magistrate of Coondapoor.

It is observed that the Head Assistant Magistrate in his Proceedings No._____ dated 13th March 1895, has ordered a magisterial inquiry and has transferred the same from his file to that of the Stationary Sub-Magistrate of Coondapoor. It is impossible to say that the objections of the accused persons to this Magistrate are without foundation. The application for a transfer is therefore admitted. The inquiry will be taken on the file of this Court and transferred to the Stationary Sub-Magistrate of Udipi for inquiry under Chapter XVIII, Criminal Procedure Code.

18. 3. 1895. (Signed) W. H. WELSH,
District Magistrate.

Extract from Tabular Notebook of Reports in Grave Crimes kept by District Magistrate.

Part of statement recorded by Inspector Boyer on 2nd March 1895 from complainant Ramakrishna Bhatta.

"I refused to remove corpse; bruise on right shoulder and on chest. Penis split in two. Refused to sign inquest."

Note of *post mortem* in same.

"Several small bruises in 2 groups on right arm. A section of one was taken; 'dull red clotted blood'. Bruise below R. breast. On L. breast 1"×½".

"Two smaller bruises on L. elbow. Several smaller on R. scapular region. Several small bruises on thigh. Bruise on ankle. On opening chest 12 oz. clotted blood found and pulmonary artery ruptured. Cause of death rupture of pulmonary artery, the result of external violence."

This is extracted to shew how complainant's statement is contradicted by the *post mortem*, and that this contradiction was reported to the District Magistrate in the Weekly Report of the Crime and noted by him then on the date when he received it.

G. R. No. $\frac{2069}{1895}$

In the High Court of Judicature at Madras.

Thursday the fifth day of September, one thousand eight hundred and ninety-five.

Present:

The Honourable Sir Arthur J. H. Collins K. T., Chief Justice,

and

The Honourable Mr. Justice Parker.

Criminal Appeals Nos. 296 and 308 of 1895.

* * * * * *

We will ask the District Magistrate to send up the Petition of the 17th of March 1895, in which the 1st accused D'Mello requested transfer of the case from the file of the Sub-Magistrate of Coondapoor and to explain how he considered it compatible with his duty as a District Magistrate to hear such a petition presented on behalf of a person who was at the time absconding from public justice before he had surrendered in obedience to the law. We will also ask the District Magistrate to explain why the transfer was ordered without notice to the complainant Ramakrishna Bhatta and without giving the Sub-Magistrate of Coondapoor an opportunity of explaining anything that was alleged against him.

With reference to the letter of the Inspector of Police, dated 31st March 1895, to the 2nd Class Magistrate of Udipi, p. 40 of the Magisterial record, a copy of which will be sent to the District Magistrate, we will ask the District Magistrate to report whether there is any ground for supposing that the Superintendent of Police was in communication with the Head Constable D'Mello while he was absconding and countenanced that officer's evasion of the warrant which had been issued against him.

By the Court.

(Signed) C. G. TODHUNTER,
Dy. Registrar, Appellate Side.

Disposal No. $\frac{531 \text{ of } 95}{\text{Magl.}}$

SOUTH CANARA DISTRICT MAGISTRATE'S OFFICE,
Camp, Kirimanjeshwar, 17th September 1895.

From

W. H. Welsh Esquire,
District Magistrate, South Canara.

To

The Registrar of the High Court of Judicature,
Appellate Side, Madras.

Sir,

In obedience to the order, dated the 5th Instant in Criminal Appeals Nos. 296 and 308 of 1895 on the file of the High Court, I have the honor to submit the petition,* dated 17th March 1895, in which the 1st accused D'Mello prayed for transfer of the case from the file of the Sub-Magistrate of Coondapoor.

* With copy of proceedings, dated 18. 3. 95.

2. I regret that I overlooked the decision of the High Court in Criminal Revision No. 413 of 1886. On referring to Section 528 of the Criminal Procedure Code it did not occur to me that notice should be given to the complainant Ramakrishna Bhatta. The prosecution appeared to me not a private prosecution but a public one in charge of the Police Department, and the Superintendent of Police who had communicated with me was, I understood, in favour of the transfer prayed for. It did not occur to me to call for an explanation from the Sub-Magistrate of Coondapoor, because the only point about which I desired an explanation was why he did not take a written deposition from the complainant when the complainant first came to him about $8\frac{1}{2}$ A. M. (at page 6, lines 41 and 42 of the printed evidence, the time is given as 10 o'clock or 7 o'clock) or shortly after, but waited until a petition had been written about 4 P. M., which gave an opportunity for law-touts to suggest inventions. Also I might have asked why he did not finish the investigation under Section 176 Criminal Procedure Code. I was then quite prepared to discredit the allegations against the Sub-Magistrate; the Head Assistant Magistrate had evidently attached no importance to them. I merely noted the fact that the accused did question his impartiality. I had not then fully adopted the theory of the Police that the murder charge was false, but that the accused could be proved guilty under Section 330 of the Indian Penal Code, I considered that the Sub-Magistrate would be required as a witness for either the prosecution or the court or the defence.

3. For instance, the medical evidence did not confirm complainant's testimony on an important point. He had said that deceased's penis was split and was bleeding (at page 12, line 22 of the printed evidence the translation used is "broken"). It seemed that if the Sub-Magistrate had viewed the corpse, he might throw light on this point. He was the first official to take complainant's statement and examine the ground. Information whether cries on the hill could have been heard in the village was obtainable from him, and also about the situation of the well, the verandahs, etc. He might be able to assist the prosecution by mentioning other facts within his knowledge, such as the details of the complaint upon which deceased had been arrested. The fact that the accused were afraid of him made me believe that he would be able to give useful information.

4. I blame myself for not having at once instructed the Public Prosecutor. But it is not usual for the District Magistrate to act in this matter unless the necessity of doing so is specially reported to him. And the actual Public Prosecutor would probably not have been able to attend personally, being otherwise engaged. I afterwards spoke however about the prosecution with the Inspector General of Police. It appeared to me that the proper place for this Sub-Magistrate in this prosecution was as a witness or an aid to the prosecution rather than as a committing Magistrate, and as the accused, the persons I thought most concerned, had asked for the transfer, it did not occur to me that notice was necessary. But if an order were to be passed, I thought that no time should be lost. It appeared from the Head Assistant Magistrate's order that he and the Tahsildar Magistrate were otherwise engaged, so I selected Mr. Devappa Punja, B. L., at Udipi, 22 miles away, where there was another Inspector Mr. Shrinivasa, and where the intrigues of the Christians of Coondapoor would have less play. The complainant subsequently moved that the Police should not be allowed in court, so they ceased to conduct the prosecution, and reports were not made to the Magistracy. Though cited as a witness the Sub-Magistrate was never actually examined.

5. With reference to the last paragraph of the order of the High Court I am of opinion that there is no ground for supposing that the Superintendent of Police countenanced the Head Constable D'Mello's evasion of the warrant. With respect to the question about communication, the petition of the absconding accused was submitted through the Superintendent of Police by means of the Pleader. The Superintendent of Police must have seen the Inspector and may have also seen the Pleader. And the Pleader of course knew how to communicate with the absconding accused as well as with those in custody. The Pleader's knowledge would not have helped towards execution of the warrant. It is possible to evade a warrant transferred from station to station in the present strength of the force, unless a determined effort is made to execute it by interruption of the ordinary course of duty. The Pleader verbally applied to me for the release of the accused on bail and was refused. It was likely that the absconding man would surrender as soon as he knew that an application for bail to me or to a superior court would be futile. I do not know how it was that the Head Constable remained at large till after the 31st March or what steps were taken to execute the warrant. But I presume that I should not await an explanation from the Superintendent of Police before submitting this report, and I have therefore not asked him. I think he understood his duty and the duty of the Police in respect of a Magisterial warrant. He received one communication, namely the petition of 17th March from the absconding man, but I cannot say whether he received more.

The order of the High Court was received at Camp Wandse in the northern part of the District and the petition was received from Head Quarters only yesterday afternoon, so this report could not have been submitted earlier.

I have etc.

(Signed) W. H. WELSH,

District Magistrate.

(49

No. 2295 Judicial.

Proceedings of the High Court of Judicature at Madras.

Dated 4th November 1895.

Read Judgment and records in Sessions Case No. 15 of 1895 on the file of the Court of Session of South Canara.

In the order of this Court, dated 5th September, the District Magistrate was requested to send up the proceedings connected with his order of transfer, dated March 17th, and to give explanation upon the following points:

(1) How he considered it compatible with his duty as District Magistrate to hear a petition presented on behalf of a person who was at the time absconding from Public Justice before he had surrendered in obedience to the law?

(2) Why he transferred the case without notice to the complainant (deceased's father) and without giving the Sub-Magistrate of Coondapoor an opportunity of explaining anything that was alleged against him?

(3) Whether, with reference to the letter of the Inspector of Police, dated 31st March 1895, there was any ground for supposing that the Superintendent of Police was in communication with the absconding Head Constable D'Mello and countenanced that officer's evasion of the warrant that had been issued against him?

2. To the 1st question the District Magistrate has given no reply at all, but has merely entered into the reasons which led him to assent to the transfer. Such reasons are obviously beside the question, and from his silence the High Court presumes that the District Magistrate has no explanation to offer. In consenting to receive and hear such a petition from an absconding person the District Magistrate was not only irregular in his procedure but displayed culpable weakness, practically allowing an absconding accused to make terms with constituted authority as to the conditions under which he would appear. Such procedure tends to bring the law into contempt and the District Magistrate should have refused to hear any petition at all until the accused had surrendered.

4. On the second question the District Magistrate observes that he did not call for an explanation from the Sub-Magistrate because the only point on which he should have desired explanation was why the Sub-Magistrate did not immediately record a written complaint. Mr. Welsh states he was *then* quite prepared to discredit the allegations against the Sub-Magistrate, especially as the Head Assistant Magistrate had attached no importance to them, but that he thought the Sub-Magistrate would be required as a witness for the prosecution or for the defence, or might be called as a Court witness.

4. As to this the High Court cannot but observe that the District Magistrate's explanation is contradicted by his own order of March 18th. Not a word is said about the necessity of calling the Sub-Magistrate as a witness, nor was any such necessity alleged in the petition of the accused. The remarks which the District Magistrate makes about the evidence could not have been present to his mind at the time, for he had not the record before him and disposed of the application without

calling for the record. Moreover it must have been obvious that the fact that the Sub-Magistrate had committed the case would be no reason why the Sessions Court should not call him as a witness if his evidence was thought necessary. At the time the District Magistrate passed his order the Sub-Magistrate had not been cited as a witness by either side, and though afterwards cited, he was not called.

5. The sole ground for the transfer alleged in the petition was that the Sub-Magistrate was prejudiced against the accused and wished to ruin him, and that was the sole ground specified in the District Magistrate's order for granting the transfer. The District Magistrate observed in his order "It is impossible to say that the objections of the accused person to *this* Magistrate are without foundation. The application for a transfer is therefore admitted." The High Court finds it impossible to reconcile this language with Mr. Welsh's present explanation that he was *then* quite prepared to discredit the allegations against the Sub-Magistrate, especially as the Head Assistant Magistrate had attached no importance to them.

6. The High Court cannot but consider that to pass such an order on the *ex parte* petition of an absconding accused conveyed a most unmerited slur both upon the Head Assistant Magistrate and upon the Sub-Magistrate of Coondapoor, and was obviously calculated to defeat the ends of justice. Here again the weakness shown by the District Magistrate is most regrettable.

7. In answer to the third question the District Magistrate states he thinks there is no reason to suppose the Superintendent of Police countenanced the Head Constable's evasion of the warrent. He states the Superintendent may have seen the pleader of the absconding accused, but that he "thinks he understood his duty".

8. If, however, the Superintendent supported the application for transfer while the accused was absconding, it is quite manifest that he did *not* understand his duty. But the District Magistrate had not called for any explanation of the instructions given by the Superintendent to the Inspector of Police referred to in the letter of March 31st, and the High Court will not now ask him to obtain any further explanation since the Court has decided that it is necessary to bring the whole matter to the notice of Government.

(True Extract)

(Signed) D. W. G. COWIE,
Acting Registrar, Appellate Side.

Ref. on C. No. 3636 Magl. / 95.

SOUTH CANARA DISTRICT MAGISTRATE'S OFFICE, MANGALORE,
28th November 1895.

From

W. H. Welsh Esquire,
District Magistrate of South Canara.

To

The Chief Secretary to Government,
Judicial Department, Fort St. George.

Through the Registrar, High Court, Appellate Side.

Sir,

I have the honor to report that I received on 26th Instant, through the Sessions Judge of this Division, copy of the Proceedings of the High Court, No. 2295, Judicial, dated 4th November 1895. This has doubtless been brought to the notice of Government.

2. I do not know whether the proper procedure is to wait till Government passes orders upon the matter so brought to its notice, but it seems to be my duty to refer to paragraphs 4 and 5 of the Proceedings, where the Honorable the Judges have been pleased to make observations which appear to impeach my truthfulness. "The remarks which the District Magistrate makes about the evidence could not have been present to his mind at the time, for he had not the record before him, and disposed of the application without calling for the record." And it is said that my explanation is contradicted by my own order, as the reasons contained in the explanation are not mentioned in the order of transfer.

3. But the order would naturally refer only to the petition or matter argued judicially before the officer passing it, whereas the explanation asked from the District Magistrate was "why he transferred the case *without notice to the complainant etc.*" The explanation submitted was that the prosecution was considered a public prosecution in the hands of the Police. Information received from the Superintendent of Police was present to my mind, for he had visited me and given an account of the *post mortem* certificate and the statements as recorded by the Police, which of course was not evidence that could be referred to in an order, but which shewed what testimony the Sub-Magistrate might be expected to give and how the officer in charge of the prosecution viewed the application for transfer.

4. I beg to enclose copy of this office letter No. 531, dated 17th September 1895 to the High Court with copy of order and extract from their order in C. A. No. 296 and 308, dated 5th September 1895.

5. Their Lordships evidently think it probable that I told lies in a futile attempt to account for hasty or mistaken action and invented a long story of motives. They have practically made a charge against me.

6. As a public servant I have a claim that a decision should be come to upon this matter, distinct from the decision upon the conduct of the officers generally.

7. The Superintendent of Police came to me to say that 3 of his men were charged with murder. He gave his reasons for considering the direct evidence of murder to have been concocted. He described the evidence substantially, as detailed in the confidential report to the Inspector General for that week.

(8. That report may be sent for *as an indication of what facts could have been present to my mind in that week.* Their Lordships in observing that the record was not before me may have lost sight of the fact that District Magistrates are kept informed of the evidence in grave crimes as it is collected.)

9. I said at once that there was a good case against the policemen under Section 330 I. P. C. for torture and that there was some evidence of murder weakened by the fact that some of the statements did not agree with the *post mortem* and that the complaint was not recorded till 4 P. M. of the day on which it was made.

10. But that complaint had been made first in the morning to the very Magistrate whom the first accused rightly or wrongly impeached as the inventor of the charge, though the Magistrate was a Native Christian like himself.

11. I say that in the interests of justice I at once considered that the Magistrate should be a witness. It was not reported whether he had viewed the corpse or not. If he could have given evidence about that, his testimony might have furnished an important link. But it was undesirable to set the parties thinking what he might be called to prove or to indicate to either side gaps in the evidence which might be supplied otherwise (for instance, by fabrication). Therefore it was not mentioned in the reasons for the transfer order.

12. It was impossible to say off-hand that the objections made by the 1st accused D'Mello to his fellow-casteman were without foundation, and therefore I gave that as the reason for the transfer order. Though I was then quite prepared to discredit the one-sided allegations, yet there was no time to go into them. It could merely be noted that the accused did say something against the committing Magistrate. The enquiry was one which I thought should be pushed forward at once, and the desirability of being able to call the Magistrate, to whom complaint was first made and who went to the scene of offence in the first instance and made some enquiries on the spot, as a witness seemed of importance. Therefore transfer was made forthwith, not to Mangalore as prayed by the pleader for the accused, but to the Magistrate of the next Taluk.

13. I would ask Government to consider what motive I could have for inserting in the explanation called for by the Honorable the Judges any thing which would be contradicted by the copy of the order of transfer which I submitted as an enclosure, though it was not called for, and which may have been the source from which the Judges ascertained the reason given for transfer.

14. It should not be forgotten that I took interest in the prosecution. The local Government Prosecutor was of course instructed at Sessions and the Government Pleader at Madras to oppose the appeal.

I have, etc.

(Signed) W. H. WELSH,

District Magistrate.

Received
District Magistrate

Disposal No. 128/95 Magl.

Proceedings of the District Magistrate of South Canara, dated 18th March 1895.

Read petition, dated 17th Instant, submitted by D'Mello, 1st accused in R. C. S. No. 20, dated 8th March 1895, of the Police Inspector of the Coondapoor Division through the Superintendent of Police.

Heard Vakil Mr. J. F. Mascarenhas for petitioner, praying that the case may be withdrawn from the Stationary Sub-Magistrate of Coondapoor.

It is observed that the Head Assistant Magistrate in his Proceedings No. ..... dated 13th March 1895, has ordered a magisterial inquiry and has transferred the same from his file to that of the Stationary Sub-Magistrate of Coondapoor. It is impossible to say that the objections of the accused persons to this Magistrate are without foundation. The application for a transfer is therefore admitted. The inquiry will be taken on the file of this Court and transferred to the Stationary Sub-Magistrate of Udipi for inquiry under Chapter XVIII, Criminal Procedure Code.

18. 3. 1895.

(Signed) W. H. WELSH,

District Magistrate.

Extract from Tabular Notebook of Reports in Grave Crimes kept by District Magistrate.

Part of statement recorded by Inspector Boyer on 2nd March 1895 from complainant Ramakrishna Bhatta.

"I refused to remove corpse; bruise on right shoulder and on cheek. Penis split in two. Refused to sign inquest."

Note of *post mortem* in same.

"Several small bruises in 2 groups on right arm. A section of one was taken; 'dull red clotted blood'. Bruise below R. breast. On L. breast 1″×½″.

"Two smaller bruises on L. elbow. Several smaller on R. scapular region. Several small bruises on thigh. Bruise on ankle. On opening chest 12 oz. clotted blood found and pulmonary artery ruptured. Cause of death rupture of pulmonary artery, the result of external violence."

This is extracted to shew how complainant's statement is contradicted by the *post mortem*, and that this contradiction was reported to the District Magistrate in the Weekly Report of the Crime and noted by him ~~then~~ on the date when he received it.

G. R. No. $\frac{2069}{1895}$

In the High Court of Judicature at Madras.

Thursday the fifth day of September, one thousand eight hundred and ninety-five.

Present:

The Honourable Sir Arthur J. H. Collins K. T., Chief Justice,

and

The Honourable Mr. Justice Parker.

Criminal Appeals Nos. 296 and 308 of 1895.

* * * * * * *

We will ask the District Magistrate to send up the Petition of the 17th of March 1895, in which the 1st accused D'Mello requested transfer of the case from the file of the Sub-Magistrate of Coondapoor and to explain how he considered it compatible with his duty as a District Magistrate to hear such a petition presented on behalf of a person who was at the time absconding from public justice before he had surrendered in obedience to the law. We will also ask the District Magistrate to explain why the transfer was ordered without notice to the complainant Ramakrishna Bhatta and without giving the Sub-Magistrate of Coondapoor an opportunity of explaining anything that was alleged against him.

With reference to the letter of the Inspector of Police, dated 31st March 1895, to the 2nd Class Magistrate of Udipi, p. 40 of the Magisterial record, a copy of which will be sent to the District Magistrate, we will ask the District Magistrate to report whether there is any ground for supposing that the Superintendent of Police was in communication with the Head Constable D'Mello while he was absconding and countenanced that officer's evasion of the warrant which had been issued against him.

By the Court.

(Signed) C. G. TODHUNTER,
Dy. Registrar, Appellate Side.

Disposal No. $\frac{531 \text{ of } 95}{\text{Magl.}}$

SOUTH CANARA DISTRICT MAGISTRATE'S OFFICE,
Camp, Kirimanjeshwar, 17th September 1895.

From

W. H. Welsh Esquire,
District Magistrate, South Canara.

To

The Registrar of the High Court of Judicature,
Appellate Side, Madras.

Sir,

In obedience to the order, dated the 5th Instant in Criminal Appeals Nos. 296 and 308 of 1895 on the file of the High Court, I have the honor to submit the petition,* dated 17th March 1895, in which the 1st accused D'Mello prayed for transfer of the case from the file of the Sub-Magistrate of Coondapoor.

* With copy of proceedings, dated 18. 3. 95.

2. I regret that I overlooked the decision of the High Court in Criminal Revision No. 413 of 1886. On referring to Section 528 of the Criminal Procedure Code it did not occur to me that notice should be given to the complainant Ramakrishna Bhatta. The prosecution appeared to me not a private prosecution but a public one in charge of the Police Department, and the Superintendent of Police who had communicated with me was, I understood, in favour of the transfer prayed for. It did not occur to me to call for an explanation from the Sub-Magistrate of Coondapoor, because the only point about which I desired an explanation was why he did not take a written deposition from the complainant when the complainant first came to him about $8\frac{1}{2}$ A. M. (at page 6, lines 41 and 42 of the printed evidence, the time is given as 10 o'clock or 7 o'clock) or shortly after, but waited until a petition had been written about 4 P. M., which gave an opportunity for law-touts to suggest inventions. Also I might have asked why he did not finish the investigation under Section 176 Criminal Procedure Code. I was then quite prepared to discredit the allegations against the Sub-Magistrate; the Head Assistant Magistrate had evidently attached no importance to them. I merely noted the fact that the accused did question his impartiality. I had not then fully adopted the theory of the Police that the murder charge was false, but that the accused could be proved guilty under Section 330 of the Indian Penal Code, I considered that the Sub-Magistrate would be required as a witness for either the prosecution or the court or the defence.

3. For instance, the medical evidence did not confirm complainant's testimony on an important point. He had said that deceased's penis was split and was bleeding (at page 12, line 22 of the printed evidence the translation used is "broken"). It seemed that if the Sub-Magistrate had viewed the corpse, he might throw light on this point. He was the first official to take complainant's statement and examine the ground. Information whether cries on the hill could have been heard in the village was obtainable from him, and also about the situation of the well, the verandahs, etc. He might be able to assist the prosecution by mentioning other facts within his knowledge, such as the details of the complaint upon which deceased had been arrested. The fact that the accused were afraid of him made me believe that he would be able to give useful information.

4. I blame myself for not having at once instructed the Public Prosecutor. But it is not usual for the District Magistrate to act in this matter unless the necessity of doing so is specially reported to him. And the actual Public Prosecutor would probably not have been able to attend personally, being otherwise engaged. I afterwards spoke however about the prosecution with the Inspector General of Police. It appeared to me that the proper place for this Sub-Magistrate in this prosecution was as a witness or an aid to the prosecution rather than as a committing Magistrate, and as the accused, the persons I thought most concerned, had asked for the transfer, it did not occur to me that notice was necessary. But if an order were to be passed, I thought that no time should be lost. It appeared from the Head Assistant Magistrate's order that he and the Tahsildar Magistrate were otherwise engaged, so I selected Mr. Devappa Punja, B. L., at Udipi, 22 miles away, where there was another Inspector Mr. Shrinivasa, and where the intrigues of the Christians of Coondapoor would have less play. The complainant subsequently moved that the Police should not be allowed in court, so they ceased to conduct the prosecution, and reports were not made to the Magistracy. Though cited as a witness the Sub-Magistrate was never actually examined.

5. With reference to the last paragraph of the order of the High Court I am of opinion that there is no ground for supposing that the Superintendent of Police countenanced the Head Constable D'Mello's evasion of the warrant. With respect to the question about communication, the petition of the absconding accused was submitted through the Superintendent of Police by means of the Pleader. The Superintendent of Police must have seen the Inspector and may have also seen the Pleader. And the Pleader of course knew how to communicate with the absconding accused as well as with those in custody. The Pleader's knowledge would not have helped towards execution of the warrant. It is possible to evade a warrant transferred from station to station in the present strength of the force, unless a determined effort is made to execute it by interruption of the ordinary course of duty. The Pleader verbally applied to me for the release of the accused on bail and was refused. It was likely that the absconding man would surrender as soon as he knew that an application for bail to me or to a superior court would be futile. I do not know how it was that the Head Constable remained at large till after the 31st March or what steps were taken to execute the warrant. But I presume that I should not await an explanation from the Superintendent of Police before submitting this report, and I have therefore not asked him. I think he understood his duty and the duty of the Police in respect of a Magisterial warrant. He received one communication, namely the petition of 17th March from the absconding man, but I cannot say whether he received more.

The order of the High Court was received at Camp Wandse in the northern part of the District and the petition was received from Head Quarters only yesterday afternoon, so this report could not have been submitted earlier.

I have etc.

(Signed) W. H. WELSH,

District Magistrate.

No. 2295 Judicial.

Proceedings of the High Court of Judicature at Madras.

Dated 4th November 1895.

Read Judgment and records in Sessions Case No. 15 of 1895 on the file of the Court of Session of South Canara.

In the order of this Court, dated 5th September, the District Magistrate was requested to send up the proceedings connected with his order of transfer, dated March 17th, and to give explanation upon the following points:

(1) How he considered it compatible with his duty as District Magistrate to hear a petition presented on behalf of a person who was at the time absconding from Public Justice before he had surrendered in obedience to the law?

(2) Why he transferred the case without notice to the complainant (deceased's father) and without giving the Sub-Magistrate of Coondapoor an opportunity of explaining anything that was alleged against him?

(3) Whether, with reference to the letter of the Inspector of Police, dated 31st March 1895, there was any ground for supposing that the Superintendent of Police was in communication with the absconding Head Constable D'Mello and countenanced that officer's evasion of the warrant that had been issued against him?

2. To the 1st question the District Magistrate has given no reply at all, but has merely entered into the reasons which led him to assent to the transfer. Such reasons are obviously beside the question, and from his silence the High Court presumes that the District Magistrate has no explanation to offer. In consenting to receive and hear such a petition from an absconding person the District Magistrate was not only irregular in his procedure but displayed culpable weakness, practically allowing an absconding accused to make terms with constituted authority as to the conditions under which he would appear. Such procedure tends to bring the law into contempt and the District Magistrate should have refused to hear any petition at all until the accused had surrendered.

4. On the second question the District Magistrate observes that he did not call for an explanation from the Sub-Magistrate because the only point on which he should have desired explanation was why the Sub-Magistrate did not immediately record a written complaint. Mr. Welsh states he was *then* quite prepared to discredit the allegations against the Sub-Magistrate, especially as the Head Assistant Magistrate had attached no importance to them, but that he thought the Sub-Magistrate would be required as a witness for the prosecution or for the defence, or might be called as a Court witness.

4. As to this the High Court cannot but observe that the District Magistrate's explanation is contradicted by his own order of March 18th. Not a word is said about the necessity of calling the Sub-Magistrate as a witness, nor was any such necessity alleged in the petition of the accused. The remarks which the District Magistrate makes about the evidence could not have been present to his mind at the time, for he had not the record before him and disposed of the application without

calling for the record. Moreover it must have been obvious that the fact that the Sub-Magistrate had committed the case would be no reason why the Sessions Court should not call him as a witness if his evidence was thought necessary. At the time the District Magistrate passed his order the Sub-Magistrate had not been cited as a witness by either side, and though afterwards cited, he was not called.

5. The sole ground for the transfer alleged in the petition was that the Sub-Magistrate was prejudiced against the accused and wished to ruin him, and that was the sole ground specified in the District Magistrate's order for granting the transfer. The District Magistrate observed in his order "It is impossible to say that the objections of the accused person to *this* Magistrate are without foundation. The application for a transfer is therefore admitted." The High Court finds it impossible to reconcile this language with Mr. Welsh's present explanation that he was *then* quite prepared to discredit the allegations against the Sub-Magistrate, especially as the Head Assistant Magistrate had attached no importance to them.

6. The High Court cannot but consider that to pass such an order on the *ex parte* petition of an absconding accused conveyed a most unmerited slur both upon the Head Assistant Magistrate and upon the Sub-Magistrate of Coondapoor, and was obviously calculated to defeat the ends of justice. Here again the weakness shown by the District Magistrate is most regrettable.

7. In answer to the third question the District Magistrate states he thinks there is no reason to suppose the Superintendent of Police countenanced the Head Constable's evasion of the warrent. He states the Superintendent may have seen the pleader of the absconding accused, but that he "thinks he understood his duty".

8. If, however, the Superintendent supported the application for transfer while the accused was absconding, it is quite manifest that he did *not* understand his duty. But the District Magistrate had not called for any explanation of the instructions given by the Superintendent to the Inspector of Police referred to in the letter of March 31st, and the High Court will not now ask him to obtain any further explanation since the Court has decided that it is necessary to bring the whole matter to the notice of Government.

(True Extract)

(Signed) D. W. G. COWIE,
Acting Registrar, Appellate Side.

Ref. on C. No. $\frac{3636 \text{ Magl.}}{95.}$

SOUTH CANARA DISTRICT MAGISTRATE'S OFFICE, MANGALORE,
28th November 1895.

From

W. H. Welsh Esquire,
District Magistrate of South Canara.

To

The Chief Secretary to Government,
Judicial Department, Fort St. George.

Through the Registrar, High Court, Appellate Side.

Sir,

I have the honor to report that I received on 26th Instant, through the Sessions Judge of this Division, copy of the Proceedings of the High Court, No. 2295, Judicial, dated 4th November 1895. This has doubtless been brought to the notice of Government.

2. I do not know whether the proper procedure is to wait till Government passes orders upon the matter so brought to its notice, but it seems to be my duty to refer to paragraphs 4 and 5 of the Proceedings, where the Honorable the Judges have been pleased to make observations which appear to impeach my truthfulness. "The remarks which the District Magistrate makes about the evidence could not have been present to his mind at the time, for he had not the record before him, and disposed of the application without calling for the record." And it is said that my explanation is contradicted by my own order, as the reasons contained in the explanation are not mentioned in the order of transfer.

3. But the order would naturally refer only to the petition or matter argued judicially before the officer passing it, whereas the explanation asked from the District Magistrate was "why he transferred the case *without notice to the complainant etc.*" The explanation submitted was that the prosecution was considered a public prosecution in the hands of the Police. Information received from the Superintendent of Police was present to my mind, for he had visited me and given an account of the *post mortem* certificate and the statements as recorded by the Police, which of course was not evidence that could be referred to in an order, but which shewed what testimony the Sub-Magistrate might be expected to give and how the officer in charge of the prosecution viewed the application for transfer.

4. I beg to enclose copy of this office letter No. 531, dated 17th September 1895 to the High Court with copy of order and extract from their order in C. A. No. 296 and 308, dated 5th September 1895.

5. Their Lordships evidently think it probable that I told lies in a futile attempt to account for hasty or mistaken action and invented a long story of motives. They have practically made a charge against me.

6. As a public servant I have a claim that a decision should be come to upon this matter, distinct from the decision upon the conduct of the officers generally.

7. The Superintendent of Police came to me to say that 3 of his men were charged with murder. He gave his reasons for considering the direct evidence of murder to have been concocted. He described the evidence substantially, as detailed in the confidential report to the Inspector General for that week.

(8. That report may be sent for *as an indication of what facts could have been present to my mind in that week.* Their Lordships in observing that the record was not before me may have lost sight of the fact that District Magistrates are kept informed of the evidence in grave crimes as it is collected.)

9. I said at once that there was a good case against the policemen under Section 330 I. P. C. for torture and that there was some evidence of murder weakened by the fact that some of the statements did not agree with the *post mortem* and that the complaint was not recorded till 4 P. M. of the day on which it was made.

10. But that complaint had been made first in the morning to the very Magistrate whom the first accused rightly or wrongly impeached as the inventor of the charge, though the Magistrate was a Native Christian like himself.

11. I say that in the interests of justice I at once considered that the Magistrate should be a witness. It was not reported whether he had viewed the corpse or not. If he could have given evidence about that, his testimony might have furnished an important link. But it was undesirable to set the parties thinking what he might be called to prove or to indicate to either side gaps in the evidence which might be supplied otherwise (for instance, by fabrication). Therefore it was not mentioned in the reasons for the transfer order.

12. It was impossible to say off-hand that the objections made by the 1st accused D'Mello to his fellow-casteman were without foundation, and therefore I gave that as the reason for the transfer order. Though I was then quite prepared to discredit the one-sided allegations, yet there was no time to go into them. It could merely be noted that the accused did say something against the committing Magistrate. The enquiry was one which I thought should be pushed forward at once, and the desirability of being able to call the Magistrate, to whom complaint was first made and who went to the scene of offence in the first instance and made some enquiries on the spot, as a witness seemed of importance. Therefore transfer was made forthwith, not to Mangalore as prayed by the pleader for the accused, but to the Magistrate of the next Taluk.

13. I would ask Government to consider what motive I could have for inserting in the explanation called for by the Honorable the Judges any thing which would be contradicted by the copy of the order of transfer which I submitted as an enclosure, though it was not called for, and which may have been the source from which the Judges ascertained the reason given for transfer.

14. It should not be forgotten that I took interest in the prosecution. The local Government Prosecutor was of course instructed at Sessions and the Government Pleader at Madras to oppose the appeal.

I have, etc.

(Signed) W. H. WELSH,

District Magistrate.

W H Welsh
District Magistrate

62

Enclosure No 3.

District Magistrate
In a letter from the ~~Collector~~ of South Canara
Govanment, Judicial
to the Chief Secretary to ~~the Commissioner of Land~~
~~Revenue~~, Madras, dated Fort St. George. December 1895.

C. No. 3636/95
A1/ap

Printed papers — referred to in paragr. 5 of the District Magistrate's explanation, Enclosure No 2 in letter No. dated 22d December 1895 to the Chief Secretary to Government, Judicial Department.

1895 5 Jud Dept. Enclos. No. 3 To 6219 C. No.

63

~~No.~~

Confidential

dtd 19-12-95

Paper A

OFFICE OF THE DISTRICT MAGISTRATE,
CIVIL AND MILITARY STATION, BANGALORE.
Dated 11th December 189 5.

FROM

A. M. SLIGHT ESQ.,
DISTRICT MAGISTRATE,
CIVIL AND MILITARY STATION,
BANGALORE.

To

THE DISTRICT MAGISTRATE of
SOUTH CANARA.

SIR,

In reply to your letter dated 4th instant, Ref. on C.No.3636-A, Mag., I have the honour to inform you that the circumstances which led me to to leave the inquiry into the charge against the two Constables of Kundapur Station in the hands of the Stationary Sub-Magistrate instead of taking it up myself were, to the best of my recollection, as follows..

2. When I first heard of the case, I was on tour in Udipi taluk. I sent instructions to the Tahsildar to go and make a local inquiry as soon as possible. I returned to Kundapur about the 11th of March. I met the Tahsildar and discussed the case with him, and from the information then available I found reason to suppose that a serious offence had been committed, and that the Police Inspector Boyer was trying to hush it up, but that the evidence which the Tahsildar had found available would make the case fairly clear and simple if it could be properly recorded without delay.

Thought all the more necessary for getting at info.

3. I had only ten days to stay in Kundapur, with a lot of work to do in that time. After that I had to start on a long tour for the settlement of a number of forest blocks

round the North of the taluk. Notices of the dates on which all these would be settled had been published some time before, and there were many claims fixed for hearing. That work could not be put off. It would have been impossible to complete the inquiry before starting; the absconding of the accused and difficulty in getting some of the witnesses would have made it impossible even to begin it. I was not to be back in head-quarters before the end of May.

4. The Tahsildar also had to go out on tour for some time on work that could not be put off.

5. It was therefore a question with me whether the programme of forest-settlement work should be abandoned, or the inquiry into the case against the Police entrusted to the Stationary Sub-Magistrate. If I had given up the forest work then, it would have had to wait till after the monsoon. As it was, some of the blocks to be taken up had been pending settle-ment a long time, and the whole was only a small portion of the total area notified for settlement. The case of the con-stables was not one for trial, but only for inquiry with a view to committal. It appeared a fairly clear case, and most of the evidence had already been heard by the Tahsildar. The most important thing was to get it recorded without delay. I knew that the Stationary Sub-Magistrate [Mascarenhas] and the Police Inspector [Boyer] were not on very good terms, and I did not think there was any likelihood of the Sub-Magistrate assisting to hush up the matter; in fact the pe-tition of the accused that the case should not be heard by that Magistrate was entirely due, I believe, to the personal feeling of the Inspector.

20.

6. On these grounds I considered it best to go on with

my own work as already fixed, and to leave this case to the Stationary Sub-Magistrate. Before leaving I gave him careful personal instructions to make the record of the evidence as full and accurate as possible, and to submit copies of the depositions to me as soon as they were taken. But then the case was transferred to the Udipi Magistrate, who knew nothing of the results of the Tahsildar's local inquiry, and to whom I had no opportunity of giving information or instructions which might have assisted him in getting at the truth in his inquiry; and the accused gained a great deal of time by the failure to arrest the Head Constable.

I have the honour to be

Sir

Your most obedient servant

Alex. Cochrane

To

Enclosure No 1.

In a letter from the ~~Collector~~ District Magistrate of South Canara
to the ~~chief~~ Secretary to ~~the Commissioners of Land~~ Government, Judicial
~~Revenue~~ Department Fort St. George,
Madras, dated December 1895

No. 3636/1895 Mag.

CHIEF SECRETARY'S
31. DEC. 1895
DEPARTMENT OF MADRAS

Mr A. M. Slight, late Head Assistant Magistrate, South Canara.— Explanation of — ordered to be submitted in paragr 2 of G. O. dated 26th November 1895 No 2437 Judicial Department, in Criminal appeals Nos 296 & 308 of 1895 on the file of the High Court at Madras.

1895 Dec 50
Jud Dept.
Enclos. No 1
To
C. No 6189

Paper A

71

Explanation permitted under G. O. dated 26th November 1895 No. 2437, Judicial, to be added to that called for in High Court Proceedings dated 5th September, and submitted from Camp Kirimanjeshwar in the North of Coondapoor Taluk on 17th September, to be in time for the hearing in Criminal appeals Nos. 296 and 308 of 1895 which I understood were posted for 25th September.

I see it was wrong to hear a petition on behalf of an accused against whom a warrant was out.

2. I am sorry that at the time of hearing, it did not occur to me that it ought not to be entertained. The merits of the case as related by the Officer in charge of the prosecution were strong in my mind and the question

12/

question whether the petition was admissible or not did not come up.

3. The Head Assistant Magistrate had not reported the crime demi-officially or otherwise. All I knew was that he was unable to hold the enquiry; nor had any information come except through the Superintendent. It seemed to me therefore not weakness but the strong thing to do to take on myself the responsibility of preventing the enquiry from being held in a Court which the accused could object to, and the best chance of proving murder seemed to be to call the Sub Magistrate who had made the local investigation under Section 176, Cr. P. Code. I believed no further local investigation was needed, and that torture at any rate could be proved by merely calling the witnesses.

4. I assure Government I had not the slightest notion that by granting transfer I was allowing the accused to make terms with constituted authority as to the conditions under which he was to appear. It was the pleader's business to keep out of sight the fact of a Magisterial order being disobeyed, and I was preoccupied with the belief that it would help the prosecution to comply with his request.

5. For convenience of reference some of the previous papers have been printed and are submitted herewith.

22nd December 1895.

Rowlah
District Magistrate.

Compd
A.V.

Enclosure 2

In a letter from the ~~Collector~~ District Magistrate of South Canara
to the Secretary to ~~the Commissioners of Land~~ Government, Judicial
~~Revenue,~~ Department, Madras, dated Fort St. George 22nd December 1895

No. 3636/1895 Mayl

G.O. dated 26th November 1895 No. 2437, Judicial:- Explanation permitted under — to be added to that already submitted in Criminal appeals Nos. 296 and 308 of 1895 on the file of the High Court, Madras.

1895 Jud Dept. Enclos. No. 2 to 609 G. No.

No. 154 91.

In Continuation of Reference on C. No: 3636/Mayl of 1895.

No.

CURRENT NO 6119

SOUTH CANARA DISTRICT MAGISTRATE'S OFFICE,

Mangalore,

December 1895.

From

W. H. Welsh Esquire,

District Magistrate of

South Canara.

To

THE CHIEF SECRETARY TO GOVERNMENT,

Judicial Department,

Fort St. George.

Sir,

In obedience to Govt. Order dated 26th November 1895 No. 2437, Judicial, I have the honor to forward Mr Slight's explanation.

2. With reference to the enquiry whether I have any thing to add to the explanation on High Court Proceedings dated 5th September, Judicial, a few lines are submitted herewith. I have already addressed Government with respect to paragraphs 4 and 5 of High Court Proceedings dated 4th November No. 2295, Judicial, in this office letter, Ref: on C. No. 3636/95 submitted through the Registrar of the High Court.

3. Therein

3. Therein a decision was claimed upon the charge of untruthfulness made by their Lordships in paragraphs 4 and 5. If Government is pleased to decide, with or without a formal enquiry, that their Lordships were right in making that particular remark against me personally, then I presume that all further explaining is at an end.

4. If, however, my explanation is believed I would submit with all deference that their Lordships have not treated me with that generous consideration which their officers used to expect.

5. It appeared from the foot note to the Government Order under reply that certain papers from the Inspector General's Office were to be expected at an early date but as they have not come this is submitted without waiting for them.

I have the honor to be,
Sir,
Your most obedient servant,
B. a Welsh
District Magistrate.

P. No. 93—93.

8/

CURRENT NO. 6119

Judl

189

From,
The District Magistrate of
South Canara.

To,
The Chief Secretary to Government,
Judicial Department,
Fort St. George.

Dated } December } 1895.
Received 31

In Continuation of Reference No. 3636 / 1895 Magl.

Rep 31/1/96

ENCLOSURES 3.

Subject.

G. O. dated 26th November 1895 No
G. 2437, Judicial Department,—
and letter covering the Explanation
transmitted under — in Criminal
Appeals Nos 296 and 308 of 1895 on
29 file of the High Court at Madras.

Hds

yrs Wright

Hds.

The resubmission of the papers returned
the Dy. Police may be awaited?
The St. Magte, S. Canara has not yet
returned the encls: to G.O. 2437/26-11-95 forwarded thro'
the Dy. Police ~~on the 31st inst~~ despa. He had not
received them when writing encl no. 6119. But the
will not get them now (with a few days + if
received them yrs Wright

Dest 20/1/96
Deferred

Telegram

to St: Magistrate, South Canara.

187 Your letter 3636 of Decembe
95. ~~Your~~ Submit records received
from Inspector General Police.

Wright 20/1/96

Memo No 161

To the Dy. Police. D 21-1-96.

Cy 20/1/96 Desd 21/1

With reference to G.O. R. No.
4 Judl. dated 6. January 1896 the Inspector Gener
of Police is requested to state whet
the records returned therewith are
available for resubmission to
Govt.

Wright 21/1/96

11308

(83)

(83)

(83)

INDIAN TELEGRAPHS.

Class: HPS

To (Office) Madras

From (Office) Fort St George

Words: 28.2 | Day: 21 | Hour: 20 | Minute: 25 | Official Instructions: dfd

Monthly Number: 263

To (Person) Chief Secretary to Government

From (Person) District Judicial depart-ment

Mangalore Kna

CHIEF SECRETARY 22 JAN 1896 GOVERNMENT OF MADRAS

State

Your telegram dated 20 January records received from inspector general have been despatched.

64 Word Form.

F. C 2.

MADRAS 21-1-96

Recd. from I.N. At Hrs. Mts. by

Sent to I.N. At Hrs. Mts. by

Telegraph Master.

O. G. P.—No 126 T—22-1-94—14,000

84

[G/9]

2,600—15-8-95.

Current No. 263 DEPARTMENT.

Sel

From

Ld Dt Magte

Mangalore

No.

Dated 21 Jan 96

Received 22 Jan 96

Enclosures

SUBJECT.

Stating, that the records rec'd from the I. G. of Police have been despatched

Note for us.

These are records refer to South Canara Police torture case. their receipt may be awaited.

8/11 Jan 96

C.

II Reference No 3636/95

Mafl.

District Magistrate's

SOUTH CANARA ~~COLLECTOR~~'S OFFICE,

Mangalore, (85

21st January 1896.

320

Omit

FROM

W. H. Welsh, Esquire,

District Magistrate ~~Collector~~ of

South Canara.

To

THE CHIEF SECRETARY TO GOVERNMENT,

Judicial Department,

Fort St. George.

Sir,

I have the honor to Submit with this the records received from the Inspector General of Police on the 28th Ultimo: during the holidays when I was absent and referred to in your telegram dated the 20th Instant.

I have the honor to be,

Sir,

Your most Obedient Servant

J. Drummond

Ld Dt. Magistrate

x put back in 80. 2437 26-11-95

Compd BR

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Jud

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From,
The District Magistrate of
South Canara.

To,
The Chief Secretary to Government,
Judicial Department,
Fort St. George.

Dated 21st January 1896.
Received 25

II. Reference No. 3636/95 Mafl.

ENCLOSURE to Proceedings.
UNDER SECRETARY
25 JAN 96
Subject.
JUDICIAL DEPT.

Records — Sessions Proceedings — which formed enclosures to G.O. No. 2437 Jud. Department, dated 26th November 1895 received from the Inspector General of Police.

WS.

To await Dy. reply to memo 161/21.1.96

Wpr 27/1/96

St. Mafts

2437
Reply to GO. 26-11-95

Omit 89

JUDGMENT.

In the Court of Sessions, South Canara.

Session Case No. 15 of 1895 (Re-trial).

Present: H. G. Joseph Esq.

Queen-Empress *Vs.*
1. Francis D'Mello.
2. Mahomad Usman.
3. Paul Machado.
4. Linga Bhatta.

(Committed by Mr. A. Devappa Punja, Stationary Magistrate of Udipi).

Charge: *Against 1st, 2nd and 3rd:* (1). Wrongful confinement—Sec. 342 I. P. C.
(2). Voluntarily causing hurt or grievous hurt—Sec. 323 or 325 I. P. C.
(3). Causing hurt and grievous hurt, and wrongful confinement for the purpose of constraining a person to confess or restore stolen property—Secs. 348, 330 or 331 I. P. C.

Against 4th: Abetment of the above offences—Secs. 109, 323 or 325, 348 and 330 or 331 I. P. C.

Assessors: Messrs. 1. U. Ananda Rau (Saraswath Brahmin). 2. Constantine Aiman (Protestant Christian).

Opinion of 1st Assessor: 1st accused *guilty* under all counts.
2nd accused, *not guilty* under Section 342 I. P. C., but *guilty* under Sections 323, 325 and 331 I. P. C.
3rd accused *not guilty* on any count.
4th accused *guilty* of abetment of offence under Sections 342 and 348 only.

2nd Assessor: 1st and 2nd accused *guilty* on all counts.
3rd accused *guilty* under Section 342 and 348 I. P. C. only.
4th accused *guilty* of abetment of all counts.

Finding of the Judge: Concurred with the 2nd Assessor.

Sentence: 1st, 2nd and 4th accused each sentenced to 9 months' rigorous imprisonment. 3rd accused sentenced to 1 month's simple imprisonment.

Judgment: This case—originally fixed before this Court at the June Sessions of 1895—was remanded for re-trial by the High Court and taken up at the January Sessions of 1896.

2. On Tuesday, February 26th 1895, some Police from the Kundapur Cusbah Station went to the village of Tallur to enquire into a case of theft alleged to have occurred there in the house of the schoolmaster Shanta Murtiappa. The schoolmaster only lately moved into the house in which the theft was committed. It had been previously inhabited by a woman named Putti—it is said that Shankra Bhatta, the son of prosecution 4th witness, had had relations with this woman, and that fact is confirmed by the admission of Prosecution 4th witness that the house into which she moved was provided for her by him and his son.

Putti was naturally questioned as to the means of entrance into the house and she mentioned the name of Shankra Bhatta as one also acquainted with this, whereupon Shankra Bhatta was also sent for and his father. Shankra Bhatta was "being enquired" by Police—they deny that he was under any restraint—until at any rate 8·30 on the succeeding evening, Wednesday February 27th. On that evening the body of Shankra Bhatta was taken out of the well in the compound of Shanta Murtiappa. The inquest report (which was drawn up by the 1st accused, the Head Constable) says that this occurred at 9·0 P. M.—the Prosecution say at about midnight.

That night—the time cannot be accurately fixed, but it must have been very shortly after the body was taken out—prosecution 4th witness went to the Potail (Prosecution 14th witness's) house and complained that his son had been beaten by Police and his life was out. The Potail refused to stir that night, and in the morning, February 28th, he went to the house of Shanta Murtiappa where the body was lying and an inquest was held, and report (Exhibit N) drawn up. This report would seem to have been sent with the body to the Apothecary at Kundapur—it bears his initials as received at 5.0 P. M:

3. The inquest was held at day-break. Tallur is only 3 miles from Kundapur, but there are some rivers to cross on the way. The Potail who was questioned by the Court as to this inquest report denied having sent it or knowing anything of it being sent. But his own report Exhibit D which he says was sent off at *7·0 a. m.* bears the Magistrate's date of receipt as *7·0 p. m.* The Ugrani Rama, Court 4th witness, who carried this report says he was sent at 8.0 A. M. and gave it to the Magistrate at Court at 10.0 A. M. and returned to Tallur at 2.0 or 3.0 P. M. The Potail says that the Ugrani returned before midday and reported to him that the report had been delivered. On the morning of that day, February 28th, the Kundapur Magistrate (Prosecution 3rd and Defence 6th witness) received at his house a verbal complaint from prosecution 5th witness Shivaya Bhatta (brother of prosecution 4th witness) and another and instructed them to give this complaint in writing, which was accordingly done, and Exhibit C was put in before the Magistrate at 4.30. This was a complaint against the Police charging them with the murder of Shankra Bhatta.

The Magistrate on receipt of the complaint referred it to the Police Inspector for report, and wrote to the Apothecary to hold *post mortem* and send his report to the Inspector direct as the complaint had been referred to him.

Next morning, March 1st, the Magistrate before he was leaving his house for office (10.30 A. M.) received Exhibit* E, an occurrence report (Exhibit F is an enclosure to Exhibit E); and after concluding his day's work at Kundapur started about 4·30 P. M. for Tallur. On his arrival he made enquiries and examined a few witnesses that evening. Next day, March 2nd, he made an inspection of the locality; and on the

* It is called a crime report but it ignores any crime at all.

arrival of the Inspector at 3·0 P. M., the Magistrate left the enquiry to him and returned to Head Quarters.

4. On the 5th March, the Magistrate who had reported to his Divisional Magistrate (the Head Assistant Magistrate) received an order to submit a report without delay, and on that sent an order to Police Inspector to submit a Charge Sheet that evening without fail. On the 8th March, the Magistrate received a reply from the Inspector that he would submit his report shortly, and prosecution 4th witness put in a petition asking that the complaint referred to the Police might be withdrawn as they were spoiling the case. On this the Magistrate sent for the Inspector who promised to submit report soon, and was told to do so next day at latest.

The Inspector sent no Charge Sheet nor report of any kind to the Kundapur Magistrate, but on March 8th submitted a referred Charge Sheet, a document of very great length (which may perhaps account for the delay in its submission), to the Head Assistant Magistrate. On that same day, another petition was presented to the Kundapur Magistrate by prosecution 4th witness asking that the 4 accused now before the Court (three Police Constables and Linga Bhatta) might be arrested at once and saying that the Inspector had served on him a notice that the complaint had been referred as false.

5. The Head Assistant Magistrate refused to accept the Police referred Charge Sheet and ordered a Magisterial investigation, and also refused the request of the Police Inspector to transfer the enquiry to some other Magistrate than the Kundapur Magistrate; and on the 14th March the Kundapur Magistrate having received the above order, took up the case on his Register file. The case remained before the Magistrate until March 20th, when he received an order (from the District Magistrate through the Head Assistant Magistrate) transferring the case to the Udipi Magistrate by whom the case was committed to this Court. While the case was before the Kundapur Magistrate, after making vain efforts to procure by any means the arrest of the 1st accused, he commenced the trial in his absence and examined 9 witnesses—in fact the prosecution evidence in the case; so that at the time of transfer the case was really ripe for committal.

6. Thus we have on the record:—

Exhibits V_1, Q, V_{10}.

I. Statements recorded by the Kundapur Sub-Magistrate on 1—3—95.
   (1) Prosecution 4th witness Rama Krishna Bhatta.
   (2) Linga Bhatta, 4th accused.
   (3) Shanta Murtiappa, also one of the accused before the commiting Magistrate, but discharged by him; (examined as 2nd Court witness and defence 4th witness).

Exhibits V_2 to V_9—V_4 and V_9 being also marked as G and K.

II. And the statements of 9 witnesses (besides Rama Krishna Bhatta on whose complaint the case was filed) examined by the Kundapur Sub-Magistrate.

Exhibits VI_1 to VI_{10}—VI_4 and VI_9 also marked as H and L.

III. Of 12 witnesses examined by the committing Magistrate (the 9 above and 3 more).

VII_1 to VII_{10}.—VII_4 also marked as Exhibit J.

IV. Of 11 witnesses examined before the Sessions Court at the 1st trial (one man a Police Constable Rasquinha was omitted from the above list);

before the witnesses were examined in the present trial.

These statements have been filed for prosecution and defence as marked in the margin; and also in this trial for the first time, the note book of the Inspector

Boyer was filed (Exhibit VIII) as containing his record of the examination which he made of the same witnesses, during his enquiry March 2nd—8th.

The above summary is necessary as an introduction to a discussion of the evidence in this case to show (1) the undisputed facts ascertainable from the records; (2) the previous history of the case; and finally (3) the very large number of times, under varying circumstances, statements of the prosecution witnesses have been recorded—all those records being now presented to the Court.

7. Now to consider the evidence. The prosecution statement is that from the time Shankra Bhatta (deceased man) was called by the Police on 26th February until his body was taken out of the well he was in Police custody, and that while the Police so detained him he was beaten to try and induce him to give information about the offence committed in Shanta Martiappa's house and restore the stolen property. And it is to this statement that the various counts of charge are directed. The defence reply to this charge is—that the Police did nothing but examine Shankra Bhatta as a witness (in accordance with the provision of section 160 Cr. Pro. Code); that he was never confined; and that he was never beaten at all for any purpose.

8. The prosecution further say that the Police after having ill-used Shankra Bhatta to such an extent that he was really dead—or at least appeared to be so—threw his body into the well where it was found, so that it might be thought that he had committed suicide and their misdeeds be so concealed.

That the body was taken out from the well is undisputed; that it was taken out about midnight and not at 9 P. M. is supported (apart from the direct evidence on the point) by the fact that the Potail's reason for not coming out at once—when complaint was made to him by prosecution 4th witness—was that "it was night and dark." This certainly points to midnight rather than 9 P. M. Even a village Magistrate, such this man shows himself to be, could hardly have refused to come and enquire into the complaint of murder by the Police at 9 P. M. That the inquest report represents the Police (*i. e.* the accused's) version of the affair in the first instance is, I think, clear. The Potail's denial that he was present at the inquest or knew what was written in the report—as also his similar statement that though he was present on 26th and 27th till 8·30 while Shankra Bhatta was detained by the Police, Shankra Bhatta was never even examined in his presence—is palpably false, but I do not think that gives any reason to doubt (rather the contrary) that his statement that he signed (in 2 places) in that report under the influence of the 1st accused is true. The witness began (before he denied all knowledge) by saying that 1st accused "must have written it", and then explained that his reason for thinking so was "there was no one else there who could write." The other witness examined on this point, Shanta Murtiappa, also very unwillingly admitted that it was written or dictated—and finally said it was written—by 1st accused.

9. The question of how the body came into the well is not one to be decided in this case. For the defence theory of suicide there is absolutely no evidence—except Exhibit N the inquest report—a document clearly drawn up for the especial purpose of suggesting that conclusion—and certain statements said to have been made by the witnesses to Inspector Boyer. Even if he did commit suicide, the only reason for his doing so would be that suggested by the committing Magistrate, viz: either because he could not bear the Police torture or because he wished to escape more. And this cannot advantage the accused much, except as an answer to a charge of murder—indeed Exhibit N would appear to have been drawn up to

assist an answer to such a charge. The evidence that the Police were seen to throw the body into the well is not, I think, in itself of great independent value in assisting the conclusion they must have done so—based on the fact that there is no other explanation of the body being there except suicide or his having tumbled in by accident.

It is not necessary for the decision of the case to decide the point except in so far as the fact of the body being so found in the well and taken out is coherent with the other prosecution evidence. And with reference to that, I think, there can be no doubt that the evidence on the point goes in every way to corroborate the other prosecution evidence and so renders the prosecution theory of the way he came into it most probable.

10. So also as to the cause of death. It is not in any way necessary to the decision of the case to find how Shankra Bhatta died. If the evidence of the Apothecary Vittal Rao, Prosecution 15th witness, is to be believed there can be no doubt that the immediate cause of death was a rupture of the left pulmonary artery. The Apothecary also considered that the rupture might have been caused by external violence—such as could be inferred from the bruises etc. which he found on the body of the deceased.

If Surgeon Captain Donovan (Court 1st witness) is right in his opinion, the rupture *could not* have been caused by any such injuries as could so be inferred. He says nothing but a blow on the front of the upper part of the chest would cause a *rupture* of a pulmonary artery, and that previous general ill usage would not be a predisposing cause. The examination of Vittal Rao makes it clear that what he saw was a rupture, not a cut, and could not have been caused by him in the course of his *post mortem*; and if that rupture could not have been caused by any of the injuries, marks of which were found on the body, the cause of rupture must be said to be unexplained and unexplainable. I am not myself satisfied that the opinion is altogether correct, but it was given with certitude and I did not feel called upon to take further medical expert evidence since (as I have already said) the decision of this point is in no way essential to a decision of the charge before me.

Again, as to the medical evidence on the question of drowning, the effect of the evidence is merely this—the absence of froth etc. in the bronchial tubes and trachea and wind-pipe, although it is not conclusive proof that the deceased was not drowned, militates very strongly against such a supposition and would argue that he must have been insensible * when he reached the water. So also it may not be a physical impossibility that bruises such as found on the body of Shankra Bhatta could *not* have been caused by his falling round and round and dashing against the sides of the well; but that bruises distributed over the body (inside the limbs etc.) could have been so caused (or in lifting the body out in a cradle) is so very improbable that the possibility of its so happening may be left out of account.

*As noted above, that Shankra Bhatta was unconscious and not dead if he was thrown into the well by Police is quite possible.

11. While writing on this point, I would say that there does not appear to have ever been any reason for supposing that murder was intended by the Police. The worst that could be said would be that the man having died in their hands after they had beaten him, they put the body into well with a view to conceal their offence, fearing no doubt a charge of murder. If the medical evidence had shown beyond doubt that the rupture which was the cause of death might be attributed to the ill usage said to have been inflicted and which might have been

inferred from the result of the *post mortem* examination, then it would have been a question for consideration whether a charge of culpable homicide would have had to be added. But with the evidence before me, I did not consider this necessary or advisable.

12. I have now to consider the effect and credibility of the prosecution evidence on the charges against the accused and their defence. The evidence is that Police Officers* from Kundapur came to Tallur on February 26th to investigate the theft supposed to have occurred in Shanta Murtiappa's house, they sent for Shankra Bhatta and his father, prosecution 4th witness, to the house of 4th accused* Linga Bhatta, that the two men were left there till evening, that when the Police allowed them to go away for their evening meal, they ordered Shankra Bhatta only to come back after his meal, but prosecution 4th witness refused to allow his son to come back alone and returned with him. Prosecution 4th witness slept on an outside (gate) pyal and Shankra Bhatta inside on the house-pyal with 1st accused on one side of him and 2nd accused on the other*. At about 2.0 A. M. Linga Bhatta 4th accused (who it is said had gone away the previous evening to consult an astrologer at Gangolli) came and asked the Police to hand over Sankra Bhatta to him for a private enquiry. The Police agreed and Shankra Bhatta was taken away to the pyal of Vishwanatha Bhatta. Prosecution 4th witness then went home and fetched his younger brother Sivaya Bhatta (prosecution 5th witness) to Vishwanatha Bhatta's house and there all three (prosecution 4th and 5th witnesses and 4th accused) exhorted Shankra Bhatta if he had committed the theft to confess and give up the stolen property but he denied all knowledge.

i. e. 1st accused the Station House Officer, a Mahomedan Constable of the same Station, and another Constable.

*It is urged by both prosecution and defence that the man though a distant relative (a dayadi) of prosecution 4th witness is on terms of enmity with him.

*It should be noted here that the prosecution witnesses do not speak before this Court of having seen 3rd accused till the next day, Wednesday 27th. But the accused offers no evidence to show that he did not come with the other two Policemen.

After this the party went* back to the house of Shanta Murtiappa the Schoolmaster (prosecution 4th witness says he was kept at a distance by 2nd accused who met him on their way back) and Shankra Bhatta was made to sit on a Katte there in charge of 3rd accused. Then Shivayya* Bhatta was taken to 4th accused's yard and beaten. Prosecution 4th witness was watching meanwhile from the shop of Vitla Prabhu (No. 18) first and afterwards from the shop of Subraya Prabhu (No. 16) to which he was moved by the Police. No. 16 as will be seen from the plan is farther removed from No. 5 and 1 than No. 18 which is actually at the corner of the compound of No. 1. At midday prosecution 4th witness went for his meal and asked for his son to be allowed to go also, the Police said he would be sent later, and he was sent in charge of 3rd accused. In the evening prosecution 4th witness again went home for his meals—Shankra Bhatta being detained the whole time in the compound of 4th accused—and coming back after his evening meal (about 9.0 P. M.) went to the gate-pyal of 4th accused; from there he says he saw his son dragged from the Katte where he had been sitting during the day to the house-pyal of 4th accused, where he was beaten and kicked till he fainted, and then water was given to him and revived with. When his son was so beaten prosecution 4th witness called out and was then driven away from the pyal of 4th accused and went again to No. 16. It would seem that Shankra Bhatta now gave information that he had some rings pledged with Rama Bhatta, prosecution 7th witness. This man was sent for and

*The house of 4th accused No. 5 on plan and that of Shanta Murtiappa No. 1 are almost contiguous.

*The beating of Shivayya Bhatta is worthy of notice because subsequently when Shankra Bhatta had fainted and water was given to him 1st accused said that the water had been successful in bringing his uncle round and should therefore be tried with him.

produced 4 rings, but Shanta Murtiappa said they were not his. The rings were then returned to Rama Bhatta. After this it is said that Shankra Bhatta was taken away by the Police—Linga Bhatta and Shanta Murtiappa accompanying them—to the east to a distance to a place called Ashvathan Katte, No. 9 ("Aswatha" is the pipal tree; a Katte is a raised platform).

13. Up to this time we have principally the evidence of prosecution 4th witness supported by that of Shivayya Bhatta prosecution 5th witness, Venktesha Prabhu prosecution 6th witness, and Rama Bhatta prosecution 7th witness, so far as they were witnesses of what occurred.

From this time the evidence is—

(1) that of Subbi, prosecution 8th witness, a woman whose house the party would have passed on their way to No. 9. She says that she heard them passing and was able to distinguish the Police by their dress. She says there was moonlight; other witnesses say it was dark. As a matter of fact the Calendar shows that the New-moon was on February 24th, so there would not have been much. She had formerly stated in addition that she heard cries of Shankra Bhatta as he passed and saw the party returning by the back of her house later. When questioned about this, she said that she had no recollection of making such a statement and did not know anything more than she now stated. She was an old woman and the events occurred a year ago. I do not think this difference in her statement need at all argue that what she now says is untrue.

(2) that of Thimmanna Bhatta, prosecution 9th witness. He says that he saw the party pass and followed them watching from 2 places—first a tree No. 25 on plan, and again from No. 26—and saw Shankra Bhatta being beaten first near the temple at No. 7, and finally at the Ashwathan tree. He says that when so beaten the man cried out for a time, then the cries ceased, then he thought he heard moans and then—silence. And that then the other men lifted him up by the arms and legs and carried him away. He says he saw a group of four or five men. He recognized that some were Police by their dress and knew 4th accused and the school-master.

Besides the evidence of these two witnesses, we have only that of Prosecution 10th and 11th witnesses, two men who, having started after dinner that evening to go and see a play, were unable to cross a river in flood—the tide being high—and came back. On their way they heard cries from the Ashwathan tree and going nearer to see what it was, they heard low talking. The only words they could distinguish were "Catch, hold and lift". They say that as they knew the Police had come for detection of a crime, they thought this would be their "putting pressure on some one"—and went home.

14. This is the whole of the direct evidence in support of the charges. That Shankra Bhatta had been beaten and beaten severely is proved by the Medical *post mortem* examination. Whether such beating is proved to have been inflicted by the Police must depend on whether the evidence is believed. Though it is necessarily small in amount and somewhat scattered, I do not think that taken with the admitted circumstances it can be considered insufficient. There was nothing in the way in which the evidence was given before me to make me mistrust it. There is also some evidence in corroboration given by the prosecution 12th witness Devadiga Venkta, who says he was acting as servant to the Police after they came to Tallur, but I do not attach much value to his evidence.

15. The only witness who was cross-examined at any length was prosecution 4th witness. This was directed to showing

(1). that he had stated in his first petition, Exhibit C, that the beating was on Tuesday.

The words might be taken to mean this—the statement being a loose one. The witness being questioned said the beating was really on Wednesday and that he had not stated to the contrary.

(2). that he said in the same petition that he was "confined" on Tuesday night, whereas his evidence now shows that he was allowed to go home. The witness said his son was "confined;" and he did not choose to leave him.

After this, the cross-examination was almost entirely limited to filing the previous statements made by the witnesses.

In the address on behalf of 1st accused, his Vakil by way of contradiction between the former statement of witnesses and those now made, only pointed out the two above noted (and a few more of the same kind) and relied on contradictions to be found in statements made to Inspector Boyer, with regard to which the witnesses were cross-examined (Exhibit VII series) in the former trial before this Court. Inspector Boyer was examined as a defence witness. 1st accused's Vakil (and I think with a wise discretion in his client's interest) examined him very shortly and put in his note-book Exhibit VIII, as containing the statements made to him. He was warned that the note-book lay under the drawback of not having been previously produced, but contented himself with asking the witness whether extracts from it had not been sent daily to his superiors.

The evidence given by Boyer

(1) as to his statement taken from Thimmanna is, "I do not think that from the place which he pointed out to me he could have seen the place he says he saw" and

(2) with regard to Subbi he says "from inside the tatti of Subbi's verandah she could not have seen outside." In reply to a question by one of the Assessors as to whether there was not an entrance through the tatti he said "yes—but from where Subbi told me she was. she could not have seen out." He further stated that Subbi had told him that from the same *front* verandah she had seen the party returning at the *back* of her house.

16. This rather suggests that the witnesses were questioned by the Inspector in the manner ordinarily adopted by a Vakil in examining an adverse witness—which is hardly calculated to get on the record in a fair light the evidence given.

I am satisfied that the fact that the statements of the witnesses as entered in Mr. Boyer's note-book vary from those made before the various Courts which have recorded their evidence is not a reason for distrusting their truth. And this fortunately need not mean that Mr. Boyer wilfully falsified his record of evidence, but he seems to have approached the enquiry in a spirit which rendered it unlikely that he would learn the truth from the witnesses. To mention one point only—he says that during the whole of his inquiry (March 2nd to 8th) he had 1st accused with him. And I think it is hardly probable that if he had been quite unbiassed he would have considered it his duty—in the interest of the accused—to take the extreme measure of acting on a suspicion which he entertained that the Magistrate to whom the case had been referred by the Divisional Magistrate would not give 1st accused a fair trial, and, therefore, ignoring his order, and sending in a referred Charge Sheet to another Magistrate. Especially, since the only reasons he is able to give for his suspicion are (1) that the Magistrate repeatedly urged him to complete his enquiry quickly, and told him to charge the case, (2) that when the accused first came to his Division he gave reports saying that the Magistrate was his enemy. On these reports no enquiry was made and no action taken.

Indeed, looking generally to the way in which the charge against 1st accused in this case had been dealt with by his departmental superiors, I think that, supposing Head Constables had reason to believe that charges against them of abusing their powers were likely to be so dealt with by their superior officers, it would be very improbable that they would not take some advantage of that fact.

17. It now remains only to consider how far the evidence brings home to the several accused complicity in the offences charged. With regard to accused 1 and 2, there is no distinction to be made either in the charge against them nor the evidence.

With regard 3rd accused, there is no evidence to connect him with the beating; the only evidence in fact is that he was in charge of Shankra Bhatta during his detention on the 27th February on the Katte in 4th accused's compound and conducted him to his meal and back.

4th accused is charged with abetment of all the offences.

One of the Exhibits viz. Exhibit Q, is the statement made by this man as a witness when examined by the Kundapur Sub-Magistrate on March 1st. I considered it admissible in evidence under Section 33 Evidence Act, since (1) the man being now an accused person is "incapable of giving evidence;" and (2) the statement was taken in the presence of the present accused (who might have cross-examined if they had wished).

The evidence against him shows that he was from the first taking part in the proceedings—that he went (he says himself he was sent) to consult the astrologer at Gangolli; when he came back on the night, he had Shankra Bhatta entrusted to him for a time for a private examination. And here I think it is important to notice that on his return from his private examination, prosecution 4th witness is left at a distance, prosecution 5th witness is beaten, Shankra Bhatta is kept in custody while the 4th accused only is at least left to do as he pleased. The proceedings are mostly conducted at his house-pyal, and it is there that the first beating—before the removal to the Aswathana Katte—is said to have been inflicted. The evidence that he accompanied the Police with Shankra Bhatta to the Aswathana Katte and returned with them is not, I think, sufficient.

If the above evidence is to be believed, I do not think it is possible to hold that he did not abet the offences which are found to have been committed.

18. The 1st assessor found—

1st accused *guilty* under all counts;

2nd accused *not guilty* under Sections 342 and 348, because he was obeying the orders of his superior Officer,—*guilty* under Sections 323 and 325 and 331;

3rd accused *not guilty* on any count;

4th accused *guilty* of abetment under Sections 342 and 348, not under Sections 323, 325 and 331.

The 2nd assessor found—

1st and 2nd accused *guilty* on all counts;

3rd accused *guilty* under Section 342 and 348, and *not guilty* under Sections 323, 325 and 331;

4th accused *guilty* of abetment of all counts.

The duty of obeying an official superior does not extend to the doing of unlawful acts—the plea of obedience to the order of 1st accused cannot therefore be held to acquit accused 2 and 3 for any offence against law they may be found to have committed but may be considered in extenuation of punishment.

I agree with the assessors in finding *1st accused* guilty on all counts of the charge and with the 2nd assessor in finding *2nd accused* also guilty on all counts,

and *3rd accused* guilty only under section 342 and 348

and *4th accused* guilty of abetment of all the offences proved against accused 1 and 2.

To acquit the accused in this case, it would be necessary to hold that Shankra Bhatta was only examined by the Police as a witness in accordance with the provisions of Section 160 C. P. C. which would mean not only that the whole of the prosecution oral evidence is found to be concocted but also that the circumstances do not throw on the accused the obligation of explaining the injuries, the signs of which are found on the corpse, and the fact that the corpse was taken out of the well.

Holding this to be impossible, I can find no sufficient reason to doubt that the offences of illegal confinement and grievous hurt were committed—and committed as shown by the prosecution evidence. If they were so committed the circumstances leave very little doubt that they were committed for the purpose of obtaining information as to the suspected crime or restoration of the stolen property.

Looking to the very slight grounds for suspicion against the unfortunate man at first sight, it seems extraordinary that such measures should be used against him. I am afraid it points to the fact that such measures are not extraordinary—the excessive use of them in the present case being due to the determination of the 1st accused to obtain detection if possible.

20. Quite apart from the melancholy event—the death of the unfortunate man—the offence of illegally detaining and ill-treating a suspected man is a very serious offence on the part of an officer in the position of 1st accused. His long service is rather an aggravation than a plea in mitigation in such a case. Still it makes the dismissal from the service—which must necessarily follow on his conviction—for such an offence in itself a heavy punishment.

I do not think I can inflict a less punishment than 9 months' rigorous imprisonment. The sentence on 2nd accused is the same. The 3rd accused is guilty only in that he should have known that he ought not to obey an illegal order of his superiors. He is sentenced to simple imprisonment for one month. I can see no reason for making any distinction between the sentence for abetment and principal offence (while as a matter of fact the same imprisonment to 4th accused means a very much slighter punishment to 4th accused than to accused 1 and 2). He is sentenced to 9 months' rigorous imprisonment.

Mangalore,
14th January 1896.

(*Signed*) H. G. Joseph,
Sessions Judge.

Exd. M. Krishnaya.

(True copy).

Appendix.

I

The witnesses examined are:—

Prosecution.

1. J. L. Boyer—Inspector of Police. 2. K. Rama Rau—Inspector of Police. 3. C. L. Mascarenhas—former Coondapoor Magistrate. 4. Ramakrishna Bhatta. 5. Shivayya Bhatta. 6. Venkatesha Prabhu. 7. Rama Bhatta. 8. Subbi. 9. Thimmanna Bhatta. 10. Shesha Shetty. 11. Mahalinga Shetty. 12. Devadiga Venkata. 13. Kusa Beliya 14. Chikaya Shetty 15. Vittal Rau—Apothecary. 16. Constable Balaya.

Court.

1. Surgeon Captain Charles Donovan. 2. Shanta Murtiappa. 3. Mr. S. P. Scott—Superintendent of Police. 4. Ugrani Rama.

Defence.

1. C. S. M. Abreo. 2. D. J. Rego. 3. J. L. Boyer—Inspector of Police. 4. Shanta Murtiappa. 5. Constable Annappa. 6. C. L. Mascarenhas.

II.

The Exhibits filed for

(*a*) Prosecution.

A.		Plan of the place prepared by Inspector Boyer.
B.		Do. by Inspector Rama Rao.
C.	28— 2—1895.	Complaint before the Kundapur Magistrate filed by prosecution 4th and 5th witnesses.
D.	28— 2—1895.	Potail's report to Kundapur Magistrate.
E.	28— 2—1895.	Crime report to the Kundapur Magistrate.
F.	28— 2—1895.	Enclosure to E, report of 1st accused to Kundapur Station House.
G.	19— 3—1895.	Subbi's deposition (prosecution 8th witness) before the Kundapur Magistrate.
H.	6— 4—1895.	Do. before the Udipi (committing) Magistrate.
J.	8— 6—1895.	Do. before the Sessions Court.
K.	19— 3—1895.	Kusa Beliya's deposition before the Kundapur Magistrate.
L.	5— 4—1895.	Do. before the Udipi Magistrate.
M.	28— 2—1895.	Certificate granted by the Kundapur Civil Apothecary Vittal Rao.
N.	28— 2—1895.	Inquest report.
O.	29— 4—1895.	Deposition of Inspector Boyer before the Committing Magistrate.
P.	31— 3—1895.	Inspector Boyer's letter to the Udipi Magistrate.
Q.	1— 3—1895.	Deposition of 4th accused Linga Bhatta before the Kundapur Magistrate.
R.	1— 5—1895.	Statement of 1st accused before Udipi Stationary Magistrate.

S.	1— 5—1895.	Statement of 2nd accused before Udipi Magistrate.
T.	1— 5—1895.	Do. 3rd accused do.
U.	Do.	Do. 4th accused do.

(b) For Defence.

I.	29— 5—1889.	Takid to Station House Office of Karkal from the Karkal Sub-Magistrate.
II.	1— 6—1889.	Report of 1st accused to do.
III.	6— 3—1895.	Petition of Ramakrishna Bhatta to the Kundapur Stationary Magistrate.
IV.	24— 3—1895.	Petition of do. to Udipi Stationary Magistrate.
IV_1.	28— 2—1895.	Portion marked in Exhibit C.
IV_2.	Do.	Do.
V_1.	1— 3—1895.	Deposition of Ramakrishna Bhatta before *Kundapur* Magistrate.
V_2.	19— 3—1895.	Do. of Venkatesha Prabhu do. do.
V_3.	19— 3—1895.	Do. of Rama Bhatta do. do.
V_4. (also J).	19— 3—1895.	Do. Subbi do. do.
V_5.	19— 3—1895.	Do. Thimmanna Bhatta do. do.
V_6.	19— 3—1895.	Do. Shesha Shetty do. do.
V_7.	19— 3—1895.	Do. Mahalinga Shetty do. do.
V_8.	19— 3—1895.	Do. Devadiga Venkata do. do.
V_9.	19— 3—1895.	Do. Kusa Belya (also Exhibit K) do. do.
V_{10}.	19— 3—1895.	Do. Shanta Murtiappa do. do.
VI_1.	5— 4—1895.	Deposition of Ramakrishna Bhatta before *Udipi* Magistrate.
VI_2.	6— 4—1895.	Do. of Venkatesha Prabhu do. do.
VI_3.	6— 4—1895.	Do. of Rama Bhatta do. do.
VI_4.	6— 4—1895.	Do. of Subbi (also Exhibit H) do. do.
VI_5.	6— 4—1895.	Do. of Thimmanna Bhatta. do. do
VI_6.	31—12—1895.	Do. of Shesha Shetty do. do.
VI_7.	31—12—1895.	Do. of Mahalinga Shetty do. do.
VI_8.	5— 4—1895.	Do. of Devadiga Venkata do. do.
VI_9.	5— 4—1895.	Do. of Kusa Beliya (also Exhibit L) do. do.
VI_{10}.	29— 4—1895.	Do. of Potail Chikaya Shetty do. do.
VI_{11}.	31—12—1895.	Deposition of Shivaya Bhatta before the Udipi Magistrate.
VII_1.	31— 5—1895.	Deposition of Ramakrishna Bhatta before the *Sessions* Court.
VII_2.	7— 6—1895.	Deposition of Venkatesha Prabhu do.
VII_3.	8— 6—1895.	Deposition of Rama Bhatta do.
VII_4. (also Ext. G).	8— 6—1895.	Subbi's deposition before Sessions Court.
VII_5.	7— 6—1895.	Thimmanna Bhatta's do.
VII_6.	6— 6—1895.	Devadiga Venkata's do.
VII_7.	10— 6—1895.	Kusa Beliya's do.
VII_8.	10— 6—1895.	Chikkaya Shetty's (Potail) do.
VII_9.	5— 6—1895.	A. S. Vittal Rao's (Apothecary) do.
VII_{10}.	11— 6—1895.	Deposition of Inspector Boyer do.
VIII.		Note-Book of Inspector Boyer.
IX.		Diary extract of the Coondapoor Magistrate.

IN THE COURT OF SESSIONS, SOUTH CANARA.

SESSION CASE No. 15 OF 1895.

(Retrial).

QUEEN-EMPRESS *Vs.* 1. Francis D'Mello.
2. Mahamad Usman.
3. Paul Machado.
4. Linga Bhatta.

Judgment (copy).

(104)

RECEIVED
CHIEF SECRETARY
24 FEB 1896
GOVERNMENT OF MADRAS

Enclosure

District Magistrate

In a letter from the ~~Collector~~ of South Canara
Chief Government, Judicial
to the Secretary to ~~the Commissioners of Land~~
Department, Fort St. George
~~Revenue~~, Madras, dated 19th February 1896
~~No.~~ IV Ref: on C. No. 3636/95
Mdyl.

Subject.

Copy of Judgment in Sessions
Case No: 15 of 1895 - (Retrial)
on the file of the local Sessions
Court.

1.—P. No. 151—91.

(105)

IV. Ref: on C. № 3636/95
Mdyl.

SOUTH CANARA DISTRICT MAGISTRATE'S OFFICE,
Camp Uppinangadi
19th February 1896.

883

From

W. H. Welsh, Esquire,
District Magistrate of
South Canara.

To

THE CHIEF SECRETARY to GOVERNMENT,
Judicial Department,
Fort St. George.

Sir,

With reference to this office Reference on III
C. № 3636/ Mdyl. dated the 21st January 1896,
I have the honor to state that I think
it desirable to forward copy of the
judgment in Sessions case № 15
of 1895 (Retrial) on the file of the local
Sessions Court, - Q.-E. Versus. Francis
D'Mello and others, in case it is not
already before Government. There
is as yet no sign of an appeal
against it.

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

District M.

This is not astonishing! The accused could not have got off more easily. Knowles did. They did appeal later. Mc H.C. judgment C 3427 BA

Compd
R

No. 25—93.

1896.

From,
The — District Magistrate of
South Canara.

CHIEF SECRETARY'S OFFICE
21 FEB 1896
GOVERNMENT OF MADRAS

To,
The Chief Secretary to Government,
Judicial Department,
Fort St. George.

Dated 19th February 1896.

Received

Ref. Reference or C. No. 3636/95
Mafl.

Enclosure one

Subject.

Sessions Case No: 15 of 1895 (Retrial)

Forwarding copy of Judgment
— on the file of the local
Sessions Court.

To await High Court's reply to

P. 373/24-2-96

P. 25.2.96 reply
Pongales

2427 I.
26.11.95 (Sess. case 15)

Enclosure No: 1 of letter No: 352 of 1896
Encl.

109

OFFICE OF THE INSPECTOR GENERAL OF
10 FEB 96
MADRAS.
7-FEB-96

4-2-96

JUDGMENT.

In the Court of Sessions, South Canara.

Enclosure No one
To letter No 1230/25.2.96
From Inspector-General of Police.

Session Case No. 15 of 1895 (Re-trial).

Present: H. G. Joseph Esq.

Queen-Empress *Vs.*
1. Francis D'Mello.
2. Mahomad Usman.
3. Paul Machado.
4. Linga Bhatta.

(Committed by Mr. A. Devappa Punja, Stationary Magistrate of Udipi).

Charge: *Against 1st, 2nd and 3rd:* (1). Wrongful confinement—Sec. 342 I. P. C.
(2). Voluntarily causing hurt or grievous hurt—Sec. 323 or 325 I. P. C.
(3). Causing hurt and grievous hurt, and wrongful confinement for the purpose of constraining a person to confess or restore stolen property—Secs. 348, 330 or 331 I. P. C.

Against 4th: Abetment of the above offences—Secs. 109, 323 or 325, 348 and 330 or 331 I. P. C.

Assessors: Messrs. 1. U. Ananda Rau (Saraswath Brahmin). 2. Constantine Aiman (Protestant Christian).

Opinion of 1st Assessor: 1st accused *guilty* under all counts.
2nd accused, *not guilty* under Section 342 I. P. C., but *guilty* under Sections 323, 325 and 331 I. P. C.
3rd accused *not guilty* on any count.
4th accused *guilty* of abetment of offence under Sections 342 and 348 only.

2nd Assessor: 1st and 2nd accused *guilty* on all counts.
3rd accused *guilty* under Section 342 and 348 I. P. C. only.
4th accused *guilty* of abetment of all counts.

Finding of the Judge: Concurred with the 2nd Assessor.

Sentence: 1st, 2nd and 4th accused each sentenced to 9 months' rigorous imprisonment. 3rd accused sentenced to 1 month's simple imprisonment.

Judgment: This case—originally fixed before this Court at the June Sessions of 1895—was remanded for re-trial by the High Court and taken up at the January Sessions of 1896.

2. On Tuesday, February 26th 1895, some Police from the Kundapur Cusbah Station went to the village of Tallur to enquire into a case of theft alleged to have occurred there in the house of the schoolmaster Shanta Murtiappa. The schoolmaster only lately moved into the house in which the theft was committed. It had been previously inhabited by a woman named Putti—it is said that Shankra Bhatta, the son of prosecution 4th witness, had had relations with this woman, and that fact is confirmed by the admission of Prosecution 4th witness that the house into which she moved was provided for her by him and his son.

Putti was naturally questioned as to the means of entrance into the house and she mentioned the name of Shankra Bhatta as one also acquainted with this, whereupon Shankra Bhatta was also sent for and his father. Shankra Bhatta was "being enquired" by Police—they deny that he was under any restraint—until at any rate 8·30 on the succeeding evening, Wednesday February 27th. On that evening the body of Shankra Bhatta was taken out of the well in the compound of Shanta Murtiappa. The inquest report (which was drawn up by the 1st accused, the Head Constable) says that this occurred at 9·0 P. M.—the Prosecution say at about midnight.

That night—the time cannot be accurately fixed, but it must have been very shortly after the body was taken out—prosecution 4th witness went to the Potail (Prosecution 14th witness's) house and complained that his son had been beaten by Police and his life was out. The Potail refused to stir that night, and in the morning, February 28th, he went to the house of Shanta Murtiappa where the body was lying and an inquest was held, and report (Exhibit N) drawn up. This report would seem to have been sent with the body to the Apothecary at Kundapur—it bears his initials as received at 5.0 P. M.

3. The inquest was held at day-break. Tallur is only 3 miles from Kundapur, but there are some rivers to cross on the way. The Potail who was questioned by the Court as to this inquest report denied having sent it or knowing anything of it being sent. But his own report Exhibit D which he says was sent off at *7·0 a. m.* bears the Magistrate's date of receipt as *7·0 p. m.* The Ugrani Rama, Court 4th witness, who carried this report says he was sent at 8.0 A. M. and gave it to the Magistrate at Court at 10.0 A. M. and returned to Tallur at 2.0 or 3.0 P. M. The Potail says that the Ugrani returned before midday and reported to him that the report had been delivered. On the morning of that day, February 28th, the Kundapur Magistrate (Prosecution 3rd and Defence 6th witness) received at his house a verbal complaint from prosecution 5th witness Shivaya Bhatta (brother of prosecution 4th witness) and another and instructed them to give this complaint in writing, which was accordingly done, and Exhibit C was put in before the Magistrate at 4.30. This was a complaint against the Police charging them with the murder of Shankra Bhatta.

The Magistrate on receipt of the complaint referred it to the Police Inspector for report, and wrote to the Apothecary to hold *post mortem* and send his report to the Inspector direct as the complaint had been referred to him.

Next morning, March 1st, the Magistrate before he was leaving his house for office (10.30 A. M.) received Exhibit* E, an occurrence report (Exhibit F is an enclosure to Exhibit E); and after concluding his day's work at Kundapur started about 4·30 P. M. for Tallur. On his arrival he made enquiries and examined a few witnesses that evening. Next day, March 2nd, he made an inspection of the locality; and on the

* It is called a crime report but it ignores any crime at all.

arrival of the Inspector at 3·0 P. M., the Magistrate left the enquiry to him and returned to Head Quarters.

4. On the 5th March, the Magistrate who had reported to his Divisional Magistrate (the Head Assistant Magistrate) received an order to submit a report without delay, and on that sent an order to Police Inspector to submit a Charge Sheet that evening without fail. On the 8th March, the Magistrate received a reply from the Inspector that he would submit his report shortly, and prosecution 4th witness put in a petition asking that the complaint referred to the Police might be withdrawn as they were spoiling the case. On this the Magistrate sent for the Inspector who promised to submit report soon, and was told to do so next day at latest.

The Inspector sent no Charge Sheet nor report of any kind to the Kundapur Magistrate, but on March 8th submitted a referred Charge Sheet, a document of very great length (which may perhaps account for the delay in its submission), to the Head Assistant Magistrate. On that same day, another petition was presented to the Kundapur Magistrate by prosecution 4th witness asking that the 4 accused now before the Court (three Police Constables and Linga Bhatta) might be arrested at once and saying that the Inspector had served on him a notice that the complaint had been referred as false.

5. The Head Assistant Magistrate refused to accept the Police referred Charge Sheet and ordered a Magisterial investigation, and also refused the request of the Police Inspector to transfer the enquiry to some other Magistrate than the Kundapur Magistrate; and on the 14th March the Kundapur Magistrate having received the above order, took up the case on his Register file. The case remained before the Magistrate until March 20th, when he received an order (from the District Magistrate through the Head Assistant Magistrate) transferring the case to the Udipi Magistrate by whom the case was committed to this Court. While the case was before the Kundapur Magistrate, after making vain efforts to procure by any means the arrest of the 1st accused, he commenced the trial in his absence and examined 9 witnesses—in fact the prosecution evidence in the case; so that at the time of transfer the case was really ripe for committal.

6. Thus we have on the record:—

I. Statements recorded by the Kundapur Sub-Magistrate on 1—3—95.
   (1) Prosecution 4th witness Rama Krishna Bhatta.
   (2) Linga Bhatta, 4th accused.
   (3) Shanta Murtiappa, also one of the accused before the commiting Magistrate, but discharged by him; (examined as 2nd Court witness and defence 4th witness).

Exhibits V_1, Q, V_{10}.

II. And the statements of 9 witnesses (besides Rama Krishna Bhatta on whose complaint the case was filed) examined by the Kundapur Sub-Magistrate.

Exhibits V_2 to V_9—V_4 and V_9 being also marked as G and K.

III. Of 12 witnesses examined by the committing Magistrate (the 9 above and 3 more).

Exhibits VI_1 to VI_{10}—VI_4 and VI_9 also marked as H and L.

IV. Of 11 witnesses examined before the Sessions Court at the 1st trial (one man a Police Constable Rasquinha was omitted from the above list);

VII_1 to VII_{10}.—VII_4 also marked as Exhibit J.

before the witnesses were examined in the present trial.

These statements have been filed for prosecution and defence as marked in the margin; and also in this trial for the first time, the note book of the Inspector

Boyer was filed (Exhibit VIII) as containing his record of the examination which he made of the same witnesses, during his enquiry March 2nd—8th.

The above summary is necessary as an introduction to a discussion of the evidence in this case to show (1) the undisputed facts ascertainable from the records; (2) the previous history of the case; and finally (3) the very large number of times, under varying circumstances, statements of the prosecution witnesses have been recorded—all those records being now presented to the Court.

7. Now to consider the evidence. The prosecution statement is that from the time Shankra Bhatta (deceased man) was called by the Police on 26th February until his body was taken out of the well he was in Police custody, and that while the Police so detained him he was beaten to try and induce him to give information about the offence committed in Shanta Martiappa's house and restore the stolen property. And it is to this statement that the various counts of charge are directed. The defence reply to this charge is—that the Police did nothing but examine Shankra Bhatta as a witness (in accordance with the provision of section 160 Cr. Pro. Code); that he was never confined; and that he was never beaten at all for any purpose.

8. The prosecution further say that the Police after having ill-used Shankra Bhatta to such an extent that he was really dead—or at least appeared to be so—threw his body into the well where it was found, so that it might be thought that he had committed suicide and their misdeeds be so concealed.

That the body was taken out from the well is undisputed; that it was taken out about midnight and not at 9 P. M. is supported (apart from the direct evidence on the point) by the fact that the Potail's reason for not coming out at once—when complaint was made to him by prosecution 4th witness—was that "it was night and dark." This certainly points to midnight rather than 9 P. M. Even a village Magistrate, such this man shows himself to be, could hardly have refused to come and enquire into the complaint of murder by the Police at 9 P. M. That the inquest report represents the Police (*i. e.* the accused's) version of the affair in the first instance is, I think, clear. The Potail's denial that he was present at the inquest or knew what was written in the report—as also his similar statement that though he was present on 26th and 27th till 8·30 while Shankra Bhatta was detained by the Police, Shankra Bhatta was never even examined in his presence—is palpably false, but I do not think that gives any reason to doubt (rather the contrary) that his statement that he signed (in 2 places) in that report under the influence of the 1st accused is true. The witness began (before he denied all knowledge) by saying that 1st accused "must have written it", and then explained that his reason for thinking so was "there was no one else there who could write." The other witness examined on this point, Shanta Murtiappa, also very unwillingly admitted that it was written or dictated—and finally said it was written—by 1st accused.

9. The question of how the body came into the well is not one to be decided in this case. For the defence theory of suicide there is absolutely no evidence—except Exhibit N the inquest report—a document clearly drawn up for the especial purpose of suggesting that conclusion—and certain statements said to have been made by the witnesses to Inspector Boyer. Even if he did commit suicide, the only reason for his doing so would be that suggested by the committing Magistrate, viz: either because he could not bear the Police torture or because he wished to escape more. And this cannot advantage the accused much, except as an answer to a charge of murder—indeed Exhibit N would appear to have been drawn up to

assist an answer to such a charge. The evidence that the Police were seen to throw the body into the well is not, I think, in itself of great independent value in assisting the conclusion they must have done so—based on the fact that there is no other explanation of the body being there except suicide or his having tumbled in by accident.

It is not necessary for the decision of the case to decide the point except in so far as the fact of the body being so found in the well and taken out is coherent with the other prosecution evidence. And with reference to that, I think, there can be no doubt that the evidence on the point goes in every way to corroborate the other prosecution evidence and so renders the prosecution theory of the way he came into it most probable.

10. So also as to the cause of death. It is not in any way necessary to the decision of the case to find how Shankra Bhatta died. If the evidence of the Apothecary Vittal Rao, Prosecution 15th witness, is to be believed there can be no doubt that the immediate cause of death was a rupture of the left pulmonary artery. The Apothecary also considered that the rupture might have been caused by external violence—such as could be inferred from the bruises etc. which he found on the body of the deceased.

If Surgeon Captain Donovan (Court 1st witness) is right in his opinion, the rupture *could not* have been caused by any such injuries as could so be inferred. He says nothing but a blow on the front of the upper part of the chest would cause a *rupture* of a pulmonary artery, and that previous general ill usage would not be a predisposing cause. The examination of Vittal Rao makes it clear that what he saw was a rupture, not a cut, and could not have been caused by him in the course of his *post mortem*; and if that rupture could not have been caused by any of the injuries, marks of which were found on the body, the cause of rupture must be said to be unexplained and unexplainable. I am not myself satisfied that the opinion is altogether correct, but it was given with certitude and I did not feel called upon to take further medical expert evidence since (as I have already said) the decision of this point is in no way essential to a decision of the charge before me.

Again, as to the medical evidence on the question of drowning, the effect of the evidence is merely this—the absence of froth etc. in the bronchial tubes and trachea and wind-pipe, although it is not conclusive proof that the deceased was not drowned, militates very strongly against such a supposition and would argue that he must have been insensible * when he reached the water. So also it may not be a physical impossibility that bruises such as found on the body of Shankra Bhatta could *not* have been caused by his falling round and round and dashing against the sides of the well; but that bruises distributed over the body (inside the limbs etc.) could have been so caused (or in lifting the body out in a cradle) is so very improbable that the possibility of its so happening may be left out of account.

*As noted above, that Shankra Bhatta was unconscious and not dead if he was thrown into the well by Police is quite possible.

11. While writing on this point, I would say that there does not appear to have ever been any reason for supposing that murder was intended by the Police. The worst that could be said would be that the man having died in their hands after they had beaten him, they put the body into well with a view to conceal their offence, fearing no doubt a charge of murder. If the medical evidence had shown beyond doubt that the rupture which was the cause of death might be attributed to the ill usage said to have been inflicted and which might have been

inferred from the result of the *post mortem* examination, then it would have been a question for consideration whether a charge of culpable homicide would have had to be added. But with the evidence before me, I did not consider this necessary or advisable.

12. I have now to consider the effect and credibility of the prosecution evidence on the charges against the accused and their defence. The evidence is that Police Officers* from Kundapur came to Tallur on February 26th to investigate the theft supposed to have occurred in Shanta Murtiappa's house, they sent for Shankra Bhatta and his father, prosecution 4th witness, to the house of 4th accused* Linga Bhatta, that the two men were left there till evening, that when the Police allowed them to go away for their evening meal, they ordered Shankra Bhatta only to come back after his meal, but prosecution 4th witness refused to allow his son to come back alone and returned with him. Prosecution 4th witness slept on an outside (gate) pyal and Shankra Bhatta inside on the house-pyal with 1st accused on one side of him and 2nd accused on the other*. At about 2.0 A. M. Linga Bhatta 4th accused (who it is said had gone away the previous evening to consult an astrologer at Gangolli) came and asked the Police to hand over Sankra Bhatta to him for a private enquiry. The Police agreed and Shankra Bhatta was taken away to the pyal of Vishwanatha Bhatta. Prosecution 4th witness then went home and fetched his younger brother Sivaya Bhatta (prosecution 5th witness) to Vishwanatha Bhatta's house and there all three (prosecution 4th and 5th witnesses and 4th accused) exhorted Shankra Bhatta if he had committed the theft to confess and give up the stolen property but he denied all knowledge.

i. e. 1st accused the Station House Officer, a Mahomedan Constable of the same Station, and another Constable.

*It is urged by both prosecution and defence that the man though a distant relative (a dayadi) of prosecution 4th witness is on terms of enmity with him.

*It should be noted here that the prosecution witnesses do not speak before this Court of having seen 3rd accused till the next day, Wednesday 27th. But the accused offers no evidence to show that he did not come with the other two Policemen.

After this the party went* back to the house of Shanta Murtiappa the Schoolmaster (prosecution 4th witness says he was kept at a distance by 2nd accused who met him on their way back) and Shankra Bhatta was made to sit on a Katte there in charge of 3rd accused. Then Shivayya* Bhatta was taken to 4th accused's yard and beaten. Prosecution 4th witness was watching meanwhile from the shop of Vitla Prabhu (No. 18) first and afterwards from the shop of Subraya Prabhu (No. 16) to which he was moved by the Police. No. 16 as will be seen from the plan is farther removed from No. 5 and 1 than No. 18 which is actually at the corner of the compound of No. 1. At midday prosecution 4th witness went for his meal and asked for his son to be allowed to go also, the Police said he would be sent later, and he was sent in charge of 3rd accused. In the evening prosecution 4th witness again went home for his meals—Shankra Bhatta being detained the whole time in the compound of 4th accused—and coming back after his evening meal (about 9.0 P. M.) went to the gate-pyal of 4th accused; from there he says he saw his son dragged from the Katte where he had been sitting during the day to the house-pyal of 4th accused, where he was beaten and kicked till he fainted, and then water was given to him and revived with. When his son was so beaten prosecution 4th witness called out and was then driven away from the pyal of 4th accused and went again to No. 16. It would seem that Shankra Bhatta now gave information that he had some rings pledged with Rama Bhatta, prosecution 7th witness. This man was sent for and

*The house of 4th accused No. 5 on plan and that of Shanta Murtiappa No. 1 are almost contiguous.

*The beating of Shivayya Bhatta is worthy of notice because subsequently when Shankra Bhatta had fainted and water was given to him 1st accused said that the water had been successful in bringing his uncle round and should therefore be tried with him.

produced 4 rings, but Shanta Murtiappa said they were not his. The rings were then returned to Rama Bhatta. After this it is said that Shankra Bhatta was taken away by the Police—Linga Bhatta and Shanta Murtiappa accompanying them—to the east to a distance to a place called Ashvathan Katte, No. 9 ("Aswatha" is the pipal tree; a Katte is a raised platform).

13. Up to this time we have principally the evidence of prosecution 4th witness supported by that of Shivayya Bhatta prosecution 5th witness, Venktesha Prabhu prosecution 6th witness, and Rama Bhatta prosecution 7th witness, so far as they were witnesses of what occurred.

From this time the evidence is—

(1) that of Subbi, prosecution 8th witness, a woman whose house the party would have passed on their way to No. 9. She says that she heard them passing and was able to distinguish the Police by their dress. She says there was moonlight; other witnesses say it was dark. As a matter of fact the Calendar shows that the New-moon was on February 24th, so there would not have been much. She had formerly stated in addition that she heard cries of Shankra Bhatta as he passed and saw the party returning by the back of her house later. When questioned about this, she said that she had no recollection of making such a statement and did not know anything more than she now stated. She was an old woman and the events occurred a year ago. I do not think this difference in her statement need at all argue that what she now says is untrue.

(2) that of Thimmanna Bhatta, prosecution 9th witness. He says that he saw the party pass and followed them watching from 2 places—first a tree No. 25 on plan, and again from No. 26—and saw Shankra Bhatta being beaten first near the temple at No. 7, and finally at the Ashwathan tree. He says that when so beaten the man cried out for a time, then the cries ceased, then he thought he heard moans and then—silence. And that then the other men lifted him up by the arms and legs and carried him away. He says he saw a group of four or five men. He recognized that some were Police by their dress and knew 4th accused and the school-master.

Besides the evidence of these two witnesses, we have only that of Prosecution 10th and 11th witnesses, two men who, having started after dinner that evening to go and see a play, were unable to cross a river in flood—the tide being high—and came back. On their way they heard cries from the Ashwathan tree and going nearer to see what it was, they heard low talking. The only words they could distinguish were "Catch, hold and lift". They say that as they knew the Police had come for detection of a crime, they thought this would be their "putting pressure on some one"—and went home.

14. This is the whole of the direct evidence in support of the charges. That Shankra Bhatta had been beaten and beaten severely is proved by the Medical *post mortem* examination. Whether such beating is proved to have been inflicted by the Police must depend on whether the evidence is believed. Though it is necessarily small in amount and somewhat scattered, I do not think that taken with the admitted circumstances it can be considered insufficient. There was nothing in the way in which the evidence was given before me to make me mistrust it. There is also some evidence in corroboration given by the prosecution 12th witness Devadiga Venkta, who says he was acting as servant to the Police after they came to Tallur, but I do not attach much value to his evidence.

15. The only witness who was cross-examined at any length was prosecution 4th witness. This was directed to showing

(1). that he had stated in his first petition, Exhibit C, that the beating was on Tuesday.

The words might be taken to mean this—the statement being a loose one. The witness being questioned said the beating was really on Wednesday and that he had not stated to the contrary.

(2). that he said in the same petition that he was "confined" on Tuesday night, whereas his evidence now shows that he was allowed to go home. The witness said his son was "confined;" and he did not choose to leave him.

After this, the cross-examination was almost entirely limited to filing the previous statements made by the witnesses.

In the address on behalf of 1st accused, his Vakil by way of contradiction between the former statement of witnesses and those now made, only pointed out the two above noted (and a few more of the same kind) and relied on contradictions to be found in statements made to Inspector Boyer, with regard to which the witnesses were cross-examined (Exhibit VII series) in the former trial before this Court. Inspector Boyer was examined as a defence witness. 1st accused's Vakil (and I think with a wise discretion in his client's interest) examined him very shortly and put in his note-book Exhibit VIII, as containing the statements made to him. He was warned that the note-book lay under the drawback of not having been previously produced, but contented himself with asking the witness whether extracts from it had not been sent daily to his superiors.

The evidence given by Boyer

(1) as to his statement taken from Thimmanna is, "I do not think that from the place which he pointed out to me he could have seen the place he says he saw" and

(2) with regard to Subbi he says "from inside the tatti of Subbi's verandah she could not have seen outside." In reply to a question by one of the Assessors as to whether there was not an entrance through the tatti he said "yes—but from where Subbi told me she was. she could not have seen out." He further stated that Subbi had told him that from the same *front* verandah she had seen the party returning at the *back* of her house.

16. This rather suggests that the witnesses were questioned by the Inspector in the manner ordinarily adopted by a Vakil in examining an adverse witness—which is hardly calculated to get on the record in a fair light the evidence given.

I am satisfied that the fact that the statements of the witnesses as entered in Mr. Boyer's note-book vary from those made before the various Courts which have recorded their evidence is not a reason for distrusting their truth. And this fortunately need not mean that Mr. Boyer wilfully falsified his record of evidence, but he seems to have approached the enquiry in a spirit which rendered it unlikely that he would learn the truth from the witnesses. To mention one point only—he says that during the whole of his inquiry (March 2nd to 8th) he had 1st accused with him. And I think it is hardly probable that if he had been quite unbiassed he would have considered it his duty—in the interest of the accused—to take the extreme measure of acting on a suspicion which he entertained that the Magistrate to whom the case had been referred by the Divisional Magistrate would not give 1st accused a fair trial, and, therefore, ignoring his order, and sending in a referred Charge Sheet to another Magistrate. Especially, since the only reasons he is able to give for his suspicion are (1) that the Magistrate repeatedly urged him to complete his enquiry quickly, and told him to charge the case, (2) that when the accused first came to his Division he gave reports saying that the Magistrate was his enemy. On these reports no enquiry was made and no action taken.

Indeed, looking generally to the way in which the charge against 1st accused in this case had been dealt with by his departmental superiors, I think that, supposing Head Constables had reason to believe that charges against them of abusing their powers were likely to be so dealt with by their superior officers, it would be very improbable that they would not take some advantage of that fact.

17. It now remains only to consider how far the evidence brings home to the several accused complicity in the offences charged. With regard to accused 1 and 2, there is no distinction to be made either in the charge against them nor the evidence.

With regard 3rd accused, there is no evidence to connect him with the beating; the only evidence in fact is that he was in charge of Shankra Bhatta during his detention on the 27th February on the Katte in 4th accused's compound and conducted him to his meal and back.

4th accused is charged with abetment of all the offences.

One of the Exhibits viz. Exhibit Q, is the statement made by this man as a witness when examined by the Kundapur Sub-Magistrate on March 1st. I considered it admissible in evidence under Section 33 Evidence Act, since (1) the man being now an accused person is "incapable of giving evidence;" and (2) the statement was taken in the presence of the present accused (who might have cross-examined if they had wished).

The evidence against him shows that he was from the first taking part in the proceedings—that he went (he says himself he was sent) to consult the astrologer at Gangolli; when he came back on the night, he had Shankra Bhatta entrusted to him for a time for a private examination. And here I think it is important to notice that on his return from his private examination, prosecution 4th witness is left at a distance, prosecution 5th witness is beaten, Shankra Bhatta is kept in custody while the 4th accused only is at least left to do as he pleased. The proceedings are mostly conducted at his house-pyal, and it is there that the first beating—before the removal to the Aswathana Katte—is said to have been inflicted. The evidence that he accompanied the Police with Shankra Bhatta to the Aswathana Katte and returned with them is not, I think, sufficient.

If the above evidence is to be believed, I do not think it is possible to hold that he did not abet the offences which are found to have been committed.

18. The 1st assessor found—

1st accused *guilty* under all counts;

2nd accused *not guilty* under Sections 342 and 348, because he was obeying the orders of his superior Officer,—*guilty* under Sections 323 and 325 and 331;

3rd accused *not guilty* on any count;

4th accused *guilty* of abetment under Sections 342 and 348, not under Sections 323, 325 and 331.

The 2nd assessor found—

1st and 2nd accused *guilty* on all counts;

3rd accused *guilty* under Section 342 and 348, and *not guilty* under Sections 323, 325 and 331;

4th accused *guilty* of abetment of all counts.

The duty of obeying an official superior does not extend to the doing of unlawful acts—the plea of obedience to the order of 1st accused cannot therefore be held to acquit accused 2 and 3 for any offence against law they may be found to have committed but may be considered in extenuation of punishment.

I agree with the assessors in finding *1st accused* guilty on all counts of the charge and with the 2nd assessor in finding *2nd accused* also guilty on all counts,

and *3rd accused* guilty only under section 342 and 348

and *4th accused* guilty of abetment of all the offences proved against accused 1 and 2.

To acquit the accused in this case, it would be necessary to hold that Shankra Bhatta was only examined by the Police as a witness in accordance with the provisions of Section 160 C. P. C. which would mean not only that the whole of the prosecution oral evidence is found to be concocted but also that the circumstances do not throw on the accused the obligation of explaining the injuries, the signs of which are found on the corpse, and the fact that the corpse was taken out of the well.

Holding this to be impossible, I can find no sufficient reason to doubt that the offences of illegal confinement and grievous hurt were committed—and committed as shown by the prosecution evidence. If they were so committed the circumstances leave very little doubt that they were committed for the purpose of obtaining information as to the suspected crime or restoration of the stolen property.

Looking to the very slight grounds for suspicion against the unfortunate man at first sight, it seems extraordinary that such measures should be used against him. I am afraid it points to the fact that such measures are not extraordinary—the excessive use of them in the present case being due to the determination of the 1st accused to obtain detection if possible.

20. Quite apart from the melancholy event—the death of the unfortunate man—the offence of illegally detaining and ill-treating a suspected man is a very serious offence on the part of an officer in the position of 1st accused. His long service is rather an aggravation than a plea in mitigation in such a case. Still it makes the dismissal from the service—which must necessarily follow on his conviction—for such an offence in itself a heavy punishment.

I do not think I can inflict a less punishment than 9 months' rigorous imprisonment. The sentence on 2nd accused is the same. The 3rd accused is guilty only in that he should have known that he ought not to obey an illegal order of his superiors. He is sentenced to simple imprisonment for one month. I can see no reason for making any distinction between the sentence for abetment and principal offence (while as a matter of fact the same imprisonment to 4th accused means a very much slighter punishment to 4th accused than to accused 1 and 2). He is sentenced to 9 months' rigorous imprisonment.

Mangalore,
14th January 1896.

(Signed) H. G. Joseph,
Sessions Judge.

Exd. M. Krishnaya.

(True copy).

Appendix.

I

THE WITNESSES EXAMINED ARE:—

PROSECUTION.

1. J. L. Boyer—Inspector of Police. 2. K. Rama Rau—Inspector of Police. 3. C. L. Mascarenhas—former Coondapoor Magistrate. 4. Ramakrishna Bhatta. 5. Shivayya Bhatta. 6. Venkatesha Prabhu. 7. Rama Bhatta. 8. Subbi. 9. Thimmanna Bhatta. 10. Shesha Shetty. 11. Mahalinga Shetty. 12. Devadiga Venkata. 13. Kusa Beliya 14. Chikaya Shetty 15. Vittal Rau—Apothecary. 16. Constable Balaya.

COURT.

1. Surgeon Captain Charles Donovan. 2. Shanta Murtiappa. 3. Mr. S. P. Scott—Superintendent of Police. 4. Ugrani Rama.

DEFENCE.

1. C. S. M. Abreo. 2. D. J. Rego. 3. J. L. Boyer—Inspector of Police. 4. Shanta Murtiappa. 5. Constable Annappa. 6. C. L. Mascarenhas.

II.

THE EXHIBITS FILED FOR.

(*a*) PROSECUTION.

A.		Plan of the place prepared by Inspector Boyer.
B.		Do. by Inspector Rama Rao.
C.	28— 2—1895.	Complaint before the Kundapur Magistrate filed by prosecution 4th and 5th witnesses.
D.	28— 2—1895.	Potail's report to Kundapur Magistrate.
E.	28— 2—1895.	Crime report to the Kundapur Magistrate.
F.	28— 2—1895.	Enclosure to E, report of 1st accused to Kundapur Station House.
G.	19— 3—1895.	Subbi's deposition (prosecution 8th witness) before the Kundapur Magistrate.
H.	6— 4—1895.	Do. before the Udipi (committing) Magistrate.
J.	8— 6—1895.	Do. before the Sessions Court.
K.	19— 3—1895.	Kusa Beliya's deposition before the Kundapur Magistrate.
L.	5— 4—1895.	Do. before the Udipi Magistrate.
M.	28— 2—1895.	Certificate granted by the Kundapur Civil Apothecary Vittal Rao.
N.	28— 2—1895.	Inquest report.
O.	29— 4—1895.	Deposition of Inspector Boyer before the Committing Magistrate.
P.	31— 3—1895.	Inspector Boyer's letter to the Udipi Magistrate.
Q.	1— 3—1895.	Deposition of 4th accused Linga Bhatta before the Kundapur Magistrate.
R.	1— 5—1895.	Statement of 1st accused before Udipi Stationary Magistrate.

S.	1— 5—1895.	Statement of 2nd accused before Udipi Magistrate.
T.	1— 5—1895.	Do. 3rd accused do.
U.	Do.	Do. 4th accused do.

(b) For Defence.

I.	29— 5—1889.	Takid to Station House Office of Karkal from the Karkal Sub-Magistrate.
II.	1— 6—1889.	Report of 1st accused to do.
III.	6— 3—1895.	Petition of Ramakrishna Bhatta to the Kundapur Stationary Magistrate.
IV.	24— 3—1895.	Petition of do. to Udipi Stationary Magistrate.
IV_1.	28— 2—1895.	Portion marked in Exhibit C.
IV_2.	Do.	Do.
V_1.	1— 3—1895.	Deposition of Ramakrishna Bhatta before *Kundapur* Magistrate.
V_2.	19— 3—1895.	Do. of Venkatesha Prabhu do. do.
V_3.	19— 3—1895.	Do. of Rama Bhatta do. do.
V_4. (also J).	19— 3—1895.	Do. Subbi do. do.
V_5.	19— 3—1895.	Do. Thimmanna Bhatta do. do.
V_6.	19— 3—1895.	Do. Shesha Shetty do. do.
V_7.	19— 3—1895.	Do. Mahalinga Shetty do. do.
V_8.	19— 3—1895.	Do. Devadiga Venkata do. do.
V_9.	19— 3—1895.	Do. Kusa Belya (also Exhibit K) do. do.
V_{10}.	19— 3—1895.	Do. Shanta Murtiappa do. do.
VI_1.	5— 4—1895.	Deposition of Ramakrishna Bhatta before *Udipi* Magistrate.
VI_2.	6— 4—1895.	Do. of Venkatesha Prabhu do. do.
VI_3.	6— 4—1895.	Do. of Rama Bhatta do. do.
VI_4.	6— 4—1895.	Do. of Subbi (also Exhibit H) do. do.
VI_5.	6— 4—1895.	Do. of Thimmanna Bhatta. do. do
VI_6.	31—12—1895.	Do. of Shesha Shetty do. do.
VI_7.	31—12—1895.	Do. of Mahalinga Shetty do. do.
VI_8.	5— 4—1895.	Do. of Devadiga Venkata do. do.
VI_9.	5— 4—1895.	Do. of Kusa Beliya (also Exhibit L) do. do.
VI_{10}.	29— 4—1895.	Do. of Potail Chikaya Shetty do. do.
VI_{11}.	31—12—1895.	Deposition of Shivaya Bhatta before the Udipi Magistrate.
VII_1.	31— 5—1895.	Deposition of Ramakrishna Bhatta before the *Sessions* Court.
VII_2.	7— 6—1895.	Deposition of Venkatesha Prabhu do.
VII_3.	8— 6—1895.	Deposition of Rama Bhatta do.
VII_4. (also Ext. G).	8— 6—1895.	Subbi's deposition before Sessions Court.
VII_5.	7— 6—1895.	Thimmanna Bhatta's do.
VII_6.	6— 6—1895.	Devadiga Venkata's do.
VII_7.	10— 6—1895.	Kusa Beliya's do.
VII_8.	10— 6—1895.	Chikkaya Shetty's (Potail) do.
VII_9.	5— 6—1895.	A. S. Vittal Rao's (Apothecary) do.
VII_{10}.	11— 6—1895.	Deposition of Inspector Boyer do.
VIII.		Note-Book of Inspector Boyer.
IX.		Diary extract of the Coondapoor Magistrate.

122

IN THE COURT OF SESSIONS, SOUTH CANARA.

SESSION CASE No. 15 OF 1895.

(Retrial).

QUEEN-EMPRESS *Vs.* 1. Francis D'Mello.
2. Mahamad Usman.
3. Paul Machado.
4. Linga Bhatta.

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Judgment (copy).

123

(No. 352 Genl of 1896. Office of the Superintendent of Police,
South Canara District,
Mangalore, 2d March 1896.

Enclosure No. Two

To letter No. 1330 / 25.3.96.

From Inspector-General of Police.

From

S. P. C. Scott Esq.,
Supt. of Police, S. Canara &c.,

To.

The Insp^r Genl. of Police,
Madras.

Sir.

In reply to your Endorsement, dated 15th February 1896, on Judgment in South Canara Session Case No 15 of 1895. I have the honor to report that 2d & 4th prisoners are said to have appealed and that their appeals are to be heard on 11th March 1896.

1st prisoner is said to be preparing his appeal and the 3d prisoner having been sentenced to only one month's imprisonment has put in an appeal for a revision.

With regard to para 16 of the Judgment I do not understand on what evidence the Judge formed his opinion that the Inspector (Mr. Boyer) "questioned the witnesses in the manner ordinarily adopted by a vakil in examining an adverse witness." Mr. Boyer in his investigation certainly arrived at the proper conclusion namely that the accusation of murder was false and that there was some evidence of assault but that it was not worth much.

I

I think Mr. Boyer's notes of investigation do show in a fair clear light the evidence given. At the first trial the judge was of opinion that the evidence was not good enough to convict one.

The action of Mr. Boyer in not carrying out the Kandapur Sub. Magistrate's order to put in a charge sheet against the accused requires some explanation. It occurred under the following circumstances:—

Mr. Boyer was on the spot engaged in the investigation and was about half way through it when he got a peremptory order from the Kandapur Sub. Magistrate to send in a "charge sheet." Mr. Boyer was not prepared to do so (the charge was one of murder at that stage of the case) because as far as he had gone there was reason to think that the complaint was a wilfully false one. Mr. Boyer should have written to the Sub. Magis-trate by return messenger to explain that he could not at that moment comply with the order. So far I think Mr. Boyer was in fault but this seems to me a most trivial error. It is hardly fair to write about the Inspector "ignoring" the order.

Having finished his enquiry Mr. Boyer found the charge of murder false and he thought it advisable to send his report to the Head Assistant Magistrate. With the evidence Mr. Boyer had collected he could not possibly have

have framed a charge sheet. Mr. Boyer was in an awkward position with an order from a Sub. Magistrate who was known to bear ill will towards one of the accused to charge that accused when there was reason to believe that the case was a false one. Mr. Boyer showed considerable prudence I think in laying the case before the Divisional Magistrate.

The latter part of the 6th para is a little difficult to understand. The judge implies I take it that the Head Constable knew that his departmental superiors were ready to back him up in abusing his powers and he took advantage of it. As a matter of fact we have had nothing to do with the case after the first investigation by the Inspector. It was taken out of our hands at once. I was with the Dy. Inspector General of Police, Southern Range, in camp when the matter was first reported and almost immediately after with the Inspector General of Police. I had no opportunity before the case was taken up by the Magistracy to take any part in it or to influence it in any way.

I am not certain that I understand this part of the para. The judge wishes to imply something ugly and appears to be afraid to say it in plain language.

I have &c.
(Sd) J.P.C. Scott
Capt. of Police.

(True Copy)

Where is there any proof of this? Mr. Boyer does seem to have known of much ignored orders; & he found sufficient ground for the second charge sheet. He should have sent in a report. The Sub. Magistrate was the same man in the hands of another magistrate & go & see that even though that other was the Inspector of the Range. Before whom the case was originally placed.

Who says that he did.

The Judge has spoken plainly enough.

No. O-48.

DEPARTMENT.

CURRENT NO 1424 (127)

No. 1330

CHIEF OFFICE OF THE INSPECTOR-GENERAL OF POLICE,
MADRAS, 25th March 1896.

FROM

M. HAMMICK, ESQ., I.C.S.,
INSPECTOR-GENERAL OF POLICE,
Madras,

Part A

To

THE Chief Secretary
to Government,
Fort St. George.

SIR,

Enclosures.
Two

With reference to my letter dated 25th December 1895. No. 6134, relating to the Kandapar murder case. I have the honor to submit the Sessions judgment in the second trial and a letter from Mr. Scott in regard to that judgment.

I have the honor to be.
Sir.
your most obedt. servt.

M Hammick

Inspector General of Police

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1424

Judicial (1896) Department.

From

M. HAMMICK, Esq., I.C.S.,

Inspector-General of Police,

Madras,

To

The Chief Secretary
to Government.
Fort St. George.

No. 1330

Dated 25th March 1896.

Received 26. MAR. 1896 GOVERNMENT OF MADRAS CHIEF SECRETARY

Subject.

Submits Sessions Judgment in the second trial of the Kundapur murder case, and a letter from Mr. Scott in regard to that Judgment

c.s.

Submitted to the c.s. with reference to the file re Rev Holmes in the Confl. box

Enclosure No. 1

To letter No. 975 dt 31-7-96

From Inspector-General of Police.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the eighth day of July.

One thousand eight hundred and ninety-six.

Present:-

The Honourable Sir Arthur J.H.Collins, Knight, Chief Justice.

and

The Honourable Mr. Justice Benson.

Criminal Appeals Nos. 49,50, and 107 of 1896.

Muhammad Usman ----------Appellant in No. 49 / 2nd Prisoner./

Linga Bhatta ----------Appellant in No. 50. / 4th Prisoner./

Francis D'Mello ----------Appellant in No. 107. /1st Prisoner./

Appeals against the Sentences of the Court of Session of the South Canara Division in Case No. 15 of the Calendar for 1895. / Re-trial/

These Appeals coming on for hearing after service of notice on the appellants, and Counsel not appearing on their behalf

Upon perusing the Petition of Appeal, and the record of the evidence and proceedings before the Court of Session, and upon hearing the arguments of the Ag. Public Prosecutor in support of the conviction, the Court delivered the following

Judgment:- We are of opinion that the appellants in these three appeals have been rightly convicted. Looking to the fact that the 1st and 2nd prisoners are police officers

and have been convicted of having caused grievous hurt in order to constrain their prisoners to confess and to restore property, we consider that the punishment of nine months' rigorous imprisonment which the Sessions Judge has imposed is unduly lenient, but having regard to the length of time during which the appellants have been under trial, andto the further consequences which their conviction will entail on the two police officers, we do not think it necessary to take any steps with a view to the enhancement of the sentences.

We confirm the convictions and sentences and dismiss these appeals.

By the Court.

C Srikantiah
Deputy Registrar,
18-7- Appellate Side.

To

The Inspector General of Police,
Madras.

T.M.V.
17/7.

No. O-18.

CURRENT No. 3427

DEPARTMENT.

No 2995

CHIEF OFFICE OF THE INSPECTOR-GENERAL OF POLICE,
Kavali. 31st July 1896.

FROM

M. HAMMICK, Esq., I.C.S.,
INSPECTOR-GENERAL OF POLICE,
Madras,

To

THE Chief Secretary
to Government.
Vothcamund.

SIR,

Enclosures.
One

I have the honor to submit the copy of the High Court's Proceedings in the appeal of F. Demello, the Head Constable convicted in the Sessions Court, South Canara, referred to in my letters, dated 25th December 1895, No. 6134, and 25th March 1896, No. 1330.

I have the honor to be,
Sir,
your most obedt. servt.

M Hammick
Inspector General of Police.

CURRENT No. 3427

Judicial (1896) Department.

(132)

C/N= 1424/96.

From

M. HAMMICK, Esq., I.C.S.,
Inspector.-General of Police,

CHIEF SECRETARY GOVERNMENT OF MADRAS
2. AUG. 1896

Madras,

To

The Chief Secretary
to Government,
Rotacamund.

No. 2995

Dated 31 July 1896.

Received 2 Aug 96

Subject.

Submitting Copy of the High Court's Proceedings in the appeal of J. De Mello the Headconstable convicted in the Sessions Court, South Canara—

Submitted to the C.S. in continuation of previous papers now with

Confidential

To the Inspr. General of Police Madras.

Dindigul 10th Dec. 1895.

Sir

Print A.

In reply to Special Memorandum Current-No 4989/Genl dated 7th Inst. I have the honor to reply as follows.

Every paper connected with the case has been forwarded under a separate cover. I did not visit the spot when I was inspecting the Station for by written order that the warrant must be executed I added (although it was quite unnecessary) because every one knew it) that H.C. D'Mello would probably surrender as the case had been transferred from Magistrate Mr. Marjoribanks who was known to bear ill will towards him. I blame this from more than one source one being H.C. D'Mello's Vakil. H.C. Counsel

By whom authority?

A very valuable source!

an inquiry by a Magistrate but he did dread as well he might appearing before Sub Magistrate Mr Marquerhenas.
When I wrote the order that the warrant must be executed I had no idea where D'Mello was nor did I at any time know this. I did not attend the Head Constable to evade a local enquiry Unless the order of transfer was made I knew that the D'Cost would conceal himself and evade arrest to delay the enquiry. I was as desirous as any one for a local Magesterial enquiry I was of opinion that this should have been done in the first instance Sub Magestrate Mr Marquerhenas was at the scene of the alleged offence before the Mr who lives many miles away could get there. He remained there 24 hrs and left the afternoon of the 24 hrs and left the afternoon. Directly the Mr arrived. I did what I could to support the application for the transfer of the case as the best means

Why did you not bring the two with you before you left the room and tell the Mr that he was wanted?

Expediting the local enquiry I went to the District Magistrate about this and was present when the application was made by the Dr Counsel Barrister I asked the Barrister to advise the Dr Cost as soon as the order was passed to transfer the case from Mr Marquerhenas to surrender without delay. I did not passively connive at the Cost absconding after the warrant had been issued for his apprehension. I have not once seen him except when he was in the dock at the Sessions Court from the date the offence is alleged to have taken place up to the date of this letter neither was I at any time directly or indirectly / except when I sent my advice through his Barrister to him as stated above / in communication with him. As his Superior Officer I thought it my duty to interest myself in this case and to urge the transfer to another Court. The transfer could in no way

prejudice the case.
I regret I could not answer
earlier. I was away in Telliches
when the Circular Memoran
dum reached me. It took me
time to collect the papers and
with such serious charges against
me I naturally took me
time for thought.
The papers sent with the Official
Memorandum are herewith
returned also those received
with your End dated 29th Inst.
1865.

I have the honor
to be Sir
Your most obed.t
Servant.

Alex Scott
Sub. of Police
St Maures

Enclosure No. 52
To letter No. 6134 dated 25 December
From Inspector-General of Police. 1895.

138

Mr. Scott's explanation.

1006
Encls. Nos. 53
To
C. No. 6041.

No. O. 49. Confidential

DEPARTMENT.

CURRENT NO 604

139

No. 6134

CHIEF OFFICE OF THE INSPECTOR-GENERAL OF POLICE,
MADRAS, 25 December 1895.

FROM

M. HAMMICK, ESQ., I.C.S.,
INSPECTOR-GENERAL OF POLICE,
Madras,

Print A.

TO

THE Chief Secretary
to Government
Fort Saint George.

SIR,

52 *Enclosures.* I have the honor to forward Mr. Scott's explanation as regards his conduct in the "Tellur" case in South Canara called for in G.O., No. 2437, Judicial, dated 26 November 1895.

2- The High Court in its Proceedings, dated 5 September 1895, asked the District Magistrate "to report whether there is any ground for supposing that the Superintendent of Police had communication with the Head Constable D'Mello while he was absconding and countenanced that officer's evasion of the warrant which had been issued against him" - This is the point on which Mr. Scott the Superintendent was called upon for explanation.

The

Enclosure No. 52
To letter No. 6134 dated 25 December 1895
From Inspector-General of Police.

138

Mr. Scott's explanation.

1896
Jan
Enclos. No. 53
to
G. O. No. 6041.

No. O. 42.

DEPARTMENT. Confidential CURRENT NO. 604

139

No. 6134

CHIEF OFFICE OF THE INSPECTOR-GENERAL OF POLICE,
MADRAS, 25 December 1895.

FROM

M. HAMMICK, ESQ., I.C.S.,
INSPECTOR-GENERAL OF POLICE,
Madras,

Print A

To

THE Chief Secretary
to Government
Fort Saint George.

SIR,

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II

The High Court also in its Proceedings
dated 30th October 1895 said - From these facts
"we find it difficult to refrain from
"drawing the inference that the Super-
"intendent of Police addicted the Head
"Constable to evade a local enquiry
"and at all events sedulously connived
"at his absconding after the warrant
"had been issued for his apprehension"

Mr. Scott's explanation is most un-
satisfactory - I mentioned in a former letter para 4 of My's letter in GO 1345 24-6-95
to Government regarding this Superintendent
that he was specially unfortunate when
committing his thoughts to paper and this
is a marked instance of it, for it is im-
possible to gather from his letter how
much he knew and how much he did not
know when he took the Course remarked upon
by the High Court -

His statements seem to conclude that he put his impressions for ambiguity

4- The occurrence viz the death of the
man Shankara Bhatta when in Police custody
took place on the 27th February 1895 - The Police
Inspector arrived at the Scene of the Crime
on

28th morning

on the 1st March - The Magistrate also arrived
on the 1st or 2nd after the Inspector - and left
the enquiry in the Inspector's hands and went
off on the 2nd - The Inspector put in a
referred Charge Sheet on the 8th March to
the Head Assistant Magistrate - The Head-
Assistant Magistrate on the 13th March
ordered the Stationary Sub Magistrate of
Kundapur to inquire into and dispose of the
case - The Stationary Magistrate issued the
warrants for the three accused on the 14th March.
On the 16th March the Inspector submitted the
Sub Magistrate's letter enclosing the warrants
to the Superintendent of Police for orders -
On the 19th March the Superintendent endorsed
the letter with the following order :-

"The warrants must be executed - District
"Magistrate has transferred the Case to the
"Udipi Magistrate - It is not unlikely
"that the Head Constable will voluntarily
"appear before that Court - Warrant might
"be sent to Udipi for execution" -
The Head Constable appeared on the 5th April.

On the 18th March a transfer of the Case
from

* This is altogether incorrect. The inspection was close of his duty until the 2nd. He returned on the 2nd and the 2nd was taken down by the S.I. in three instalments into the case.

two days after the transfer order of the D.C. made.

4th

140/ dati

from 142/ the Kundapur Stationary Magistrate was
asked for in the District Magistrate's Court
and the Superintendent was present in the
District Magistrate's Court when the application
was put in for transfer by the Vakil of the
Head Constable and the Superintendent then
asked the Vakil to advise the Head Constable
to surrender without delay -

5- The above are the facts and it certainly
must be held that the Superintendent
3- da passively connived at the evasion of arrest on the
to part of the Head Constable - I think I may say
tha that hardly any other officer in the Police would
com have acted in this manner. Obviously - and the
is course was so obvious that I cannot understand
2 pa Mr. Scott not having followed it - Mr. Scott
mu should have insisted on the warrant being
kno executed and the Head Constable surrendering
by himself, before he took any step whatever
4 on his behalf - He should have refused to
ma go to Court at all or advise the Vakil in
too any way until he saw the Constable himself.
This Conduct was most improper -

His defence is apparently that he
6- Sympathised

143/ Sympathised with the Constable to such an
extent in his fear of having to appear before
the Kundapur Stationary Magistrate that he
felt bound to interest himself in his behalf
and obtain a transfer of the Case before he
insisted on his appearance - But certainly
no amount of feeling for the Head Constable
should have permitted him to countenance
this evasion of a legal warrant and I have
nothing to say to justify Mr. Scott in
his view - It is to be noted also that even
here where the seriousness of Mr. Scott's fault
depends to a great extent on the question how
far the Head Constable's fears were legitimate
Mr. Scott takes no pains whatever to explain
why it was that Head Constable D'Mello
so feared Mr. Marquerenhas, the Sub Magistrate
appointed by Mr. Slight to enquire into his Case
He dismisses it by saying "he did dread as well
he might appearing before the Magistrate" -
It must be remarked also that this very
Sub Magistrate left the enquiry into the Case
originally in the hands of the Inspector, who
certainly did not look as if he had any

Speci

special audacity to work the Case unjustly against this Head Constable -

7- I think this much may be said for Mr. Scott. I believe he did honestly believe that the Police would not get a fair trial by the Kundapur Sub Magistrate - I was in Mangalore myself on the 22nd March four days after the transfer of the Case and I had then only heard of the Case as far as I recollect from Mr. Scott himself - I had conversation with him about the Case and the impression I gathered then as far as I remember was the case was a false one as against the Police and Mr. Scott I remember then was particular in alluding me that the enmity between the local Magistrate and the police was such that no fair trial could have been gained from him - I have since then been through the evidence as reported to me carefully and I shall be very much surprised if the Case against the Defendants is successful - It is a mass of Contradictions and as difficult a Case to unravel as any Case that has come

Mr. Joseph & the H.C. have unravelled it, & their own satisfaction & all words AGH

come before me - The original Statements do conflicted with the Medical evidence that it was impossible to put any faith in them and I believe that in spite of all the High Court has said the only verdict a judge could have come to was very much that arrived at by Mr. Holmes viz that the unfortunate man who met with his death died while under illegal Custody in the hands of the Police, by what means was not proved -

8- It may also be said for Mr. Scott that he had no direct communication with the Head Constable D'Mello. He did not know where he was, and, although no doubt had the Superintendent insisted on the Head Constable attendance before him the Head Constable would have appeared, I do not think it can be said that he actively assisted him He certainly omitted even to suspend the man from the date of his absconding and ordered the suspension to run from the 5th of April instead of the 14th March - another Circumstance which shows how ignorant Mr. Scott was

special [illegible] this of his duties as Superintendent. The Head Constable should of course have been suspended from the date of the issue of the warrant. It is clear that Mr. Scott's action all through was the result of the obstinacy with which from the beginning he adhered to the Police Inspector's view that the Head Constable was the subject of unfair treatment by the Sub Magistrate.

9- However in this Case I venture, with all due respect to the Magistracy, to say (and I state it here because it is not the only Case that I have come across where a similar course has been followed) - I venture to say that the Police did not in this Case receive the treatment from the Magistrate - that they should have received, or that they must receive, if the Police are to be worked satisfactorily. Here was a Case where close to the Divisional Magistrate's Head Quarters, still closer to the local Stationary Magistrate's office, a man was found to have been killed while in Police Custody in circumstances most suspicious circumstances. The could only be three causes for his death

death, an accident, which was not at all probable, Suicide or Murder, and in any Case the matter was one which called for the most prompt and thorough investigation.

The local Inspector, a man who has a high reputation as a Police officer reached the Spot with the utmost speed. The Divisional Magistrate never turned up at all, and the Sub Magistrate after making a very brief enquiry left the matter to the Inspector. I venture to say that this is not the way in which such matters should be treated. The Inspector held an enquiry and I believe perfectly honestly arrived at the conclusion that the Case as against the Police was false. His enquiry was as exhaustive as was possible and though (as no doubt must almost always be the Case) the Inspector, after finding the witnesses' stories were not believable, was inclined to look upon the whole Case as one concocted against the Constables, nothing is I believe on record to show that he misbehaved seriously during the enquiry - He as it seemed to

* He was absent on tour at the time and did not return until the 11th March. He took over charge on the 12th March. He received a complaint after taking a deposition opened at the Inspr's for the purpose of enquiry & report.

me quite rightly, put in a Referred Charge
Sheet. For if he believed the Complaint of
Murder false, I, with very much respect
to the High Court, venture to think the Courts
he took was proper, and that he would
have done wrong had he charged and
arrested men against whom he did not believe
he had a Case. The Head Assistant Magistrate
in his proceedings ordering a Magisterial
enquiry stated that "arrangements already
"made make it impossible for the enquiry to be
"held by this Court" I do not know
what his arrangements were but here again
I venture to think that a charge of Murder
against Police officers, in regard to an
enquiry made by them in which prima facie
a man had been detained longer than was
legal in Police Custody, was a matter which
should have had precedence of almost any
other work. I am certainly quite sure that
when I was a Head Assistant Magistrate I
should have looked on the matter as one
demanding my personal and immediate attention
and I should have allowed other work on
hand to stand over and enquired into the
Case

An explanation has been given.

Quite so. As what I would do.

Case myself, and I believe this is what would have conformed to my District Magistrate's Views on the Subject. Mr. Slight however thought differently and in a Proceedings of great brevity handed the Case over to the Magistrate who had not thought it worth his while to stay and complete his original enquiry. In all this I venture to think the Police should have been differently treated. Cases of this gravity are happily not very frequent and I venture to suggest that Magistrates might be reminded of their importance when they do occur. I myself am of opinion that in all Cases of serious accusation of torture or murder by the Police, the Police themselves are not the officers best entrusted with investigation. If only in such Cases a Divisional Magistrate would at once come to the Spot and make the investigation himself or at all events have it made by the local Inspector under his immediate supervision the results would be more satisfactory in all Cases, and it would not afterwards leave the suspicion that the Police officers had hushed up matters.

In

In a recent similar Case in Kistna the Magistrates neglected their duty in very much the same way and although in a recent Police Order No. 87 - Police Gazette, dated 26th October 1895, I have ordered the Police in all such Cases in future to bring the facts immediately before the District Magistrate for his orders I venture to suggest that if the Government impressed upon the Magistracy their duty in such Cases it would have a good effect.

10- In the present Case I blame Mr. Scott very much for his action in allowing the Head Constable to evade the warrant against him, and I further blame him as I have done already, very much for his inactivity all through the Case. I distinctly warned him when in Mangalore to do every thing to get the Case thoroughly sifted. A further endorsed on his Weekly Report submitting the first report on the Case, which reached me only on the 3rd April and which Mr. Scott might have despatched before the 26th March, that in my opinion the Case was a very serious one and that the story that the man accidentally fell into the well was not to be believed and that I much doubted the theory of Suicide.

I warned Mr. Scott then that the Case was to be gone into most Carefully and that the Inspector, if he was at all inclined to screen his men, was to be taken off the Case. I asked also to see the Magistrate's judgment as soon as possible.

I again told Mr Scott when he told me in his Weekly Report, dated 11th May that the Case was Committed to Sessions, that I wanted particulars of what had happened before the Magistrate and that every step in the Case should have been reported. I told Mr. Scott then to submit a full report on the Case and asked him what was his opinion on the Conduct of the Police. I remarked that it was Scandalous that a Superintendent should have treated the Case as he had done. All he told me in reply was that Mr. Boyer the Inspector had not been allowed to be present in the Magistrate's Court when the Case was going on and so he could say nothing.

Again on the Weekly Report of the 25th May I asked for information about this Case - Mr. Scott gave me the most unsatisfactory replies.

11- Mr. Scott's treatment of the Case -

140

from Start to finish was as unsatisfactory
me as it could be. He gave me no information
that as to what he thought of the Conduct of the men
me or the Inspector. He failed from the first to
to realize the gravity of the Charge made. He did
he not visit the Scene of the Crime until he had
h to do so in his regular Course of Inspection
a and when that was he does not even take the
h trouble to say in the letter he now forwards
in as his explanation.

3 e 12- At the same time as I have already
2 La told Government I believe Mr. Scott's chief
to h fault is his neglect of his office work.
tha I believe that in this Case Mr. Scott did keep
com himself fairly well informed of what was going
is a on. He neglected and he continually neglects
2 fe to keep me similarly informed. His present
mu explanation shows what he thinks sufficient
kno in this respect. He has given me more anxiety
by than almost any other Superintendent, and this
4 in a District in which Police work is Comparatively
ma light. I cannot recommend his transfer, and
toc I can only hope that he may profit by whatever
action Government may think proper to take
in this Case.

I

153

I don't see what assistance and direction was required. This case was a distinct one from the one.

13- I think as I have stated above that the Superintendent did not receive the amount of assistance and directions from the Magistrate that he was entitled to get. Like many other Superintendents he required to be guided and in the old days of early Police administration I think the local Magistrates would have done more than they did in this Case. Unfortunately the feeling that the Magistrates are as much responsible as any body for the satisfactory working of the Police in their Divisions is very much dying out and while ready to criticize they do not assist. I earnestly hope the Government will take this opportunity of drawing the attention of all Magistrates to their duties in this respect.

14- I enclose all the records in the Case submitted by Mr. Scott. There are points on which the Inspector Mr. Rogers conduct in the Case will require further notice. But as to this, I propose waiting until the second trial is over.

I have the honor to be,
Sir,
your most obedient Servant,

Mammatt
Inspector General of Police

CURRENT NO. 6041.

154

Judicial (1895) DEPARTMENT.

confidential No 395

FROM

M. HAMMICK, ESQ., I.C.S.,

INSPECTOR-GENERAL OF POLICE,

Madras,

To

THE Chief Secretary
to Government,
Fort Saint George

UNDER SECRETARY 26 DEC 95 PUBLIC & TR. DEPTS.

No. 6134

Dated 25 } December 1895.
Received

Note All cycles except his
Security explanations - 90
R. Nos 4 & 6 - 96.

SUBJECT.

Forwarding Mr. Scott's explanation as regards his Conduct in the "Tallut" Case in South Canara called for in G.O. No. 2437 Judicial, dated 26th November 1895.

To await South Canara Dt. Superts reply

G.O. 2437 / 26-11-95

Cir. 6119

No. O-49.

DEPARTMENT.

154

CHIEF OFFICE OF THE INSPECTOR-GENERAL OF POLICE,

No. 473.

MADRAS, 4th February 1896.

FROM

M. H[illegible], I.C.S.,

[illegible] GENERAL OF POLICE,

Madras,

To

THE Chief Secretary
to Government
Fort Saint George.

SIR,

Enclosures. 51 With reference to official Memorandum No. 161 dated 21 January 1896 of your Office, I have the honor to submit the records referred to therein.

I have the honor to be,
Sir,
your most Obdt. Servant.

P.C. Lee

Ag. Asst. Inspr. Genl. of Police,
for Inspr. General of Police.

514

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and this case — an
that

CURRENT NO. 6041

154

Judicial (1896) Department.

156

From

M. HAMMICK, Esq., I.C.S.,

Inspector-General of Police,

Madras,

To

The Chief Secretary
to Government
of Fort Saint George.

No. 473.

Dated 4th February 1896.
Received 5th

Rect. to be laid before Govt. 7/2/96

CHIEF SECRETARY'S
7 FEB 1896
GOVERNMENT OF MADRAS

Subject.

Resubmitting papers connected
with the Kumedpur Torture Case.

Ref

by

Govt's reply to GO 2437/26-11-95
(Sessions Case 15.)

c 258
R 14/9
Canara Sessions Case No 15
Mr Holmes' work as a
Sessions Judge

Supt + Cole

I will deal separately with the cases of the five officers whose conduct is called in question in these papers. The first four are connected with Sessions case No. 15 of 1895 only.

Mr. Slight. I consider that in not taking up the case he committed an error of judgment. If he had himself taken up the case, we should almost certainly have been spared all the trouble that has since occurred, and the Hd Const. of Cantonment would have received punishment more commensurate with their offence (for that it was at least a case of culpable homicide, if not of murder, I have no doubt) — But it is easy to be wise after the event. I have no doubt that Mr. Slight acted to the best of his judgment, according to his lights at the time; and it is only fair to point out that in all probability, if the D.C. Magte had not interfered and transferred the case, things would not have gone as they did.

The question arises, however, whether a positive rule should not be laid down that, in the absence of reasons to the contrary, which it will be for the Dist officer to bring forward, all cases of torture by the Police should be investigated by the Dist Magte. There have recently been several glaring cases of torture by the Police — the Kistna case, the Calicut case and this case, and there is

157 Judl. Dept.

GOs 2231/4.11.95 2441/26.11.95 2437/26.11.95 and 2446/26.11.95

also connts in the Kistna bundles in the file —

For orders.

These papers deal with two matters, viz the conduct of certain cases by Mr. W.C. Holmes I.C.S. Sessions Judge of S. Canara, now at Home on leave, & his general fitness for the position of District + Sessions Judge, and (2) the doings of the local officers (the H.A. Magte Sessions Judge, the Dist. Magte & the Supt. of Police) in South Canara in a certain case in which the Police were charged with wrongful confinement of a previous hurt to a man in their custody. (Sessions case No. 15 of 1895.)

As Mr. Holmes' work comes in question in both matters they are sent up for orders together, but they will be kept as distinct as possible. It seems desirable to take the latter Conduct of the other local officers case subject first.

2. The first paper is a letter from High Courts Letter dt. 26.11.95 with enclosures. J. drawing the GO 2437/26.11.95

occasion there are brought to light— I am therefore in favour of adopting the above effect. Prompt and efficient inquiry into charges of torture is the only means I know of of stopping the practice.

Mr Welsh. I have no doubt that this officer acted with the best intentions— I dont suppose the H.C. intended to impute untruthfulness to him & should say so— But that he was exceedingly stupid & grossly neglected his duty, there can be no doubt— This is in effect, what the H.C. said. I should inform him that the Govt entirely concurred with the strictures of the H.C.— The truth is that Mr. Welsh has not sufficient intelligence for his position, which is his misfortune rather than his fault. He has been tested as a Dist. Judge & was not considered a success in that capacity but perhaps he could do less harm as a Judge than as a Dist. Magte & if Mr. Scott would be well to find slight employment in an opportunity offering— With the settlement of S. Canara coming on, it wd certainly be an advantage that the Collr of the District should be a man of more capacity for numerous intricate & difficult questions are certain to arise in which his opinion will be required—

Mr Scott. The J. Govt verdict (para 5 of C No 6041) is "it entirely must be held that the Supt passively connived at the evasion of escort on the part of the Hd Constable" — I don't see what other conclusion is possible— Mr Scott is victorious as a bad Police officer [He has just been promoted!]. There was some correspondence about him before (vide G.O. 1345 24.6.95 and preceding papers, not in the file) from which it will be seen that the G.G. is not at all disposed to be unduly hard on him. The C.S. is of opinion that Mr Scott's allegation is a falsehood — that is, I suppose, his allegation that he did not know where D'Mello was — I don't know that I go quite so far. I think it more probable that Mr Scott did not know, but I also think that his ignorance was wilful ignorance & that he did not know because he did not choose to find out. Ignorance of this kind is no excuse whatever. I consider that Mr Scott is quite unfit for the important office of Supt of Police & should recommend his removal & desth Supt— I am not sure, indeed, that he doesn't deserve dismissal—

Mr Boyer. This officer seems to have done his best & broke the case— The H.C. says that an honest man actually saw D'Mello, yet did not arrest him— I am of opinion that definite charges should be formulated against him & that he should be

This account of the hostiles is not correct—

On the 9th D'Mello asked for Hawaldar & this magistrate originally ordered a Mohd Constable under the Cantonment Magte to proceed to the spot & bring in the accused

159

that Shankara Bhatta had been murdered by the 4 accd. of the Pros. witnesses (the parents of two accused) & said that he had seen his body & that the penis was split in two. The post mortem certificate medical evidence, however, says nothing of this injury, but mentions a number of bruises & contusions & says that death was due to rupture of the pulmonary artery caused by external pressure to the chest. There was also little direct evidence of violence by the Police. So the trial in the Sessions Court was under the two above sections & a number of similar charges added by the Sessions Judge. The Judge acquitted the 3rd & 4th accd, & found the 1st & 2nd (D'Mello & his Constable) guilty of wrongful confinement under sec. 342 I.P.C. & sentenced them to three months (Simple) imprisonment

3. The High Court's complaint against the procedure of the Dist. Magte in the case may be first considered. —

Warrants were issued on the 1st of accd 1-3 on March 1st M. Holm Kundapur Sessions [illegible] with the Chs [illegible] clearly what has happened and

159

That Shankara Bhatta had been murdered by the 4 accd. the [illegible] of the Pros. witnesses (the gravamen of his accusation) said that he had seen his body & that the penis was split in two. The post mortem certificate / medical evidence, however, says nothing of this injury, but mentions a number of bruises & contusions & says that death was due to rupture of the pulmonary artery caused by external pressure to the chest. There was also little direct evidence of violence by the Police. So the trial in the Sessions Court was under the two above sections & a number of similar charges added by the Sessions Judge. The Judge acquitted the 3rd & 4th accd, & found the 1st & 2nd (D'Mello & his Constable) guilty of wrongful confinement under sec. 342 I.P.C. & sentenced them to three months simple imprisonment.

3. The High Court's complaint against the Magte in the case may be first considered. —

Warrants were issued for Shankara Bhatta accd 1-3 on March 1st for restoring stolen property wrongfully & [illegible] Kundapur Sr.

Before one in writing which they did on the afternoon of that day. He was referred to the Inspector (Mr Brewer for forging). On the 9th March in consequence of a report which he received went to the spot in the afternoon & made some inquiry. Next day he inspected the spot & on the afternoon of that day the Inspector arrived. The magistrate went away leaving the case with the Sub. who delayed through him recorded evidence in his report until the 16th when he sent in a report. Referred back to the H.A. Mr. Wahll ignoring the Sub's report the matter until the 15th Mr. a letter enclosed

* The H. A. he did not actually refuse an application for bail. The case came before the 4th Asst. Magte & the 4th Constable asked that of offence to a Sub. he should not be sent & H.C. S. In of him dispensed. The 4th however did so.

* called on to show cause why he should not be dismissed — the last not yet had an opportunity of explanation.

Mr. Holmes. Considering how [illegible] result [illegible] H.C. & Dist. [illegible] that the [illegible] a representation as done in Mr Holmes' case, we think that we are bound except it opinion that Mr Holmes is not suited to judicial work — and the charitable way of saying that he is not fit to be a judge — Mr Master & the same in his note of 22/12/85 (G.O. 1433 A / 31.5.86), & this prediction has been verified. In their notes in G.O. 901 the then members of Govt (Lord Reay etc Hon'ble Mr Justice [illegible]

unanimously decided that "care should be taken that he is not again made a Judge". Later on (vide G.O. 418 / 28.5.91), that decision was withdrawn, apparently unfortunately. Mr Holmes is not charged with lazy or want of interest in his work, but the papers show that all along his faults have been an absolute want of tact, so that at one time a question was raised as to his being in his right mind (vide Sullivan's note in G.O. 2154 / 14.8.86), a strong tendency to insubordination and inability to perceive his own and own inability & passive his own when pointed out to him, due, I should say, to an extreme sense of his own merits, & extreme sensitiveness. These faults are still prominent; and as the H.C. says (vide para 4 of C.R. No. 1263), "the circumstances of Mr Holmes' defending his conduct and not admitting his shortcomings, and as it appears to report any material improvement", the evidently cannot be employed again as a Dist. Judge.

What then can be done with him? He has been tried in the regular line (in Eastern Districts) & proved a failure; & for the Rev. Dept.) & placed a failure; & for the reasons given in my note of 25/10/95 in G.O. 2231 / 4.11.95 I am of opinion that it would be wrong to make him a Chief. The conclusion I shall arrive is that there is no alternative to remanding him, on his return from furlough, to a sub-collectorate. I do not, however, think that in G.O. 2346 / 8.11.86 Mr Holmes was warned that any further shortcomings on his part would result in his case being reported to the S. of S. This warning evidently referred to Mr Master's note of 12/5/86 (in G.O. 1433 A / 31.5.86) in which the following passage occurs: — "Mr. Holmes can improve in discretion & his continuance in the Service is [illegible] undesirable". Now, the question is should Mr Holmes' case be reported to the S. of S.? I think that it is better to do so, and to recommend his retirement on a minor pension, as this would be better than to retain him as a sub-Collr, which would often cause inconvenience & not advance the public interests, especially as Mr H. has himself expressed a wish to retire in this way (vide the last sentence of para 7 of his letter of 3/4/95 in G.O. 2140 / 26.11.95).

W. 24/8/96

161

with his duty as a Dist. Magte to hear such a petition presented on behalf of a person who was at the time absconding from public justice before he had surrendered in obedience to the law", and "when the transfer was ordered without notice to the complainant, & without giving the Sub-Magistrate of Kundapoor an opportunity of explaining anything that was alleged against him".

A perusal of the Dist. Magte's reply to this order (in G.O. 2437.J. / 26.11.95) & of the High Court's order thereon (in same G.O.) is solicited.

Upon these papers Govt (in same G.O.) asked the Dist. Magte whether he had anything to add to the explanation sent to the High Court. Current No. 855 and the papers under cover of it (docketed as "Dr. Magte's reply" in blue pencil) give Mr. Welsh's further replies in chronological order.

Orders are solicited upon these case.

4. Next may be taken the High Court's complaint against Mr. [illegible] of Sufficiency. The first sentence of the High Court's order [illegible] between Mr. Holmes the case] be endeavoured with Mr. [illegible] to show clearly what has happened and

159

that
reason that Inspector Boyer of
Sholapur & the accd. D'Mello
were on friendly terms. They were
living in the same house although
the Inspector was enquiring into the
case against D'Mello. The Inspector
originally referred the case as false
although ordered not to, & afterwards
supported the pet". for transfer before
the Dy. Magte. He went with D'Mello
& called to the Dy. Magte's house to ask
for the transfer & he saw & spoke
with D'Mello that same day (18th March)

Warrants were issued against
D'Mello on March 14th, the Police
had reported on March 16th that he
was not to be found anywhere. On
the 16th, accordingly, the warrants
were sent to the Supt. of Police for
orders. On the 17th & 18th the
Supt. saw the Dy. Magte about the
transfer of the case, & Boyer saw
the Supt, yet D'Mello was never
arrested. On March 31st Boyer
absconded to the High Court, to whom
the case was transferred, that he
accd. 1-3 at from the Supt. of Police
Kundapur Sr. not unlikely to
him. On
Ch
case that

2

Yet he was told: he was
called upon to endorse her
Charge Sheet at once. He refused
of the Sub Magte spoke also of Sub
Court & his letter of the 8th shows
clearly though that in using the word
"Charge Sheet" he referred to Sending
in a "Revised Charge Sheet" or
a "Refused Charge Sheet" - whichever
the Dy Magte thought should be
necessary.

* I should read it as so. It is the Court of
the Addnl Station House Officer after
the Court, of the 25th

* I cannot see the force of this,
however it is certainly asserted the
Scott says in his letter to the I.G. 10.12.95
that he never said D'Mello for the
date of the alleged offence till the
trial.

Jg

1. As to Mr. Holmes. What occurred
in 1895 - 96 showed that Mr. H. as
a Mag. was wanting in judgment,
insubordinate to the High Court
& disrespectful to the Sessions Judge,
but the High Court thought this
ought not to be due to ill health, & Govt
agreed to by Mr. H. again as
Asst. Mag. but warned him that
any [illegible] that a similar conduct would result
in [illegible] from Sec. of State.

Mr. H. afterwards addressed Govt
justifying all he had done, but
Govt refused to reconsider the matter

What occurred in 1890-91
seemed to show that Mr. H had done
bad[illegible] as Judge of Bellary, & the High
Court remarked on his disposition
to approach the consideration of
evidence with a preconception against
the trustworthiness. Mr. H. again
asserted that he was wrong in no
respect, & the High Court, after
considering his representations, said
he was better than they thought previously & that they saw no objection to his being made a
Judge again, but they thought it
advisable that he did his employment
at first in a lighter district than
Bellary. Some afterwards he was
made Acting Judge of S. Canara.
He has now an Assistantship & has
been transferred in his absence
to the Judgeship of Tinnevelly.
He is due to return next December.

The papers now before us
show that in 1895 Mr. Holmes
showed great want of judgment,
amounting to a want of ordinary
reasoning powers, & leading to a
miscarriage of justice in two
important cases, No 33 of 94
(R. v Padmanaja & Lakshmappa
Bangara & 13 others for culpable
homicide & rioting), & No 15 of 95
(R. v T. D'Mello & 3 others for wrongful
confinement & grievous hurt to
cause restoration of stolen property),
conducted another important
case No 88 of 94 (R. v Krishna
Bhatta & 3 others for the murder

163

they find it difficult to refrain from
drawing the inference that the
Supt. of Police assisted the Mr. Contractor
to evade a local enquiry & that
at all events passively connived
at his absconding after the warrant
had been issued for his apprehension. In their Progs. dealing
with the Police & the Dy. Magte the
H. Ct. asked the Dy. Magte to "report
whether there is any ground for
supposing that the Supt. of Police
was in communication with the
Mr. Contractor D'Mello while he was
absconding & countenanced the
officer's evasion of the warrant which
had been issued against him".

Para 5. of the Dist. Magte's
first explanation (in GO. 2437. J. 30)
is the reply to this. It amounts
to nothing at all. In GO.
2437. J. Govt. ordered the Dy. Mag
to obtain & forward with
remarks a full explanation
from the Supt. upon the allegations
made by the High Court. The file
marked in blue pencil "Supt Holm's
reply" is the answer with the
Orders only that has happened and
solicited.

that
Deems In para 14. of his letter the I.G.
of opr that he thinks Inspector
Hodgson's case requires further notice,
but that he is waiting till the
trial is over. Govt. may now
perhaps say it agrees, & wishes to
be informed of the I.G's conclusions in the case.

In para. 9. the I.G. asks,
"approves of Mr. Slight's the Hd. Asst.
Magistr's action in transferring this
Case to a Sub-Magistr instead of
taking it onto his own file, that
general orders may be issued
for guidance of the Magistracy that they
should assist the Police in all
important cases. Orders are
solicited as to whether any necessity
for such orders has been made out.

6. Mr. Slight's transfer of the
case had already been noticed in
Govt. 2437/26.11.95. His reply is marked
in the file docketed "Dt. Magr's reply
Govt orders upon it are solicited.

The cases against Mr. Holmes
now be dealt with.

In the trial Court referred to above
Proc. 1-3 will be remembered as S.C. No 15
Kundapur Sr. not a separate
Case not

2437

for orders.

for orders.

7. Vankatramanamma) in such a way
that time was great waster of public
time at first, & (as I know from
considering the petn for Mercy
in that case) enormous difficulty in
deciding the appeal & petn relating
to that case afterwards. As usual,
Mr. Holmes admits nothing wrong on
his part, & the final result is that
the High Court have reprimanded
him unfit to be a judge &
so not exercising due control over
workers, in the examination of
witnesses, & generally in the
conduct of the cases - a quietness
due either to weakness or incapacity
to distinguish between relevant &
irrelevant evidence, & which leads to
"a lamentable waste of time & a
risk of the miscarriage of Justice".
The Judges also remark that the
way in which Mr. H. has defended
himself & refuses to admit short-
comings renders it hopeless to expect any
material improvement. After this
pronouncement I do not
think it would be justifiable
to employ Mr. H. as a Judge

orders have since been sent to the I.G.
in connection with the Kistna Police Parties
case (in circ.) that the Police & the Magistracy
are getting gradually to act more in depend-
ently of one another than is good.

again. Should he be tried as a
Collector? His inability to exercise
proper control in the trial of cases
would make him a poor Collector &
his want of judgment & determination
now to admit shortcomings practically
unfit him for any office in the Rev.
Dept. & if he is made a Collector
would result in grave harm to
public interests. There does not seem
to be example in what he has done
now to warrant our dismissing him
from Govt. Secs. of State

or degrading him to the post of a
Sub. Collector, but if we do not get
rid of him somehow we shall
keep a bad bargain on our
hands & do harm to our people. I
think Mr H.'s letter of the 15th Nov
1895 (G.O. 26.11.95/2440) shows us a way
out of the difficulty. In that letter
Mr. H. seems to want to retire on
a proportionate pension (Rs. 400 per
so far as I can make out £530 a
year) if his explanation is not
considered satisfactory & if he
can be given light work he likes,
eg that of judge. The explanation
is not satisfactory. In my opinion,
he ought never to be employed as a
judge again. The difficulty is so
great & the circumstances are so
peculiar, that I think the Secy of State
would be right to his retiring on a
proportionate pension. A report
should accordingly be made to Secy of
State.

2. As to Mr. Webb. All the High
Court's strictures are deserved. Mr.
W. complains that some of them
appear a want of truthfulness
to him, but all the Judges say it
was warranted by the way in which Mr. W.
has forward & himself that certain
after thoughts were in his mind when
he ordered the transfer, & asserted
that they were amongst his reasons
for it. The Govt have given more attention
to case 15 of 95 & proved the
miscarriage of justice Mr. has
certainly occurred. She did be censured.
I don't know how he could be punished
otherwise or what punishment would do
good. He is a weak man who will
always be liable to make mistakes

This was sent to him in draft for
for any remarks he wished to make
Before he received the G.O. however
he had already drafted a reply to
the H.Ct's Progs. on receiving it
direct from that Court. ~~This is~~ to the Registrar
~~his letter of the 27th Nov. 1895, marked~~
~~as "explanation in reply to H. Ct's remarks~~
~~about Sessns Case No 15" under~~
~~Cover of Current No. 6078 in the file~~
~~docketed "Mr. Holmes replies~~. He
therefore in Current No. 3767 (which
is put up separately by itself) sends Govt
a copy of his explanation to the Registr
of the High Court.

Orders on this explanation are
now solicited.

3. Besides this Sessns case No. 15
there are two other cases in which
Mr. Holmes' procedure & work have been
called in question. Vizt
are Sessions cases Nos 33 & 38. In

It is feared that the progs. &
correspondence & explanations about
these cases may appear very
but the confusion is the almost
inevitable result of the existence of
the High Court - v. between Mr. Holmes
& Govt. Endeavour will be
to show clearly what has happened and

the first sessions case 33.

This was first brought to Govt's
tice in Mr. Dancie's letter in Gio. 291/11.2.95
commending an appeal by Govt.
nst the acquittal. A copy of
Sessions Court's judgment in the
se will be found in Gio. 2441/26.11.95
e Govt. Pleader recommended an
peal (his letter in Gio. 568/14.3.95) in
e case of all the accused except
e first, against whom no evidence
cord on record. He made strong
marks about the Sessns Judge's con-
uct of the case. Govt. adopted his
ggestion (Gio. 568/14.3.95), Hon. directing
at then the appeal was decided the
apers should be circulated + saying
at he did not think he had ever
ead such an extraordinary judgment.

In the High Court's order (Gio.
2441/26.11.95) a retrial was ordered + the
ourt remarked among other things
that the judge's mind was obviously
trongly biassed (+ that by one
f conclusive fact) against the prosecu-
ion, that the case had been unduly pro-
onged by irrelevant cross-exam-
nation + that in this case many the first + especially disposal of
ases. The Govt. Pleader in forwarding
undaram explained that when he
id no appeal against the
cquittal of the (vide supra)
e first accused, he had

like he does. We ought to have a
stranger man in S. Canara when it
is being settled. This unfortunate
district has such weak men as
Mr Welsh + Mr. Pereira (whom Mr.
Hamnick says he could transfer) placed
in this same district.

3 Mr. Slight. I don't think that under
the circumstances (with regard to
which Mr Hamnick is evidently
misinformed), any fault can be found
with the Head Assist. Mag.; but I
agree with the Hon. Mr Bliss that
it should now be ordered that all
cases of Police torture etc shall be
taken up by Divisional Magrs.

4. As to Mr. Pereira, the Supt of Police.
He is evidently from what has been
reported before as well as the papers
now before us a weak man + a bad
Superintendent. He could certainly, if
he liked have prevented the long
detainment of the lad D'Mello, after
he knew a warrant was out against
him, + put him arrested. He ought to
have suspended D'Mello for the delay
of the warrant, the 16th March, but
he only suspended him from the date
of his surrender, the 4th or 5th of
April. It was his duty to get justice
done in Case 15 of '95, + he
could probably have prevented the
failure of justice which occurred.
He ought not to have retired as he
did on Inspector Boyer for it ought
to have been quite evident to him
that Boyer was concerning his own undue
this weak deportment on Mr Boyer
is manifest in all the transaction
connected with the case, + in his
letter to the I.G. of Police @ 2.3.96
on which he remarks on Mr Joseph's
retrial. For all this he deserves
punishment. I don't think, however,
that there is any proof that he

report with Secs. of Mad.

wanted to screen D'Mello from
what he considered a fair trial
by an impartial Mag, so I
don't think he should be dis-
missed, or that he has said enough
to warrant his being degraded to
the rank of Assist Supt. I think
that on the analogy of the case
of Mr Prendergast in the Krishna
Police torture case he should be
placed on the grade below his grade
on which he is now + debarred pro-
motion for 12 months.

5. As to Inspector Boyer. The
matter to his attention has been
called by the High Court, + the
other circumstances enumerated
by the C.S. at the end of the order
makes it almost certain that he
wanted to screen his subordinates,
+ that he transgressed the law in
order to do so. In para 14 of the
I.G's report of 25.12.95 the I.G.
says there are points in Mr Boyer's
conduct which require further notice,
+ he will attend to this upon the
retrial of case 15. The retrial
of this case was finished by Mr
Joseph on the 14th Jan 96, + I agree
with the Hon Mr Bliss that formal
charges should be drawn up + that
Mr Boyer should be called on to show
cause why he should not be dismissed.

JG
2.9.96

1. As to Mr. Slight. I agree with Hon. Members, and I
think it will be sufficient to record the substance of the
Hon. Mr. Grose's note. I am of the opinion
of my Hon. Colleagues that cases of Police tortures should

before him only the judge's
P.S. notes of evidence which, in re
the evidence of the Hon. P.S., Contain
no evidence against the 1st accd.
Subsequently on perusing the evidence
recorded by the clerk he found there
was a considerable body of evidence
against the man. The High Court
was asked in para 4. of the order in
the matter to take Mr. Holmes' explanation
on this point + send it to Govt. (Gio
2441/26.11.95). This it has done in
current No 6078 (docketted in blue
pencil Mr. Holmes' replies to Gio.s 2231 +
2441). ~~Its conclusion~~ Mr. Holmes
says he did not record the evidence
in question as it was not relevant (the
Govt. Pleader says it was) + the H.C.
says he should not have recorded or acted
to record a witness's evidence merely
because the evidence of previous wit-
nesses to the same point was ~~not~~ disbelieved, but that after the
Magisterial record is the real
record of the case.

Orders on this point are solicited
to proceed with the High Court's order
on the case (sees. Case 33).

Govt was not written to the Sessions
for remarks for the reasons and

should be investigated by the Divisional Mag^te, unless good cause to the contrary is shown. An order should issue accordingly.

2. In the case of Mr. Welsh, I think with my Hon. Colleagues that the censure of the High Court is deserved – He should be told so, but I do not think he was consciously guilty of unfaithfulness, and I do not understand that the High Ct. make such a charge against him. We should take an early opportunity of moving him.

3. As to Mr. Scott, the Supt. of Police, I agree with my Hon. Colleagues that it is proved that he is a bad Police Officer. In this particular case, I think he was more weak than wicked. He seems to me to have allowed himself to become a tool of Mr. Boyer. The service would be well rid of him, but his dismissal would be a Comical of too prospective, to which, I feel, we cannot assent. I believe we have other speedy and long ones, with which we have to part with. I should have been inclined to agree with the Hon. Mr. Blair as to the former and degree of the punishment to be inflicted on Mr. Scott, were it not for two circumstances, (1) that he is a married man, to whom loss of pay &c. be a much more severe penalty than to a bachelor, and (2) that the charges against him have been hanging over him for many months, and this on behalf he is in some degree a punishment. I consider the case is a worse than Mr. Prendergast's. I am of opinion that the punishment recommended by the Hon. Mr. Spence, namely that he should be reduced in the grade below that in which he is now serving, – should be ordered. But, instead of suspension from promotion for 12 months only – I would make the term of this suspension indefinite. The Hon. Mr. Blair remarks that the Mr. Scott has recently been promoted. When the proposal came for promotion was made, I was in ignorance that Mr. Scott was under this dark cloud. Mr. Hemmick should have called my attention to this circumstance. Mr. Scott's reputation in Camera must have suffered by all that has happened. This, I am sure, demands that he should be moved. Mr. Hemmick says he [illegible] I intend to be glad if he would come to this matter again. Would a transfer to Amherstpur be open to objection?

4. In the case of Mr. [illegible], I concur with my Hon. Colleagues in the course to be adopted. I only regret that there has been delay.

5. Lastly, as regards Mr. Holmes, I am satisfied that it is injurious to the interests of the Public Service that he should continue to be a Dist. Judge. To make him a Collector would

some other dept. on his return from furlough.

Mr. Holmes' first reply to the call in G 2231 / 24.11.95 for explanations & remarks on these Progs. is contained in G.O. 2440 / 26.11.95

His second reply Cont. 5573 is under cover of Cont. 6078 in the file marked "Mr. Holmes' replies" in blue pencil.

The first reply was cover to an explanation on the same subject sent by Mr. Holmes direct to the High Court. In G.O. 373 / 24.2.96 the High Court was asked what order it had passed on this explanation, & to give Govt. its opinion on the two replies addressed to Govt. in G.O. 2231 / 4.11.95

Current No. 1263 is the High Court's reply answer. It says it passed no separate orders on the explanation in question, & as to the two replies has nothing to add to the opinion already expressed, that to figures & statistics made by Mr. C irrelevant, & that his faults cause lamentable waste of public time & a miscarriage of justice, & is of opinion that Mr. H's defence of his conduct & refusal to admit any shortcomings & hopeless to expect any material good and ment.

Holmes generally agrees
[illegible] on these two cases and upon Mr.
[illegible] calculated. - Remains papers as to
[illegible] cos conduct are at the bottom of the
[illegible] side & are briefly abstracted in the
[illegible] notes in 90. 1231
4.11.95

6/11/96

[illegible]

[illegible]

[illegible] would probably do what practice knows to be proper
[illegible] Sinclair. The two would nothing to merit ind without
[illegible] to the words of a Sent. Collector. The omens of
[illegible] actions performed by them. Attendance seems to
[illegible] now the first thing that can be adopted. The Sec.
[illegible] of State should be addressed with a little delay
[illegible] as possible.

6. The office note appears to me excellent, and
must have cost much time and labour.
With the great help they have given me, I have
had to spend from two & four hours over these

that

strong!

I accept what H.L. says, except as
to Mrs Scott - My views as to him is that
he is not competent to be kept of office & that
therefore, in the public interest, he should be
[illegible] and don't kept - I am afraid no good will
be done, either to him or to the public service, by the
[illegible] proposed method of dealing with him - In Mrs
Ascendorgat's case, there was a definite fault
to be punished; and the punishment awarded
Kundat may be hoped, make both him & others
[illegible] in future. In Mrs Scott's case,
[illegible] that a definite fault has
[illegible] committed (though of course there is that
[illegible] we have a hopeless man in a
[illegible] he is unfit to [illegible] as

170

Canara Sessions

Case 15, re Mr. Holmes'

Work as a Sessions Judge.

H.M. to Sec.

(for orders).

* ant of punishment of any kind will
ever make him fit. Hence, in my
view, the only thing to be done is to remove
him from that position to another position,
to which, under continuous & compulsory
supervision, he may perhaps adequate. That
such a removal would entail a heavy
loss of pay is an unfortunate accident
of the case, which Govt may regret,
but practically it is not in any way
responsible.

As to H.L.'s suggestion that Mr. Scott
might be transferred to Mauritius, it
may be said of that district that in
Mrs Worsop's hands "application sore
long time it bore", and that it requires
a lighthearted period of better treatment
to set it into good order. Hope therefore
Mrs S. may not be sent there - I should
see how it suits & remains as Supt, he
can be better disposed of there in Canara.
He will probably ~~do less~~ almost certainly
do less harm there than anywhere else -

HS
16/9/96

I can cur with the. The misdeeds
of Mr. Scott to that grade of assist.
Supts would be too severe a punishment
She is as unfit to be an assist
Supt as a Supt. Mr Hamilton
did he asked about transferring
him, but I do'nt see how this
can be done.

JG

171

[8.]
25 A.
1,000—21-3-96.

DEPARTMENT

C. No.

FOR ORDERS.

I very much regret that this papers have
been with me so long. They came to me
at the beginning of April when I had
far more work than I could possibly
attend to and I directed that they
should be sent up to Ootacamund in
order that I might take them up
during the holiday which we had
at the time of the move in lieu of
Easter. They were sent to my house
but during the "holidays" I had so much
other work in hand that I was
unable to work at the file [illegible] in
unpacking, the box was put on one
side and I did not notice that
it was mixed up with other things
in my writing room until a few
days ago. J.H.

A mass of irrelevant papers and
sundry duplicates have been sent up
by the different Officers concerned" ad

172

have given rise to a good deal of unnecessary trouble.

The method followed up hearing the cases followed in the H.S's rule appears to be the best.

The account herein given of the case is, I think, correct, excepting that I do not think that there was so little evidence against the three as the H.S. seems to consider. They most decidedly knocked about the deceased in a very violent manner & did so more than once. The evidence as to their throwing the man into the well is not so satisfactory but I have no doubt that they did.

The District Magistrates explanation appears to me to be of the casuals and the censure of the High Court of which he complains seems to have been fully merited.

The ground and the only ground - pleas accepted in the very brief order of transfer passed by Mr Welsh was that there was differing between the 1st accused Dhullo and the [illegible] to whom the case [illegible] depended by the 3rd Asst

[illegible] reason for their opinion

FOR ORDERS.

H. M.

173

[G. / 25 A.]
1,000—21-3-96.

DEPARTMENT 2

C. No.

FOR ORDERS.

& found and I cannot find in the record anything whatever to warrant it. The Inspector Mr Boyes in his diary to the Superintendent makes some general remarks on the subject — very general indeed - but there is no mention of any specific cause for enmity. Apparently Mr Welsh was content with the assertion of the Jakeel for the 4th Constable and perhaps he accepted something that may have been said by the Insp. Mr Scott who had probably been told it by Mr Boyes. When offering his explanation to the H.S Ch. the Dist. Magistrate he stated that his main reason for the order of transfer was that he thought that the Sub-magistrate could give valuable evidence in the case, that it was desirable not to examine him in the Proceedings and that he therefore said nothing about it! The proceedings of the H.S Ch. Mar

174

2295 dated 4th Mr 1896 deals with this statement and I think in a very fair manner. The explanation given must I fear be regarded as an after thought. It may be that he failed having before submitting his explanation seen the records in the case imagined that he had the reason which he therein assigned in his mind at the time of making the order of transfer. He is described as weak - I speak of him from a personal acquaintance as well as from a knowledge of his official work - that is quite possible that this is the case. The fact of his complaining to Govt of the 18th Cl. Structures fails to confirm this theory. There cannot be a shadow of a doubt I think that the only ground upon which the transfer was made was alleged enmity into which not the slightest inquiry was made. Mr Welsh has admitted that he was in fault in receiving a petition from an absconding accused and in not calling upon the complainant to appear and be heard. His grounds for not having given this to be heard to

FOR ORDERS.

H. M. Secretary

[G. / 25 A.]
1,000—21-3-96.

DEPARTMENT

C. No.

FOR ORDERS.

the magistrates concerned is absolutely absurd. His explanation with regard to the failure to take measures to ensure the arrest of the 1st accused is exceedingly weak. He was asked a definite question by the High Court and I do not see that what is stated in para 5 of his letter 5731 of 95 dated 17th Sept. affords any valid grounds for the omission with which that para he fails.

From what he says it seems fully evident that the Supt of Police - who had expressed a view before the 18th March here to the high about the case - and who seems to have opposed them in support of the transfer, though he might not have actually known the exact finding placed of the walls was perfectly aware that he was evading arrest and took no pains to have him caught. Mr. Welsh admits that the main fact in the petition

176

"through the Rift of Steel Gaunt
of a Jackal" – a most astounding
statement. This fact of the Dst Magte
had had his wits about him in the
least might have shown him how
the land lay.
The truth no doubt is that Mr Welsh
who is very weak was sat upon
off by the Supt and the Jackal, swallowed
all they told him at once and without
enquiry of any sort or kind dashed
off a proceeding tantamount the case.
He does not seem to have even required
the production of the copy of the
Ptn this proceedings: he ought to have
done so: it is contrary to all practice
to do otherwise.
Mr Welsh says in the concluding portion
of his explanation to Govt. "It should
" not be forgotten that I took interest
" in the prosecution. The Local Govt Counsel
" was of course instructed at Sessions
" and the Govt Pleader at Madras to
" oppose the appeal"
This is nonsense – almost puerile.
I cannot see any indication anywhere
of his having disabled himself in the
least in the prospect of the case as
he thought a lot about it
troubled himself a lot after passing

FOR ORDERS.

H. M.

[G. / 25 A.]
1,000—21-3-96.

DEPARTMENT.

C. No.

FOR ORDERS.

the order of transfer. Instructing the
Public Prosecutor to appear in Sessions
Case or the Pub. Pleader to do so in
a case before the Hr Ct. a matter
of the merest routine. The former is
done by means of a printed form filled
in by a Clerk and signed by the Dst.
& Mr Welsh whatever misleading way
of doing things was no doubt the cause
of all the trouble which has ensued
with regard to this case. Had it been
left in the hands of the Pub. Magistrate
there is but small doubt that it would
have terminated unobjectionably from
what it did at first.
It has been severely censured by the Hr
Ct.: it is for orders whether anything
further is to be said to him than
that Govt. quite concurs in the
strictures passed to which he takes
any exception.

Mr. Slight would perhaps have acted more wisely than he did had he taken up the case himself but he was certain that he could not have dealt with the case as it came before him in the days and it had apparently work which [illegible] him away on the tank Bund and which could not brook at least inconvenience to all concerned be postponed, and hand, he took measures as soon as he heard - in camp - of the case to have it looked up and the case is in the hands of a magistrate who was not at all likely to fall into the hands of Inspector Bayes who seems to have been at the bottom of the attempt to spoil the case. If it had not been from the [illegible] action of Mr. Baker in taking the case from the magistrate to whom the inquiry was originally entrusted all would probably have gone well. Mr Slight could not have reasonably expected what occurred.

It is submitted that he cannot be held to blame.

The second and [illegible] of Police

FOR ORDERS.

H. E. THE GOVERNOR.

THE HON'BLE MR. H. W. BLISS, C.I.E.

THE HON'BLE MR. J. GROSE, C.I.E.

[G. / 25 A.]
1,000—21-3-96.

DEPARTMENT.

C. No.

FOR ORDERS.

with reference to the conduct of Mr Scott and the Police are very voluminous and many are quite irrelevant.

I will take Mr. Bayes first though it is by the personnel that now finds the trial of the case and the appeal are over Mr. Hamnick will send a further report regarding their Officer.

On the 1st March (vide his diary for that day written on the 2nd) he was at a place called Hosangi where he states that he received by Express the compliment which had been preceded by the Submagistrate; he at once [illegible] for Talwa whither he reached at 2 P.M.* on the 2nd and there found the Submagistrate waiting inquiries.

On his arrival the Submagistrate handed the inquiry over to him and left the place. He inquired into the case on the 5th instant and in the [illegible]

* The d.g. is distinctly wrong when he says that the Sub-magistrate arrived after the Inspector. The dates each [illegible]

of the 7th Instant that he had sent in a referred Charge Sheet to the Hd. Asst. High stating that the case was false and requiring that it might be struck off the file. On the 5th March the Sub-High wrote to him asking him to hurry up with his report. This he Boyce replied on the same date in a very importunate letter saying that the case was still under further investigation, but duly reported were sent to the Sessions under whose orders he must act as the accused were Police Officers and that he was in "Communication with the Hd Sub High as well whose orders I am also pushed to carry out at a moments notice". This letter / was one in which he sent on the Sub-High's Yadash to the H.M.s and wound up with saying "respectfully request that I may be pleased to communicate any orders direct to me which I shall carry out at once". On the 8th the Sub High again wrote to Mr. Boyce saying that he heard that he was sitting on the case in a referred Sheet and asking him to do so without delay. To this the Sessions took no notice: he has in however a referred Charge Sheet

/Communication referred to

FOR ORDERS.

H. E. THE GOVERNOR.

THE HON'BLE MR. H. W. BLISS, C.I.E.

THE HON'BLE MR. J. GROSE, C.I.E.

[G. / 25 A.]
1,000—21-3-96.

DEPARTMENT.

C. No.

FOR ORDERS.

before the H.M.s he asked Sir Branch and on that same day wrote a letter to the H.M.s stating that he was quite convinced that the accused were not guilty and requesting that the case might not be dealt with by the Kandahar Sub Magistrate but by some other.

In his theory for the 7th - written on the 8th - he makes but a passing allusion to the transactions of the 8th. He evidently omits to say that the Sub-High called upon Rem on the 8th to send in a referred charge sheet straight. Though he refers to the letter of the 8th. There is not one word of remark or anything of the sort: though he criticises the action of the Sub-High says it is "wrong" and a mystery he does not say a word regarding the letter by the H.M.s asking that the case may not be sent to the S. J. of Kandahar

182

It may be remarked that on the Court
doing the business that on the 6th the
Court for them and told them that
the H.M. had personally desired him
to urge the Justices to send up the
report in the case at once. On
the 9th March the Inspector received
by the Sessions a letter from 1st Court
Mr Wells asking that the inquiry
may not be held by the Subdivisl
of Kundapoor as the general that
that Officer owes been ill will
on account of a "private grudge" (what
this is not stated) and that he will
require him as a witness for his
defence - why he should call his
enemy as a witness is not very
clear. This was by Registered
Parcel to be delivered by the Sessions
on the 18th or some previous day
as he seems to have spoken
to the Dist. Magistrate about the
case before them.
On the 13th March the H. A Magistrate
received - by Post only - the Reference
charge sheet & a direction the Sub
Magistrate of Kundapoor to take the
case up. On the 14th the Sub Magistrate
wrote a letter to the Inspector forwarding

17th

FOR ORDERS.

H. E. THE GOVERNOR.

THE HON'BLE MR. H. W. BLISS, C.I.E.

THE HON'BLE MR. J. GROSE, C.I.E.

183

[G / 25 A.]
1,000—21-3-96.

DEPARTMENT.

C. No.

FOR ORDERS.

three warrants, one of which was for the arrest of the
Wells and requiring the immediate execution
of these. The letter stated that intimation
of the issue of these warrants had been
sent to the Supdt. of Police. When the Boys
received this letter there is nothing to show
: there is a hiatus in the diaries sent up
and neither Mr Boys nor Mr Scott seem
to think it necessary to enter upon papers the
date of receipt. However it was on the 16th
that the Inspector submitted the letter for
the orders of the Supdt: what exactly necessity
for doing that at such time there
was I cannot conceive. Where Mr Scott
was on that date - Mr Boys was
shown at the foot of his endorsements as
"Camp Mangalore" - keeping nothing to show
probably there 65 - On the 17th the petition
for transfer was written and and
on the 18th the order thereon was
passed by Mr Welsh. On that date the

Hewas in Mangalore on the 17th
DD

FOR ORDERS.

H. E. THE GOVERNOR.

THE HON'BLE MR. H. W. BLISS, C.I.E.

THE HON'BLE MR. J. GROSE, C.I.E.

is certain, as Mr. Scott has stated in his explanation, that he was in Mangalore: it was not until the 19th — the day after the order for transfer had issued — that Mr. Scott dealt with the letter of the Sub Magistrate of the 14th in which it was requested that the warrant (on a charge of murder) might be executed at once. Mr. Scott who ought to have on receipt of Mr. Boyes reference to him himself fallen front of Sub for not obeying his subordinate's the Sub Magistrate's requisition merely wrote across the letter "The warrant must be executed." Mr. Magistrate has transferred the case to the Udipi Magistrate. He is not inclined that the 1st Constable will voluntarily appear before that Court warrant might be sent to Udipi for execution". Mr. Boyes thereupon (on the 20th.) forwarded the warrant to the Station House Officer who returned on the 23rd the letter stating that two of the accused had already been apprehended but that De Mello had not appeared before the Sub Magistrate Udipi up to date & was supposed to have gone to Mangalore and that the Sub Magistrate Kundapore had issued a duplicate warrant which a constable had been sent to

[G. 25 A.]
1,000—21-3-96.

DEPARTMENT

C. No.

FOR ORDERS.

execute. De Mello was never arrested and finally surrendered on the 2nd April 2nd March. I cannot find from the papers sent up that Mr. Boyes was troubled himself any further about seeing that the man was arrested and Mr. Boyes (I get this fact from his diary of the 4th March) was surprised why Mr Scrimgeour declined to issue a duplicate warrant. I append an extract from this diary referring to which shows pretty clearly what part Mr Boyes was taking in the case. He wished to remain in Court during the examination of the witnesses & then be asked for the prosecution objected. The Sub Magistrate apparently accepted the objection. Mr Boyes under of the matter " There is hardly anything " for the wicked to have me for witness " The fact is he does not wish me " to be present as the witnesses whom " I summoned in my presence would " not condescend to tell a lot of false- " hood which they have already done " in the Kundapore Magistrate Court " I shall see the defence taken when " I cross-examine them tomorrow and go back " to Kundapore". 1st Court. De Mello " surrendered himself before the Mag" " here today at 12 noon"

FOR ORDERS.

H. M.

At the foot of the diary in red ink he wrote "
" After consultation with some people I
" find that my presence in the Court
" during the investigation is undesirable
" as I defined the case as false. If
" Capt. approves of my suggestion I
" beg that the Dy. Inspector may
" be moved and order which I am "

The remarks in subsequent diaries are all in support of the defence. Mr B 13 appears to have been examined as a witness on the day before the accused were committed to the Sessions but says, as far as I can find, nothing about it in his diaries.

At pages 2 & 3 of the Proceedings of the High Court in ending the case against Dr Hallo for which there is the most damning remark against Mr. Boyes. How far it is correct we cannot ascertain from the record sent up but it is presumed that it is. It is marked with red tape.

Taking this note what has been put forward in this note I submit that there cannot be the slightest doubt that Mr. Boyes not only openly connived at the evasion of arrest by Dr Hallo but did everything in his power to hinder the course of justice and ruin the case.

Now with reference to Mr. Scott.

I have been through all the Papers sent up by the D.G. whose letter gives correctly all the facts as regard this Officer.

[G. / 25 A.]
1,000—21-3-96.

DEPARTMENT

C. No.

FOR ORDERS.

I am unable to see which branch Mr. Scott could have had for his holding a personal inquiry into the case.

Shankara Bathi was taken and tried on the night of the 27th Feb. On the 1st March the Police sent in a complaint to the Supt. which Mr Scott seems to have received on the 2nd. In this the outlines of the case were correctly stated and the Supt was asked to come to the spot and hold a personal inquiry. Again this Mr Scott wrote "It is "impossible for Supt. to go to the "spot as he is with the D.C. and "has to await at Mangalore the Lieut. "General's arrival. Def: should go "to the nearest Magistrate". The order was not passed until five days after the petition had been received. There was a big fracas caused and a report for personal enquiry made. It was all nonsense making the excuse that he did. The D.C. and the Dy. would not have detained Mr. Scott for however if he had asked for permission to go or manifested the slightest desire to, as he should

have done, suppose with the two Ho Js the supervising change brought forward against his name.

He did absolutely nothing. I do not find him asking a single question as to Mr. Bryer's duties or taking the slightest interest in matters. He accepts all that Mr. Boyer told him as Gospel and reproduced it in his book No of his diary without as far as I can find Comment of any sort. Anyone at all experienced in native ways would on reading over the indorsement up by the Inspector have felt my suspicion raised as to the conduct of the police and had Mr. Scott sent at all enquiries & Jealousies he would speedily have taken the investigation into their own hands. He did nothing approaching this. Not only did he do nothing in the way of investigation but he actually did what one may I think fairly call, did what he could to prevent further being done. He should have strongly hauled Mr. Boyer over the coals for sending the warrants and the Sub Insp letter on to him for orders. The law is plain enough. A Police Officer is bound to obey it. The warrants were addressed to Mr. Boyer and he was bound to execute them and had no right legal or departmental to make any reference to the Inspector any did Mr. Scott not give him

FOR ORDERS.

H. M.

5 A.
—21-3-96.

DEPARTMENT

C. No.

FOR ORDERS.

Boyer the reprimand which he most richly deserved, but he apparently waited to hear orders on the reference until he had seen the result of the application to the Dep Magistrate for transfer. This he had no business whatever to do. When attending with the basket when the applt. for transfer was heard was conducted like such as a weak creature Mr. Scott in whose would have treated. He consulted with the basket and advised him, he no doubt saw Mr. Boyer who had had anything seem to be wrong. Law to be behind after the way in which the Supt. evidently treated the Inspector and the license which he gave him that he did not know that Mr. B could place his hand on the basket at once. It is an unpleasant thing to say but my opinion after going through a weighing mass of evidence is that the view taken by the Supt Comb is correct and that Mr. Scott's allegation is a false one If he did not know about the basket he must be so utterly shifted and

necessary as to be quite unfitted for the public service.

I submit that Mr. Hancock's strictures on the Magistracy are in no way deserved. How far his opinion as to the case is correct has been shown by the conviction of Dr. Wells & his fellows on the appeal to the High Court (which is linked to this file)

I believe that what has been stated on this note shows that Mr. Barker was obstructive and hostile from the very first and that until the Dist. Magistrate intervened and transferred the case the Sub Magistrate did anything that he possibly could to block the way before him for enquiry. It would have been better no doubt had Mr. Magistrate taken up the case himself - but it is very easy being wise after the event, and the reasons which he has given for not dealing with the matter himself do not seem to afford any sufficient ground for definitely condemning him. Then regarding the matter of Mr. Hancock, I do not think that he can in any of the cases but firstly he cannot be guilty of lack of earnestness, care or zeal. He is evidently a long headed hair-splitting Police Officer with a large estimate of his own capacity and skilled in argument; this is not his best performance he made a much more certainly in two out of the three cases. But here not the first Judge by many who has done like. He did the best reading of the light - though these lights were

FOR ORDERS.

H. M.

[G. / 25 A.]
1,000—21-3-96.

DEPARTMENT.

C. No.

FOR ORDERS.

perhaps somewhat eccentric and wrong. Whether he would make any better Collector than Dr. Ingle than he would a Bad Revenue Judge is a bench upon which I do not for me to offer an opinion - All that I would remark is that the former has the more opportunity of doing harm than the latter.

There is I would submit nothing which would justify the reduction of Mr. Hancock & a fact taken that Mr. Cole or Mr. Ryle

I am [illegible] done that the paper which I began and for half thought when to keep for the charge which I was duly allowed to take up nearly a month ago has been kept able longer than it would have been had I not to hand. There [illegible] in the office when I began. I have however had two since I returned from Coimbatore by very much to do that I have been utterly unable to complete the [illegible] - which has involved a great deal

192

of arranging and typing reading-corner.
As it is I have had to devote my only
day spent in the week to it.

LO
23/8/96

FOR ORDERS.

H. E. THE GOVERNOR.

THE HON'BLE MR. H. W. BLISS, C.I.E.

THE HON'BLE MR. J. GROSE, C.I.E.

C 1619
R 1879

W. Holmes', W. Scott's,
W. Welsh's & other officers'
Conduct in Canara Sessions
Case (5. etc.

193

[G. 25 A.] 1,000—21-3-96.

FOR DEPARTMENT.

C. No.

(for orders).

1. H.M.
2. Hon W. Grose

FOR ORDERS.

Resubmitted to Hon Members with
refce to H.E. the Governor's note, especially
that part of it which refers to W. Scott.

Wm 16/9 LO 15/9/96

194

FOR ORDERS.

H. E. THE GOVERNOR.

THE HON'BLE MR. H. W. BLISS, C.I.E.

THE HON'BLE MR. J. GROSE, C.I.E.

SECRET

1951

Please see
to this & let me
have a report
that the papers
have gone W 21/9/96

Sept 21 1896

My dear Francis

There were some
papers regarding changes
in the Police office establishment
which I sent
back to the office 3 weeks
or a month ago to await
disposal after discussion
with Hammick — He is
now here. Will you please
have the papers in question
sent up tomorrow, as he is

201

South Canara Sessions Case

194

FOR ORDERS.

H. E. THE GOVERNOR.

THE HON'BLE MR. H. ... LISS, C.I.E.

... E, C.I.E.

196

Coming to me on Wednesday morning.

As I am writing, I ... just ask you to enquire, if possible, to get the S.O. despatched about Holmes & the other people in S. Canara drafted & passed by the Govt. before he leaves on Saturday next.

Yours truly

H. W. Bliss

201

South Canara Sessions Case

Draft for orders.

Before

PRIVATE SECRETARY TO THE GOVERNOR MADRAS

CHIEF SECRETARY GOVERNMENT HOUSE 22 SEP. 1896 MADRAS

22nd Sept. 1896

Navigation file, Put with draft pls 22.9.96

My dear Arundel.

Bliss has suggested that W.C. Holmes should be informed that the Govt. has recommended to the S of S that he should be retired on a proportionate pension so as to give him an opportunity of making

194

FOR ORDERS.

H. E. THE GOVERNOR.

THE H... V. BLISS, C.I.E.

...OSE, C.I.E.

198

any representations he may wish at the India Office. His Excellency agrees and desires me to ask you to be good enough to write to Holmes accordingly.

Yours sincerely

H Allcard

201

South Canara Sett

Draft for orders

for Fore

GOVERNMENT OF MADRAS

199

Sept 23 1896

My dear Francis

Of course if Holmes has applied for an extension there is not the urgency I thought there was about ~~this~~ the G.O. & despatch about him - I was afraid we might have him coming out only to be turned back, which would have been very awkward - I no doubt it will save trouble to detail the reasons in print for final consideration -

Yours truly

H. W. Wilson

194

FOR ORDERS.

H. E. THE GOVERNOR.

THE HON'BLE MR. H. W. BLISS, C.I.E.

THE HON'BLE MR. J. GROSE, C.I.E.

200

201

South Canara Sessions

Draft from orders

CONFIDENTIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following paper:—

G.O., Mis. No. 2437, Judicial, dated 26th November 1895.

Read—the following paper:—

From D. W. G. COWIE, Esq., Acting Registrar, High Court, Appellate Side, to the Chief Secretary to Government, dated Madras, 11th November 1895, No. 2297, Judicial.

I am directed to forward, for the consideration of Government, a copy of the decision of the Sessions Court of South Canara in sessions case No. 15 of 1895, together with this court's order directing a retrial of the accused persons. Copies of the orders of this court, dated 5th September and of other proceedings as well as of the District Magistrate's explanation and proceedings in the transfer case, are also forwarded.

2. As the accused have to be retried, the High Court does not offer any remarks upon the merits of the case; but whether the charge be eventually sustained or not the court thinks it right to draw the attention of His Excellency the Governor in Council to the conduct of the local officers concerned.

ENCLOSURES.

IN THE COURT OF SESSIONS, SOUTH CANARA.

SESSIONS CASE NO. 15 OF 1895.

Present:

W. C. HOLMES, Esq.

Queen-Empress.

v.

(1) *Francis D'Mello*, (2) *Mahomed Usman*, (3) *Paul Machado* and (4) *Linga Bhatta*.

(Committed by Mr. A. Devappa Punja, Stationary Magistrate, Udipi.)

Charge.—Against first, second and third.—Wrongful confinement to constrain a person to cause restoration of stolen property, section 348, I.P.C., and grievous hurt to constrain a person to restore stolen property, section 331, I.P.C.

Against fourth.—Abetment of the above offence, sections 109, 348 and 331, I.P.C.

Charges added in this Court.

First added charge—Against first accused.—Hurt to constrain a person to restore stolen articles, section 330, I.P.C.

Second added charge—Against first, second and third accused.—Hurt to constrain a person to restore stolen articles, section 330, I.P.C.

Third added charge—Against all the accused.—Grievous hurt to constrain a person to restore stolen articles, section 331, I.P.C.

Fourth added charge—Against first and second accused.—Wrongful confinement of a person to constrain the person to restore stolen articles, section 348, I.P.C.

Against third accused.—Wrongful confinement of a person to constrain the person to restore stolen articles, section 348, I.P.C.

Against fourth accused.—Wrongful confinement of a person to constrain the person to restore stolen articles, section 348, I.P.C.

Assessors.—Messrs. (1) Bhardwaja Shiva Rao (Saraswati Brahman) and (2) Martin Souza (Roman Catholic Christian).

Opinion of the Assessors.—First assessor found the first and second accused guilty of wrongful confinement to constrain a person to restore stolen articles, section 348, I.P.C., and found the accused not guilty on all other charges.

Second assessor found all the accused not guilty on all the charges.

Finding of the Judge.—First and second accused guilty of wrongful confinement under section 342, I.P.C. All the accused acquitted of all other charges.

Sentence or order.—First and second accused each sentenced to three months' simple imprisonment; third and fourth accused acquitted and set at liberty.

Judgment.—The first three accused have been committed to this court charged under section 348, I.P.C., with having wrongfully confined a man named Shankara Bhatta from the evening of the 26th February last till about the midnight of the 27th February at Tallur village for the purpose of constraining him to restore certain property. They have also been committed, charged under section 331, I.P.C., with having committed grievous hurt to Shankara Bhatta during the night of the 27th February for the same purpose. The fourth accused was committed on charges of having abetted the above offence of the first, second and third accused.

2. The charges on which the accused were committed were not properly framed and did not comply with the requirements of section 222 and section 223 of the Criminal Procedure Code. The charge should, as required by section 222, state such particulars of the time and place of the alleged offence as are reasonably sufficient to give the accused notice of the matter with which he is charged.

The first charge, as framed by the magistrate, mentions the village in which Shankara Bhatta lived as the place where he was wrongfully confined. No doubt a man might be wrongfully confined within the limits of his village, but that is not the allegation, I believe, in this case. The charge should have stated what particular place in the village it was in which it was alleged Shankara Bhatta was wrongfully confined, or, if it were alleged that he had been confined in more places than one, the charge should have mentioned all those places.

The second charge should have stated more definitely than "on the night of the 27th February," the time at which it was alleged the grievous hurt was caused. The place where it is alleged the grievous hurt was caused is entirely omitted from the charge. This is directly opposed to the provisions of section 222 of the Criminal Procedure Code. It is alleged that Shankara Bhatta was beaten three times at three separate places on the night of the 27th, and it cannot be made out from the magistrate's charge to which alleged beating the charge refers.

These are not merely idle criticisms. After the trial in this case had proceeded for nearly three days, the court was unaware what the exact offences were that the accused were being tried for, except one alleged offence for which the court had framed a specific charge itself. The court did not know whether the offences the court *thought* the prosecution was probably trying to prove were the offences which the prosecution *thought* it was trying to make out, nor indeed whether the prosecution had any definite ideas on the matter at all.

The Code requires (section 210) that the charge should be read and explained to the accused and that a copy of the charge should, if required by the accused, be given to the accused free of cost. This shows the object of the charge, namely, that the accused should clearly know what the exact offence is that he is to be tried for. If the charge be not framed with sufficient distinctness, the object of this provision of the Code is defeated. I should not say so much about this were it not that I think in cases where there are private prosecutions, magistrates should be particularly cautious to frame charges correctly. It is extremely unfair to accused persons to be sent to stand their trial before the court of sessions on vague charges and on vague evidence, and when prosecutions are privately conducted—from some cases that have come to my notice—it seems to me that in such cases evidence of a vague and intangible nature is purposely left before the court and that the object of the prosecution is not, as it always should be, that the truth should be ascertained by true evidence, but that somehow or other in the confusion of vague evidence a conviction might be obtained. Magistrates should be on their guard in such cases to prevent confusion and uncertainty. I personally think private prosecutions are, as a rule, objectionable. In this case the police reported the charges to be false and the Head Assistant Magistrate ordered a magisterial inquiry. I think when a magisterial inquiry was considered necessary, it should have been conducted either by a responsible officer of Government or by a vakil who had the confidence of Government.

Besides, when the charges are not properly prepared, there is great waste of time in the Sessions Court. The Public Prosecutor is in doubt what the charges are and cannot properly open the case, and the case is left for considerable time in a state of confusion until the Judge has

gone sufficiently into the details of the evidence to be in a position to frame new charges. Thus the trial, in place of being a trial in the proper sense of the word, has to take to a greater or less extent the form of a preliminary inquiry as well.

3. In the present case a number of new charges had to be framed and added by this court. The court refused to amend the first charge sent by the magistrate though it would appear to be unsustainable, because to amend it as was proposed would have been equivalent to the Public Prosecutor withdrawing from a part of the case as sent up by the magistrate, and as in a recent case in which the Public Prosecutor abandoned the prosecution Government appealed, the court would not allow the withdrawal of any part of the case.

This court refused to add a charge of having caused hurt to Shankara Bhatta's father, because it did not appear that there was either a complaint about that alleged offence or a preliminary inquiry.

This court added a charge against the first accused (for reasons given on page 12 of notes) under section 330, I.P.C., of having caused hurt to Shankara Bhatta for the purpose of compelling the restoration of property by kicking him on the evening of Wednesday, the 27th February, at about 9 o'clock in the yard of the fourth accused. This charge will be referred to as the first added charge.

This court also added another charge (the second added charge) against the first three accused that they, at about 9 or 10 P.M., near the house of one Subbi, in Tallur village, voluntarily caused hurt to Shankara Bhatta by beating him for the like purpose, section 330, I.P.C.

The third added charge was against all the accused, and was that they at about 10 or 11 P.M. on the night of the 27th February near the Asvatakatta in Tallur village voluntarily caused grievous hurt to Shankara Bhatta by beating or kicking him in a way they knew to be likely to endanger his life for the same purpose (section 331, I.P.C.).

The fourth added charge was for wrongful confinement for the like purpose, section 348, I.P.C. It contained three counts. The first charged the first and second accused with having wrongfully confined Shankara Bhatta at certain places specified in the charge during the night of the 26th and up to about midnight on the 27th February. The second count charged the fourth accused with having joined the first and second accused in the wrongful confinement of Shankara Bhatta from about 2 A.M. on the morning of the 27th February. The third count charged the third accused with having joined the first and second accused in the wrongful confinement from the forenoon of the 27th February.

4. The first accused is the head constable of Kundapur police station. The second and third accused are two constables attached to the station. On the afternoon of the 26th February last, the first and second accused were engaged at Tallur in the investigation of a theft that was alleged to have taken place in the house of Shanti Murthappa, a schoolmaster living at Tallur, a village three miles from Kundapur. The third accused, as it now appears, joined them on the morning of the 27th February. The fourth accused Linga Bhatta's house is next Shanti Murthappa's house, and he interested himself in the investigation into the alleged theft at Shanti Murthappa's. It seems that a woman named Putti had shortly before the 26th February been in occupation of Shanti Murthappa's house, and, owing to some alleged intimacy between Shankara Bhatta and Putti's daughter-in-law, it appears that Shankara Bhatta was suspected of having been concerned in the theft. It is certain that Shankara Bhatta was sent for and questioned about the alleged theft.

5. The prosecution case as presented to this court is that Shankara Bhatta was kept in wrongful confinement during the night of the 26th February and till about midnight on the 27th February, and that hurt was caused to him at two places in Tallur and grievous hurt at a third place close to Tallur and that all this was done with the object of constraining him to restore the stolen property.

6. It is certain that, early in the morning of the 28th February, a cry was raised that Shankara Bhatta had fallen into a well. It is also certain that Shankara Bhatta's body was taken from a well in Shanti Murthappa's yard by the ninth prosecution witness, Kusa Billiya, who had been sent for for the purpose and who got down into the well by means of a bamboo. It is also certain that Shankara Bhatta's father, Ramakrishna Bhatta (first prosecution witness), went to the potail and made a complaint to him about his son having been beaten and the potail came in the morning and an inquest was held and a report made that Shankara leapt into the well and committed suicide, but that as the relations of the deceased questioned this decision, the body was sent to the Kundapur hospital for examination.

7. The second prosecution witness, A. S. Vittal Rao, apothecary in charge of the Kundapur hospital, held the *post mortem* examination of Shankara Bhatta's body. The examination began at about 5–20 P.M. on the 28th February. It was partly conducted by lamp-light.

The following external injuries were found on the body :—

(1) A group of small bruises on the right upper arm near the shoulder joint, the diameter of the whole group being about 1 inch.

(2) A similar group of bruises about 1½ inches in diameter a little lower down the right arm.

(3) A similar group of small bruises on the right scapular region 1½ inches in diameter.

(4) A similar group of small bruises on the lower part of the left side of the back or on the upper part of the left leg. The group was 2 inches in diameter.

The apothecary in reply to questions put by the court said that these injuries must have been caused by some substance having a number of small blunt protuberances.

There were also on the body two small bruises ¼ inch long and very narrow on the arm on the inside of the left elbow, a bruise 2 inches long and ¼ broad on the front of the left leg below the knee, and two other small bruises near the right ankle.

There was also a bruise below the left breast 1 inch long and ½ broad, and a bruise 1 inch long by ⅓ broad below the right breast, and 5 smaller bruises ½ inch long by ¼ broad and ¼ inch distant from one another above the right breast.

Internally it was found, according to the witness, that there was an oblique rupture about ⅓ inch long on the left pulmonary artery—about 2 inches from the bifurcation of the pulmonary arteries. The rupture was below the inter-space between the cartilages of the second and third left ribs.

Both lungs were found congested and the membranes of the brain were also congested.

Everything else was normal.

8. The rupture of the left pulmonary artery might possibly, in the witness's opinion, have been the result of the blow that caused the bruise below the left breast; but as that bruise was between the sixth and seventh ribs and so 3 or 4 inches from the alleged rupture, it cannot be said to be at all probable that that blow caused the rupture.

The congestion of the lungs could not possibly be a result of the rupture of the pulmonary artery. How in this case there can have been *both* congestion of the lungs *and* rupture of the left pulmonary artery has not been satisfactorily explained by the prosecution. The defence theory is that there was no rupture of the artery, but that the artery was cut in the *post mortem* examination, and it is argued in support of the theory that an injury to the artery that was oblique (as the injury was in Shankara Bhatta's case) and not either across or along the line of the artery was unlikely to have been caused by a blow or by external violence. In support of the theory it is further argued that the apothecary did not dissect the body himself, but allowed the hospital sweeper to do so, and in support of the argument it is pointed out that the Pariahs who brought the body did not bury it and this was, it is argued, because the body was touched by a person of the sweeper class. As to this theory of the defence it is not necessary for me to say more for, as will presently appear, it will not be necessary for me, for the purposes of this case, to come to any decision about the cause of the injury to the artery.

The third added charge.

9. The most serious charge in the case is the third added charge.

The prosecution theory is that the four accused took Shankara Bhatta to a hill close to Tallur and there near an Asvatakatta (a seat under a Peepul tree) caused grievous hurt to Shankara Bhatta, that they carried him back to Tallur, and, after keeping the body for a short time resting against a pyal at the entrance to Shanti Murthappa's yard, they threw the body into the well in the yard and then raised a cry that Shankara Bhatta had fallen into the well.

This charge, I find, is not supported by any reliable evidence.

Subbi, an old woman aged 60 with bad eyesight, deposes that, as she was sitting in the verandah of her house one night, she heard a cry "Ayyayyo" in front of her house, that she knew it was Shankara Bhatta's cry and that he was taken by some persons to the hill and she heard Shankara Bhatta there cry out four or five times "Ayyayyo," then a loud cry and after that nothing. After that she states she saw some three or four men carrying him by the back of her house. She says she left her house and stood near a palm tree and saw this.

This woman's evidence did not carry the slightest weight with it. The woman is of the prostitute class and is a servant of the temple of which Ramakrishna Bhatta is a moktessor and she lives on temple land, so that practically no weight whatever can be given to her evidence simply because she gave it. If the prosecution wished to have any weight given to her evidence, the prosecution should have made her tell her story in the minutest detail. In place of that her story was vague and indefinite. Her story is in itself very improbable. It is much more likely that if any one was being beaten near her house, she would have gone inside and shut the door than have paid any attention to the beating. It is highly improbable that she would have gone outside to watch what was going on when the men were, as is alleged, returning; and she said nothing to the police inspector, who investigated the case, about her having done so.

The other witness, whose evidence bears directly on this part of the charge, is Timmanna. He is a nephew of the complainant Ramakrishna Bhatta Timmanna says he was sleeping on the pyal of a temple close to his house, that he heard Shankara Bhatta cry out and that he went first to a tamarind tree and then to a lane and from the lane, he says, he saw the beating that is the subject of the charge now under discussion.

The Magistrate of Kundapur went to Tallur on the 1st March and made inquiries as to Shankara Bhatta's death. The witness says he told the magistrate what he saw, but that the magistrate did not record his statement. It is impossible to suppose that that can be true.

At any rate the prosecution has not called the magistrate to corroborate the witness. The police inspector deposed that the witness showed him the place where he said he stood and that it would have been impossible to have seen from there a beating going on at the Asvatakatta. It was argued for the prosecution that the police inspector was unreliable, but he seemed to me to give his evidence in a perfectly straightforward and satisfactory way. Timmanna told the inspector that after he heard Shankara Bhatta's cry he wakened his mother. Before this court he denied it. Timmanna also told the inspector that he took a stick with him. Before this court he denied it.

In my opinion Timmanna Bhatta's evidence cannot be credited. It is probably totally false. The charge really rests on the evidence of Subbi and of Timmanna Bhatta, and as their evidence cannot be believed the charge must fail. There is, however, some other evidence bearing on the charge to which I shall now refer.

There seems to be no doubt that the fifth prosecution witness Rama Bhatta was sent for on the night of the 27th February. He took with him to Linga Bhatta's house five rings that Shankara Bhatta had given him, but as soon as Shanti Murthappa said they were not his rings, the rings were returned to him. This witness told the inspector that as soon as his rings were returned he was told to go, and that he went home. This was very likely; but in this court he deposed he was told to stop at Linga Bhatta's and that he sat on the chavadi of Linga Bhatta's house while Shankara Bhatta was taken away and that he heard cries and after some time Linga Bhatta, fourth accused, came back and he was told to go and he left. I think it is much more probable that the story he told the inspector was the truth, for it does not appear that the police could have had any object in keeping him at Linga Bhatta's. On the contrary, if the police were going to beat Shankara Bhatta, they would have had every object in sending the witness away.

The rest of the evidence bearing on this charge is also, I think, in all probability untrue. Devadiga Venkata, the third prosecution witness, attended the first accused as a servant when he was at Tallur. He deposed that some one of the three policemen told him to sit on the pyal in Shanti Murthappa's yard, that he did so, that the three policemen took away Shankara Bhatta towards the Asvatakatta, that he heard cries of "Ayyayyo" and that afterwards the police carried Shankara Bhatta back and put him sitting leaning against the pyal, and he was told to go. Before the magistrate he deposed he saw from the road Shankara Bhatta's body thrown into the well, but before this court he denied it, that is to say, he said nothing about it, and said he did not know where Shankara Bhatta was when he left.

Devadiga Venkata's evidence, so far as it has any bearing on this charge, is probably totally false. There is no reason why he should have been made to sit on the pyal, and it is the last thing the police would have been likely to have ordered him or to have allowed him to do. If they were going to beat Shankara Bhatta, the witness would have been sent home. He was examined by Police Inspector Boyer, but told him nothing that he now deposes to in support of the charge of grievous hurt.

Another witness, Venkatesha Prabhu, also deposed that he was in Linga Bhatta's when Shankara Bhatta was taken away and he heard cries and was afterwards told by Linga Bhatta to go and he went. He did not tell anything about this to Inspector Boyer. He told Inspector Boyer that after Putti was brought to Linga Bhatta's, Shankara Bhatta prostrated himself at Putti's feet and asked her to return the jewels and that when the police were questioning Shankara Bhatta, he ran away and threw himself into the well. This story is totally different from what he told this court. He told this court that he did not see Putti at Linga Bhatta's that night at all.

Ramakrishna Bhatta, the father of Shankara Bhatta, in this court deposed that he was asleep on the pyal of Subraya Prabhu's house near Linga Bhatta's, and that he heard Linga Bhatta cry out "Shankara Bhatta died having fallen into a well" and that as he was going to the place, some one cried out "Who is that?" and that he got afraid and went home, told his brother to go to Kundapur and he went to the potail's. There is no doubt that the witness has suppressed almost all that he knew. He told a different story on this point to the Kundapur Magistrate on the 1st March and afterwards to the inspector.

10. It would generally be enough to say that the evidence in support of the charge is unreliable, but in this case I must say a few words about the final part of the theory of the prosecution, namely, that the accused threw Shankara Bhatta's body into the well with the object of representing that he committed suicide. Before this court no witness gave any evidence in support of this theory; but before the magistrate, as I have said, the third prosecution witness, Devadiga Venkata, deposed that he saw this being done. Before this court he denied it.

On the 1st March, Linga Bhatta, the fourth accused, made a sworn statement before the Kundapur Magistrate who went to Tallur to hold an inquiry about Shankara Bhatta's death, and the statement has been filed by the prosecution and marked as exhibit D. He said that after Rama Bhatta left with the rings, Shankara Bhatta went towards the pyal of Shanti Murthappa's house and a moment after the people of the house cried out that something had fallen into the well, and a torch was got and a sound was heard in the water of the well and after that Kusa Billiya descended into the well. Kusa Billiya was examined as the ninth witness before this court. He

lives some little distance from Shanti Murthappa's house and there is no doubt that he was called that night and that he got into the well and took out Shankara Bhatta's body. There is also no doubt that attempts according to native ideas were made to restore animation and that with that object the body was covered with rice. The defence did not call witnesses because probably the defence wanted to have the last of the arguments, so that there is hardly any evidence before this court in support of the theory of suicide. I think I have stated all the evidence there is. The medical evidence is not in my opinion in conflict with the theory. Even if the pulmonary artery were ruptured, the rupture may have been caused by the force of the blow with which the water was struck. The blow would be of very considerable violence as the well was rather deep—perhaps 15 feet or 16 feet to the level of the water. There were roughly dressed logs across half the mouth of the well and the diameter of the well was only 6 feet. It was partly cut in laterite rock, and partly built up of laterite stones, and at the bottom of the well there were some loose laterite stones. The depth of the water in the well was up to Kusa Billiya's neck, *i.e.*, less than 5 feet. Under these circumstances, the difficulty is rather to account for there being so few and so trifling injuries on the body. The injuries that there were in several cases—I refer to the groups of smaller bruises—look very much like injuries caused by coming in contact with the uneven surfaces of laterite stones. There is thus on one side the prosecution theory which is not supported by any evidence on which, in my opinion, any reliance can be placed, and on the other side there is the defence theory of suicide which is supported by some evidence and seems, I think, probable.

The second added charge.

11. This charge rests on the same evidence as the third added charge with which I have just dealt. The evidence is, as I have said, in my opinion, totally unreliable.

The first added charge.

12. This charge is that the first accused kicked Shankara Bhatta in the yard of the fourth accused Linga Bhatta's house.

The charge is supported by the evidence of two witnesses who depose they witnessed the assault. These witnesses are Ramakrishna Bhatta and Venkatesha Prabhu.

Ramakrishna Bhatta is the father of Shankara Bhatta, and he deposed he was sitting on a chavadi in Linga Bhatta's yard, that the first accused came to the yard of the house dragging his son and that he kicked him on the left side two or three times, that his son became unconscious and that he interceded and was told to leave, and he left and went to Subraya Prabhu's chavadi.

Venkatesha Prabhu, the fourth prosecution witness, deposed that he was at Linga Bhatta's and had been questioned by the police about the theft, that first accused came dragging Shankara Bhatta and kicked him on the right side, and he fell down unconscious.

The evidence of these two witnesses was in itself very unsatisfactory. The evidence was chiefly remarkable for the vagueness of the account of what they said happened. Even if the evidence stood alone, the only conclusion possible in my opinion would be that it was not reliable.

But the charge is not supported by the medical evidence. It is in conflict with it. There were no marks on Shankara Bhatta's body of his having been dragged along the surface of a yard and there was no mark either on the right side or on the left side of Shankara Bhatta's body that was in even a remote degree probably caused by a kick or kicks.

Besides, nothing was said about this alleged offence in the complaint that was presented to the Kundapur Magistrate on the 28th February. On the 1st March, when the Kundapur Magistrate examined Ramakrishna Bhatta, the story was first told though not in the exact form now deposed to.

If this charge were really true, that is to say, if the complainant had seen his son dragged and kicked so violently that he became unconscious, would the father have remained quietly seated on a neighbouring pyal? Would he not have at once gone off to the potail and complained? From his subsequent conduct in this prosecution, it may be assumed I think, that he would. Moreover, when towards morning after his son's body had been taken from the well he did go to the potail and made a complaint, nothing was said about this charge. What was said, according to the report, was that Kusa Billiya told him his son had been beaten. If Ramakrishna Bhatta had been an eye-witness to his son receiving two or three violent kicks, it may be assumed he would have mentioned it.

The evidence on this charge is in conflict with the evidence of Venkata Subbi and of Timmanna Bhatta, but I do not attach any importance to that as I altogether discredit these witnesses.

Fourth added charge—first count.

13. There is no reason to doubt that the second accused went on the evening or afternoon of the 26th February to Ramakrishna Bhatta's house and brought him and his son Shankara Bhatta to the head constable, the first accused, at Shanti Murthappa's house. There is also, I think, no reason to doubt that the complainant and his son returned for their meals to their

house, but went and slept at Linga Bhatta's house on the night of the 26th February. The incident about Shankara Bhatta and Ramakrishna Bhatta going from there to a neighbouring pyal early in the morning of the 27th, where Shankara Bhatta was questioned by the fourth accused, Linga Bhatta, is also, I think, true. I also consider that from there Shankara Bhatta went to Shanti Murthappa's house and that he sat on the pyal of the house during the day except when (accompanied by the third accused) he went home for meals. I also think that from there he went to Linga Bhatta's house some time during the night of the 26th and 27th February and that he remained there for some time, that is to say, till he (as I think probable) left and committed suicide.

I think the prosecution witnesses have suppressed the truth about the occurrences at Linga Bhatta's that night and have given a totally false account of what happened. After Rama Bhatta had been given back the rings, he, as I think, left. I think it is very likely that the story told to the Kundapur Magistrate that Putti was sent for and examined that night is true. The police that night continued, I think, to hold their investigation. I also think that it cannot be believed that any serious violence was offered to Shankara Bhatta.

Three main questions arise with reference to this charge:—*First*, was Shankara Bhatta from the evening of 26th February to about midnight on the 27th February kept under restraint by first and second accused? *Second*, was the restraint wrongful? And *third*, was it restraint with the object alleged in the charge, that is to say, to compel the restoration of the stolen property?

As to the third question, I think there is no sufficient evidence to support it. There is no evidence that the accused or either of them said to Shankara Bhatta "unless you deliver up the property you will not be allowed to leave." I do not consider that there are any facts proved from which it could be reasonably inferred that, although such words were not actually spoken, their meaning was conveyed to Shankara Bhatta. It is not in the least likely that the police could have had any expectation that in consequence of mere confinement Shankara Bhatta would have given up the property if he had it.

With regard to the first question, I think the evidence shows that Shankara Bhatta was under restraint. On the evening of the 26th the head constable, first accused, told Shankara Bhatta to return. It is likely that at that time Linga Bhatta had gone off to Gangoli to consult an astrologer. It is also likely that the head constable told Shankara Bhatta to return in case he might be wanted in connection with the information Linga Bhatta might get from the astrologer. Shankara Bhatta came back with his bedding and slept on Linga Bhatta's chavadi. The confinement, if any, would have begun on his return to Linga Bhatta's. Shankara Bhatta slept in the chavadi and it would appear that the head constable and second accused slept on the same chavadi—one on each side of him—and that his father was not allowed to sleep on that chavadi. I think it must be held that Shankara Bhatta was then restrained from going wherever he wished. It seems to me impossible to say that he was sleeping voluntarily on the pyal. He had been ordered by the head constable to come. He was not merely requested but ordered, and there is evidence the second accused threatened him. I think it must be held he was from the time he came under restraint. I think that restraint continued till midnight on the 27th February, when Shankara Bhatta threw himself, as I think, into the well. There is satisfactory evidence that Shankara Bhatta was most of the 27th February on the pyal of Shanti Murthappa's house. There is evidence that the second accused forced him to sit there. The evidence that the third accused sat on a pyal near that on which Shankara Bhatta was sitting is also, I think, true, and I think it is also true that when Shankara Bhatta went home for meals the third accused accompanied him. It is also, I think, probable that Shankara Bhatta was not allowed to go for night meals on the 27th February to his house, and that he was taken from the pyal of Shanti Murthappa's house to Linga Bhatta's yard. I do not consider it proved that he was taken to the Asvatakatta at all. I think it probable he was at Linga Bhatta's till he left to commit suicide.

Taking the view of the case most favorable to the accused, namely, that Shankara Bhatta was kept at Linga Bhatta's and other places so that he might be further examined as to the theft in case of necessity, it is a question whether the restraint was wrongful. It does not appear that the head constable had any power to give Shankara Bhatta a *verbal* order to attend at Linga Bhatta's. Under section 161 he could have examined Shankara Bhatta, or under section 160 he could have by a written order required his attendance. The section (160) does not say for what purpose his attendance could be required, but read with the next section it would appear to mean his attendance could be required for the purpose of examining him. The power given by section 160 is far from clear. The word "attendance" implies waiting; but would it be legal at all or for how long would it be legal to keep a person summoned under section 160 waiting? Does it mean till the examination was finished or till he had leave to depart? If the order under section 160 is not obeyed, it does not appear that the police officer who issued it has any legal power to compel the attendance of the person summoned, that is to say, he could not send a constable and bring him under arrest. It would also appear, as it seems to me, that a police officer has no legal power to retain a person whom he has summoned under section 160. I think the retention in this case was wrongful.

Fourth charge—second and third counts.

14. It is argued that there is no evidence againt the third and fourth accused in support of these charges.

The evidence against the third accused is that he sat on one pyal and Shankara Bhatta on another in Shanti Murthappa's yard on the 27th and that he followed Shankara Bhatta to his house and back. It was certainly no offence for the third accused *merely to watch* Shankara Bhatta. So far as I see, it must be held that there is no *evidence* he did more.

There is also, I think, no reliable evidence against the fourth accused. It is argued that there was an admission of guilt in exhibit D, the statement fourth accused made to the Kundapur Magistrate on the 1st March; but that is not so. The alleged admission depends on the meaning of a single word which has been translated "took," but the word does not imply that Linga Bhatta compelled Shankara Bhatta to go with him.

15. The result is that the first and second accused are, with reference to section 238, Criminal Procedure Code, convicted under section 342, I.P.C., of having wrongfully confined Shankara Bhatta and that on all other charges they are acquitted.

16. The first and second accused are men of long service and good character, but it is a matter of so much consequence that police officers should not exceed their powers, that for this reason as well as considering the result in this case that followed the powers being exceeded, I sentence the first accused and second accused to three months' simple imprisonment.

17. I should remark that I think the powers of police officers should be so clearly laid down that there could not be any possibility of their being mistaken. In this case the consequences of this not being done have been most deplorable. One man has committed suicide. The four accused and another man had a false charge of deliberate murder brought against them. The four accused have had to undergo a long trial in this court—the greater part of the charges being probably false. And the first two accused, who seem respectable men, and who have had a long service in the police and have each a good character, are each sentenced to a term of imprisonment.

18. The third and fourth accused are set at liberty.

MANGALORE, (Signed) W. C. HOLMES,
20th June 1895. *Sessions Judge.*

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

WEDNESDAY, THE 30TH OCTOBER 1895.

Present:

The Hon'ble Sir ARTHUR J. H. COLLINS, *Kt.*, Chief Justice, and the Hon'ble Mr. Justice PARKER.

(Criminal Appeals Nos. 296 and 308 of 1895.)

Francis D'Mello, appellant in 296 (first prisoner) and *Mahomed Usman*, appellant in 308 (second prisoner).

Appeals against the sentence of the Court of Session of the South Canara division in case No. 15 of the calendar for 1895.

Criminal Revision Case No. 424 *of* 1895 (*taken up No.* 21 *of* 1895).

(1) *Francis D'Mello*, (2) *Mahomed Usman*, (3) *Paul Machado* and (4) *Linga Bhatta*, accused in calendar case No. 15 of 1895 on the file of the Sessions Court of South Canara.

These appeals and this revision case coming on for hearing on Monday, the 21st instant, after the receipt of the report called for in the order of this court, dated 5th September 1895, and counsel not appearing on behalf of the appellant in criminal appeal No. 308 (second accused in criminal revision case No. 424) and the third and fourth accused not appearing in person or by counsel; upon perusing the petitions of appeal and the record of the evidence and proceedings before the Court of Session, and upon hearing the arguments of Mr. H. G. Wedderburn, counsel, and of the Hon'ble Mr. C. Sankaran Nair, vakil for the appellant in criminal appeal No. 296 (first accused in criminal revision case No. 424), and of the Public Prosecutor in support of the conviction, and the cases having stood over for consideration till this day, the court made the following

Order.—The appellants in these two appeals were the head constable and another constable of the Kundapur police station in South Canara and were charged with two others (another police constable Paul Machado and one Linga Bhatta) with offences under sections 348 and 331 of the Penal Code. The two latter were acquitted, but the two former were convicted of wrongful confinement under section 342, I.P.C., and were each sentenced to three months' simple imprisonment. On the appeals coming on for hearing, it appeared to us that the judgment of the Sessions Court was seriously defective and that many irregularities had taken place. We therefore directed notice to issue to all the four accused to show cause why they should not be retried, and the whole case is now before us.

It appears that in February last a theft had occurred in the house of one Shanti Murthappa at Tallur and the police were endeavouring to detect the offender. For some reason which does not appear, suspicion fell upon the deceased Shankara Bhatta, which suspicion appears to have

been intensified by the opinion given by an astrologer that he was the thief. That Shankara Bhatta was detained by the police on the 26th and 27th February is not denied, and the Sessions Judge finds that he was in wrongful confinement up to the time of his death. This occurred about midnight on the 27th of February, the Judge being of opinion that he then committed suicide by throwing himself into a well. What induced Shankara Bhatta to commit suicide the Judge does not explain, and in his judgment he has ignored, and practically refused to give any weight to, the medical evidence; but the medical evidence is at all events conclusive on this point, namely, that drowning was *not* the cause of death. For some reason, which it is impossible for us to understand or appreciate, the Judge at first refused to allow the question to be put, but the description already given by the witness "that the larynx, trachea and bronchi were normal in appearance and that there were no foreign bodies or disease in them" conclusively shows that death was not caused by drowning (see Taylor's Medical Jurisprudence, 3rd Ed., vol. II, p. 3). The presence of a froth in the pharynx, larynx and bronchial tubes are invariable concomitants of death from drowning. The prosecution evidence was to the effect that Shankara Bhatta had been detained and kicked by the accused, or some of them, in order to make him confess, and that when they found they had gone too far and that the man was dying, they had thrown him—quit unconscious, but with life not quite extinct—into the well, and then raised a hue and cry that he had committed suicide in order to conceal the real cause of his death. The medical evidence was that death was caused by rupture of the left pulmonary artery, the result of external violence to the chest, and the apothecary deposed that the body was covered with masses of bruises and that the injuries were not likely to be caused by a single fall. How this evidence can be reconciled with the theory of suicide adopted by the Judge no attempt has been made to explain.

It was apparently argued that there was no rupture of the pulmonary artery, but only a cut and that this cut was made after death in the *post mortem* examination. The Judge stated that it was not necessary for him to come to any decision upon this point. In this view we are quite unable to agree. The point appears to us to be one of great importance. Besides this, the Judge should have considered how the masses of bruises spoken of by the medical officer could be accounted for.

The Sessions Judge has dwelt upon the discrepancies in the story as told by the prosecution witnesses, and appears to have relied chiefly upon the evidence of Inspector Boyer (eleventh witness), but he has entirely omitted to consider how strongly the medical evidence, unless it can be explained away, supports the prosecution story. The father and friends of the deceased appear to be poor and uneducated rustics and they were placed under every possible disadvantage. It is quite clear that the whole influence and efforts of the superior officers of the police were first directed to prevent any magisterial investigation at all and that when this—through the firmness of the Head Assistant Magistrate—was rendered impossible, the next effort was to prevent, at any rate, a local investigation by the authorities on the spot. Notwithstanding that the Head Assistant Magistrate had refused a transfer, the District Magistrate granted one on the *ex parte* statement of the first accused, forwarded through the Superintendent of Police, to the effect that the Kundapur Magistrate was prejudiced against him. The District Magistrate in his order accepts this statement without calling upon the Head Assistant Magistrate or the Sub-Magistrate for any explanation, and he actually did this on the petition of a public servant, who was at the time evading a warrant and absconding from justice, without requiring that the accused should first surrender to answer to the charge.

In connection with the efforts of the police to burke inquiry into the complaint against members of the force, we find it necessary to refer to the conduct and evidence of Inspector Boyer. He arrived on the 1st of March before the Kundapur Magistrate had completed his local inquiry. On the 2nd of March the Magistrate left, leaving the inspector to go on with the inquiry, but the record shows that he gave positive orders that a charge sheet was to be prepared. Those orders were disobeyed, and on the 8th of March the inspector sent a referred charge sheet to another Magistrate. Mr. Slight, the Head Assistant Magistrate, to whom this was sent, very properly insisted that a magisterial inquiry should be held and refused to transfer the case. Then followed the successful application to the District Magistrate which was supported by Inspector Boyer and by the Superintendent of Police.

We turn now to Inspector Boyer's evidence before the committing magistrate and before the Sessions Court, from which we gather that the inspector was living in the same house with the accused D'Mello at the time he was conducting the inquiry against him. He accompanied the accused's vakil to the court of the District Magistrate on the 18th of March to ask for a transfer. He admits that he saw the accused on that same day and spoke to him. He admits also that the accused had been absconding *from the 15th of March* and that a warrant of arrest had come into his hands on the 16th of March, yet he never arrested him on the 18th of March, and, in fact, the accused was at large until April 5th, on which day he seems to have put in a voluntary appearance before the Sub-Magistrate at Udipi, to whose court the case had been transferred. On March 31st (page 40 of the magisterial record) Inspector Boyer writes to the Udipi Magistrate that "he learns from the Superintendent of Police that it is not unlikely that the head constable would voluntarily appear before the court at Udipi to which tribunal the case was transferred. The warrants were sent to Udipi for execution."

From Inspector Boyer's evidence it appears that, instead of executing the warrant, it was sent to the Superintendent of Police for orders on the 16th of March. It is thus clear that it was held in suspense from March 16th to 31st. From these facts we find it difficult to refrain from drawing the inference that the Superintendent of Police assisted the head constable to evade a local inquiry and at all events passively connived at his absconding after the warrant had been issued for his apprehension.

There is another point as to which Inspector Boyer's evidence calls for notice as showing the spirit in which this case has been treated. In his deposition before the Udipi Magistrate he speaks of the case against the police as "simply a farce." Now even adopting the view most favourable to the defence, Shankara Bhatta was moved to commit suicide after he had been several hours in illegal confinement, there being nothing more tangible against him than the pronouncement of an astrologer, in our opinion such an occurrence is by no means a farce, but an event of very serious import demanding the strictest investigation.

We are fully sensible of the difficulties attending a retrial after so great a lapse of time, but the case is so serious and the Judge has lost sight of so much that was important in the evidence that we feel it our duty to direct that the case be further investigated. We set aside the present convictions and direct that the accused be retried.

The retrial will take place before Mr. Holmes' successor in the office of Sessions Judge of South Canara, and the Sessions Judge will of course be at liberty to add any charge which may seem to him expedient.

(By the Court.)

(Signed) C. G. TODHUNTER,
Dy. Registrar, Appellate Side.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

THURSDAY, THE 5TH DAY OF SEPTEMBER 1895.

Present:

The Hon'ble Sir ARTHUR J. H. COLLINS, *Kt.*, Chief Justice, and the Hon'ble Mr. Justice PARKER.

(Criminal appeals Nos. 296 and 308 of 1895.)

In criminal appeal No. 296—*Francis D'Mello* (first prisoner), appellant.

In criminal appeal No. 308—*Mahomed Usman* (second prisoner) appellant.

Appeals against the sentence of the Court of Session of the South Canara division in case No. 15 of the calendar for 1895.

These appeals coming on for hearing on Wednesday, the 4th instant: Upon perusing the petitions of appeal and the record of the evidence and proceedings before the Court of Session, and upon hearing the arguments of the Hon'ble Mr. C. Sankaran Nair, vakil for the appellant in criminal appeal No. 296, and of the Public Prosecutor in support of the conviction in both cases and the appellant in criminal appeal No 308 not appearing in person or by counsel and the case having stood over for consideration till this day, the court made the following

Order.—The appellants in these two cases were charged under several counts with hurt and grievous hurt to one Shankara Bhatta for the purpose of constraining him to restore certain stolen articles, and also with wrongful confinement of the said Shankara Bhatta. The appellants are the head constable of the Kundapur police station and a Mussalman constable attached to that station. They have been convicted by the Sessions Judge of wrongful confinement only under section 342 of the Penal Code and were each sentenced to three months' simple imprisonment. Of the graver charges they were acquitted.

The complaint of Ramakrishna Bhatta, the father of the deceased Shankara Bhatta, was received by the Second-class Magistrate of Kundapur on the 28th of February and referred by him to the police inspector for report. The Second-class Magistrate was on the spot on the evening of the 1st of March before the police inspector had arrived, and he began his inquiries under section 176, Criminal Procedure Code. He took statements from the father of the deceased, the schoolmaster, who is alleged to have lost certain jewels, and from Linga Bhatta (fourth accused) who has been discharged. After his arrival the police inspector appeared on the spot and on the 2nd of March the Magistrate left and ordered the police inspector to complete the inquiry.

On the 4th March the Head Assistant Magistrate ordered the Second-class Magistrate to hold a careful inquiry into the matter and not to leave more than was necessary in the hands of the police inspector. This order was received by the Second-class Magistrate on the 5th of March. On the 6th the father of the deceased, Ramakrishna Bhatta, asked that the inquiry should be withdrawn from the police inspector on the ground that the accusation was made against the police. On the 8th of March the police inspector referred the charge as false. On the 13th March the Head Assistant Magistrate, Mr. Slight, refused to accept this recommendation and very properly ordered a magisterial inquiry. His order states that the first accused, the head

constable, had objected to the inquiry being held before the Kundapur Sub-Magistrate, but the objection was overruled by the Head Assistant Magistrate who ordered the Sub-Magistrate to inquire into the case as a charge of murder.

Warrants were issued for the accused one—three on the 14th March. The first accused, the head constable, then absconded. The police reported on the 16th of March that they could not find him or arrest him. The complainant Ramakrishna Bhatta thereupon requested that the warrant issued for the arrest of the head constable might be entrusted to some one other than a policeman, since no police officer would execute it and he represented that the head constable was concealed in the overseer's house at Kundapur. On the 18th March the Second-class Magistrate resolved to go on with the case against the other two constables. On the 20th March an order was received from the District Magistrate transferring the case to the Udipi Sub-Magistrate. This order had been passed on the 18th and was passed on a petition presented on the 17th by the head constable who was then absconding, but who appeared before the District Magistrate by a vakil Mr. Mascarenhas. The order was passed *ex parte* without calling for any explanation from the Sub-Magistrate and without notice to the complainant. On the 31st March the police inspector wrote from Kundapur to the Udipi Sub-Magistrate that he had forwarded the warrant received on the 16th for execution to the Superintendent of Police for orders and had received it back with an endorsement from the Superintendent of Police that it was not unlikely that the head constable D'Mello would voluntarily appear before the court of Udipi to which the case had been transferred. The Magistrate at Udipi on the 3rd of May committed the case to the sessions on the ground that there was ample evidence of torture against the first and second accused and that the third accused and other police constables had acted under their orders and that the fourth accused, one Linga Bhatta, had abetted the same. He thought that the deceased had drowned himself in the well because the pain of the torture to which he was subjected was unbearable and in order to avoid the liability to being tortured further. The Sessions Judge in acquitting the accused of all the graver charges has wholly ignored the medical evidence, the effect of which is to show that death was certainly not caused by drowning. The body of the deceased Shankara Bhatta appears to have been covered with a mass of bruises, and, as far as the medical evidence goes, the prosecution case would appear to be strongly supported. We are not able to understand why this evidence should have been ignored or on what grounds the Sessions Judge has discredited the evidence of the prosecution witnesses, since he finds that Shankara Bhatta was in wrongful confinement at the time of his death. We consider that notice should go to all the four accused to show cause why the charges against them should not be retried.

We will ask the District Magistrate to send up the petition of the 17th of March 1895, in which the first accused D'Mello requested transfer of the case from the file of the Sub-Magistrate of Kundapur and to explain how he considered it compatible with his duty as a District Magistrate to hear such a petition presented on behalf of a person who was at the time absconding from public justice before he had surrendered in obedience to the law. We will also ask the District Magistrate to explain why the transfer was ordered without notice to the complainant Ramakrishna Bhatta and without giving the Sub-Magistrate of Kundapur an opportunity of explaining anything that was alleged against him.

With reference to the letter of the inspector of police, dated 31st March 1895, to the Second-class Magistrate of Udipi, page 40 of the magisterial record, a copy of which will be sent to the District Magistrate, we will ask the District Magistrate to report whether there is any ground for supposing that the Superintendent of Police was in communication with the head constable D'Mello while he was absconding and countenanced that officer's evasion of the warrant which had been issued against him.

(By the Court.)

(Signed) C. G. TODHUNTER,
Dy. Registrar, Appellate Side.

Proceedings of the High Court, No. 2295, dated 4th November 1896.

In the order of this court, dated 5th September, the District Magistrate was requested to send up the proceedings connected with his order of transfer, dated 17th March, and to give explanation upon the following points:—

(1) How he considered it compatible with his duty as District Magistrate to hear a petition presented on behalf of a person who was at the time absconding from public justice before he had surrendered in obedience to the law.

(2) Why he transferred the case without notice to the complainant (deceased's father) and without giving the Sub-Magistrate of Kundapur an opportunity of explaining anything that was alleged against him.

(3) Whether, with reference to the letter of the Inspector of Police, dated 31st March 1895, there was any ground for supposing that the Superintendent of Police was in communication with the absconding head constable D'Mello and countenanced that officer's evasion of the warrant that had been issued against him.

2. To the first question the District Magistrate has given no reply at all, but has merely entered into the reasons which led him to assent to the transfer. Such reasons are obviously beside the question, and from his silence the High Court presumes that the District Magistrate has no explanation to offer. In consenting to receive and hear such a petition from an absconding person the District Magistrate was not only irregular in his procedure, but displayed culpable weakness practically allowing an absconding accused to make terms with constituted authority as to the conditions under which he would appear. Such procedure tends to bring the law into contempt, and the District Magistrate should have refused to hear any petition at all until the accused had surrendered.

3. On the second question the District Magistrate observes that he did not call for an explanation from the Sub-Magistrate because the only point on which he should have desired explanation was why the Sub-Magistrate did not immediately record a written complaint. Mr. Welsh states he was *then* quite prepared to discredit the allegations against the Sub-Magistrate especially as the Head Assistant Magistrate had attached no importance to them, but that he thought the Sub-Magistrate would be required as a witness for the prosecution or for the defence, or might be called as a court witness.

4. As to this the High Court cannot but observe that the District Magistrate's explanation is contradicated by his own order of March 18th. Not a word is said about the necessity of calling the Sub-Magistrate as a witness, nor was any such necessity alleged in the petition of the accused. The remarks which the District Magistrate makes about the evidence could not have been present to his mind at the time for he had not the record before him and disposed of the application without calling for the record. Moreover, it must have been obvious that the fact that the Sub-Magistrate had committed the case would be no reason why the Sessions Court should not call him as a witness if his evidence was thought necessary. At the time the District Magistrate passed his order the Sub-Magistrate had not been cited as a witness by either side; and though afterwards cited, he was not called.

5. The sole ground for the transfer alleged in the petition was that the Sub-Magistrate was prejudiced against the accused and wished to ruin him, and that was the sole ground specified in the District Magistrate's order for granting the transfer. The District Magistrate observed in his order "It is impossible to say that the objections of the accused person to *this* magistrate are without foundation. The application for a transfer is therefore admitted." The High Court finds it impossible to reconcile this language with Mr. Welsh's present explanation that he was *then* quite prepared to discredit the allegations against the Sub-Magistrate especially as the Head Assistant Magistrate had attached no importance to them.

6. The High Court cannot but consider that to pass such an order on the *ex parte* petition of of an absconding accused conveyed a most unmerited slur both upon the Head Assistant Magistrate and upon the Sub-Magistrate of Kundapur, and was obviously calculated to defeat the ends of justice. Here again the weakness shown by the District Magistrate is most regrettable.

7. In answer to the third question the District Magistrate states he thinks there is no reason to suppose the Superintendent of Police countenanced the head constable's evasion of the warrant. He states the Superintendent may have seen the pleader of the absconding accused, but that he "thinks he understood his duty."

8. If, however, the Superintendent supported the application for transfer while the accused was absconding it is quite manifest that he did *not* understand his duty; but the District Magistrate has not called for any explanation of the instructions given by the Superintendent to the inspector of police referred to in the letter of March 31st, and the High Court will not now ask him to obtain any further explanation since the court has decided that it is necessary to bring the whole matter to the notice of Government.

(True Extract.)

(Signed) D. W. G. COWIE,
Ag. Registrar, Appellate Side.

Proceedings of the High Court, No. 2296, dated 4th November 1895.

From W. H. WELSH, Esq., District Magistrate, South Canara, to the Registrar of the High Court of Judicature, Appellate Side, Madras, dated Camp Kirimanjeshwar, 17th September 1895, No. 531/Magte.

In obedience to the order, dated the 5th instant, in criminal appeals Nos. 296 and 308 of 1895, on the file of the High Court, I have the honour to submit the petition * dated 17th

* With copy of proceedings dated 18th March 1895.

March 1895, in which the first accused D'Mello prayed for transfer of the case from the file of the Sub-Magistrate of Kundapur.

2. I regret that I overlooked the decision of the High Court in criminal revision No. 413 of 1886. On referring to section 528 of the Criminal Procedure Code it did not occur to me that notice should be given to the complainant Ramakrishna Bhatta. The prosecution appeared to me not a private prosecution but a public one in charge of the Police department, and the Superintendent of Police, who had communicated with me was, I understood, in favour of the transfer prayed for. It did not occur to me to call for an explanation from the Sub-Magistrate of Kundapur because the only point about which I desired an explanation was why he did not take a written deposition from the complainant when the complainant first came to him about 8–30 A.M. (at page 6, lines 41 and 42 of the printed evidence the time is give as 10 o'clock or 7 o'clock), or shortly after, but waited until a petition had been written about 4 P.M. which gave an opportunity for law touts to suggest inventions. Also I might have asked why he did not finish the investigation under section 176, Criminal Procedure Code. I was then quite prepared to discredit the allegations against the Sub-Magistrate; the Head Assistant Magistrate had evidently attached no importance to them. I merely noted the fact that the accused did question his impartiality. I had not then fully adopted the theory of the police that the murder charge was false, but that the accused could be proved guilty under section 330, Indian Penal Code. I considered that the Sub-Magistrate would be required as a witness for either the prosecution, or the court, or the defence.

3. For instance, the medical evidence did not confirm complainant's testimony on an important point. He had said that deceased's penis was split and was bleeding (at page 12, line 22 of the printed evidence the translation used is "broken"). It seemed that if the Sub-Magistrate had viewed the corpse he might throw light on this point. He was the first official to take complaint's statement and examine the ground. Information whether cries on the hill could have been heard in the village was obtainable from him and also about the situation of the well, the verandahs, &c. He might be able to assist the prosecution by mentioning other facts within his knowledge such as the details of the complaint upon which deceased had been arrested. The fact that the accused were afraid of him made me believe that he would be able to give useful information.

4. I blame myself for not having at once instructed the Public Prosecutor; but it is not usual for the District Magistrate to act in this matter unless the necessity of doing so is specially reported to him. And the actual Public Prosecutor would probably not have been able to attend personally, being otherwise engaged. I afterwards spoke, however, about the prosecution with the Inspector-General of Police. It appeared to me that the proper place for this Sub-Magistrate in this prosecution was as a witness or an aid to the prosecution rather than as a committing Magistrate, and as the accused, the persons I thought most concerned, had asked for the transfer it did not occur to me that notice was necessary; but if an order were to be passed, I thought that no time should be lost. It appeared from the Head Assistant Magistrate's order that he and the Tahsildar-Magistrate were otherwise engaged, so I selected M.R.Ry. Devappu Punja, B.L., at Udipi, 22 miles away, where there was another Inspector, M.R.Ry. Srinivasa, and where the intrigues of the Christians of Kundapur would have less play. The complainant subsequently moved that the police should not be allowed in court, so they ceased to conduct the prosecution and reports were not made to the magistracy. Though cited as a witness the Sub-Magistrate was never actually examined.

5. With reference to the last paragraph of the order of the High Court, I am of opinion that there is no ground for supposing that the Superintendent of Police countenanced the head constable D'Mello's evasion of the warrants. With respect to the question about communication the petition of the absconding accused was submitted through the Superintendent of Police by means of the pleader. The Superintendent of Police must have seen the Inspector and may have also seen the pleader; and the pleader of course knew how to communicate with the absconding accused as well as with those in custody. The pleader's knowledge would not have helped towards execution of the warrant. It is possible to evade a warrant transferred from station to station in the present strength of the force unless a determined effort is made to execute it by interruption of the ordinary course of duty. The pleader verbally applied to me for the release of the accused on bail and was refused. It was likely that the absconding man would surrender as soon as he knew that an application for bail to me or to a superior court would be futile. I do not know how it was that the head constable remained at large till after the 31st March or what steps were taken to execute the warrant; but I presume that I should not await an explanation from the Superintendent of Police before submitting this report, and I have therefore not asked him. I think he understood his duty and the duty of the police in respect of a magisterial warrant. He received one communication, namely, the petition of 17th March, from the absconding man, but I cannot say whether he received more.

6. The order of the High Court was received at camp Wandse in the northern part of the district and the petition was received from head-quarters only yesterday afternoon, so this report could not have been submitted earlier.

The humble petition of F. D'MELLO, Second-grade Head Constable of Kundapur, to the District Magistrate of South Canara (through the Superintendent of Police, South Canara), dated Mangalore, 17th March 1895.

That the petitioner is the head constable in charge of the Kundapur taluk kasba station.

2. That one Ramakrishna Bhatta falsely accused petitioner of having murdered his son when petitioner had been to investigate into a case of theft.

3. That this complaint was entertained by the Acting Stationary Sub-Magistrate of Kundapur, who, on the 1st of March, began some sort of inquiry after visiting the locality and continued with it till the police inspector of the Kundapur division arrived at the scene of offence, when the Stationary Magistrate abruptly left the place, leaving the inquiry into the hands of the police inspector.

4. The police inspector, after holding a full and detailed inquiry into the complaint, was satisfied that the complaint is entirely false and referred the case as false.

5. The complainant thereupon put in an objection petition before the Head Assistant Magistrate, who, without expressing any disagreement with the police inspector's report, has ordered a magisterial inquiry by the Stationary Sub-Magistrate.

6. That petitioner applied to the Head Assistant Magistrate for a transfer of the case, but the Head Assistant Magistrate has not granted petitioner's prayer. Hence petitioner is now obliged to approach your honour with this petition earnestly trusting that the case against the petitioner may be withdrawn from the file of the Kundapur Stationary Sub-Magistrate.

7. That there were not good feelings between the Stationary Magistrate and petitioner for some time before the present case arose.

8. That the Stationary Sub-Magistrate has already betrayed a good amount of animus and bias against petitioner and has evinced a great anxiety to get petitioner into trouble. The Stationary Sub-Magistrate tried to fetter the discretion of the investigating officer—the division police inspector—by asking him to put in a charge sheet and to arrest petitioner, so that the Magistrate may clutch jurisdiction over petitioner.

9. The conduct of the Magistrate at the alleged scene of offence, the great animus betrayed by the Sub-Magistrate, certain expressions given out by the Stationary Sub-Magistrate showing that he wishes to see the ruin of petitioner, and his desire to obtain a charge sheet and to see petitioner disgraced by an arrest, have made a decided impression on the public at large that evidence, true or false, will be accepted by the Stationary Sub-Magistrate who has already assumed petitioner's guilt.

10. That the facts referred to in paragraph 9 will encourge the prosecutor to bring any amount of false evidence against petitioner, while false witnesses will also be very much emboldened to give evidence before a biassed Magistrate. An impartial tribunal is not so much resorted to by false witnesses.

11. Petitioner further submits that the case for the defence will be seriously damaged if it should be in the hands of a biassed Magistrate, who may just in due time exercise a discretion in adjournment, &c., which may prove perfectly mischievous to the defence.

12. That no sooner the Head Assistant Magistrate sent the case to the Stationary Sub-Magistrate he issued a warrant of arrest without any bail clause and without taking into consideration that the case has been referred by a responsible officer.

13. That petitioner will be able to vindicate his character in the judicial inquiry, but what petitioner objects to is that he should be subjected to undeserved disgrace by being arrested in a false case and that he should be made a victim of the animus of a hostile Magistrate.

14. That petitioner will get justice at the hands of any magistrate in the district, except the Kundapur Stationary Magistrate. Now that the steamers are plying petitioner begs to suggest that the inquiry may be ordered to be held by one of the magistrates at Mangalore, so that your honour and also the District Superintendent of Police may watch in what way petitioner has been made a victim.

15. That this petition is humbly submitted through the District Superintendent with a prayer that the District Superintendent may be pleased to forward this petition with such remarks as may be considered necessary.

It is therefore prayed that your honour may be pleased to own that this case may be transferred to the file of any other Magistrate.

Dis. No. 128.

It is observed that the Head Assistant Magistrate in his proceedings, No. , dated 13th March 1895, has ordered a magisterial inquiry and has transferred the same from his file to

that of the Stationary Sub-Magistrate of Kundapur. It is impossible to say that the objections of the accused persons to this Magistrate are without foundation. The application for a transfer is therefore admitted. The inquiry will be taken on the file of this court and transferred to the Stationary Magistrate of Udipi for inquiry under Chapter XVIII, Criminal Procedure Code.

18th March 1895.

(Signed) W. H. WELSH,
District Magistrate.

The High Court does not at all understand the difficulty felt by the Sessions Judge as to the charges in this case. The Sessions Judge had the depositions taken on the preliminary inquiry before him before the trial commenced and if he considered that the charges were imperfectly drawn it was his duty, under section 226, Criminal Procedure Code, to alter the charges and bring them into proper shape. From the statement of the Sessions Judge that after the trial had proceeded for nearly three days he was still unaware what were the exact offences for which the accused were being tried, the High Court can only draw the inference that the Judge had not read the depositions taken before the magistrate, and that it was himself rather than the Public Prosecutor who had no definite ideas.

2. The High Court regrets to have again to observe upon the irregular manner in which the examination of witnesses is conducted in the Sessions Court of South Canara. After two or three questions had been asked by the Public Prosecutor of the ninth witness, Kusa Billiya, the Sessions Judge appears, from the record, to have taken the examination altogether out of the hands of the Public Prosecutor, and the next two pages (59 and 60) of the printed record consist entirely of an examination by the court. After that the Public Prosecutor was allowed to ask a few more questions before the cross-examination. Exactly the same course was adopted in the examination of the eleventh witness Inspector Boyer. After the Public Prosecutor had asked a single question the examination was taken up by the court for several pages of printed matter, several of the Judge's own questions being objected to as inadmissible by the accused's vakil, and the court disallowing (quite erroneously) its own questions on the ground that they were inadmissible. The High Court cannot but observe that, assuming the record to be accurate as to the procedure adopted, such procedure is neither regular nor dignified, and tends to show that the Judge cannot exercise proper control when presiding in his own court.

(See also copy of evidence sent up from South Canara, page 99 and following pages.)

(See copy of evidence sent up from South Canara.)

3. The question to the medical witness as to whether there were any signs of death by drowning was a quite permissible question, evidence having been already given that the body had been taken out of a well. The proper form of the question would have been "were there any signs of death by drowning, if so, describe them?" but the objection of the accused's vakil (allowed by the Judge) that it was a leading question was altogether frivolous.

(True Extract.)

(Signed) D. W. G. COWIE,
Ag. Registrar, Appellate Side.

Order—Mis. No. 2437, Judicial, dated 26th November 1895.

Communicated to the District Magistrate of South Canara and the Inspector-General of Police.

2. The District Magistrate will be requested to report whether he has anything to add to the explanation already submitted by him to the High Court in reply to its proceedings, dated 4th November, No. 2295, Judicial, and to obtain the explanation of the then Head Assistant Magistrate (Mr. Slight) of the reasons which led him to leave the inquiry in this case to a Sub-Magistrate instead of taking it up himself. The Inspector-General of Police will be requested to obtain and forward to Government with his remarks a full explanation from the Superintendent of Police upon the allegation made in the third of the points referred to in that proceedings and mentioned in the last paragraph but three of the High Court's order remanding

the case for retrial—that he "assisted the head constable to evade a local inquiry and at all events passively connived at his absconding after the warrant had been issued for his apprehension."

* * * * *

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the Inspector-General of Police, with records
for perusal and transmission at early date to District Magistrate.
" District Magistrate, South Canara.

Read—also the following papers:—

Proceedings of the District Magistrate, South Canara, dated 18th March 1895.

Extract from the Proceedings of the High Court, dated 5th September 1895 in C.A. Nos. 296 and 308 of 1895.

From W. H. WELSH, Esq., to the Registrar, High Court, Appellate Side, dated 17th September 1895, Dis. No. 531-Magl.

From W. H. WELSH, Esq., District Magistrate of South Canara, to the Chief Secretary to Government (through the Registrar, High Court, Appellate Side), dated Mangalore, 28th November 1895, Ref. on C. No. 3636-Magl.

I have the honour to report that I received on 26th instant, through the Sessions Judge of this division, copy of the proceedings of the High Court, No. 2295, Judicial, dated 4th November 1895. This has doubtless been brought to the notice of Government.

2. I do not know whether the proper procedure is to wait till Government passes orders upon the matter so brought to its notice; but it seems to be my duty to refer to paragraphs 4 and 5 of the proceedings, where the Hon'ble the Judges have been pleased to make observations which appear to impeach my truthfulness. "The remarks which the District Magistrate makes about the evidence could not have been present to his mind at the time for he had not the record before him and disposed of the application without calling for the record;" and it is said that my explanation is contradicted by my own order, as the reasons contained in the explanation are not mentioned in the order of transfer.

3. But the order would naturally refer only to the petition or matter argued judicially before the officer passing it, whereas the explanation asked from the District Magistrate was "why he transferred the case *without notice to the complainant, &c.*" The explanation submitted was that the prosecution was considered a public prosecution in the hands of police. Information received from the Superintendent of Police was present to my mind for he had visited me and given an account of the *post mortem* certificate and the statements as recorded by the police which of course was not evidence that could be referred to in an order, but which showed what testimony the Sub-Magistrate might be expected to give and how the officer in charge of the prosecution viewed the application for transfer.

4. I beg to enclose copy of this office letter, No. 531, dated 17th September 1895, to the High Court with copy of order and extract from their order in C. A. Nos. 296 and 308, dated 5th September 1895.

5. Their Lordships evidently think it probable that I told lies in a futile attempt to account for hasty or mistaken action and invented a long story of motives. They have practically made a charge against me.

6. As a public servant I have a claim that a decision should be come to upon this matter distinct from the decision upon the conduct of the officers generally.

7. The Superintendent of Police came to me to say that three of his men were charged with murder. He gave his reasons for considering the direct

evidence of murder to have been concocted. He described the evidence substantially as detailed in his confidential report to the Inspector-General for that week.

8. That report may be sent for *as an indication of what facts could have been present to my mind in that week.* Their Lordships in observing that the record was not before me may have lost sight of the fact that District Magistrates are kept informed of the evidence in grave crimes as it is collected.

9. I said at once that there was a good case againt the policemen under section 330, Indian Penal Code, for torture and that there was some evidence of murder weakened by the fact that some of the statements did not agree with the *post mortem* and that the complaint was not recorded till 4 P.M. of the day on which it was made.

10. But that complaint had been made first in the morning to the very Magistrate whom the first accused rightly or wrongly impeached as the inventor of the charge, though the Magistrate was a Native Christian like himself.

11. I say that in the interests of justice I at once considered that the Magistrate should be a witness. It was not reported whether he had viewed the corpse or not. If he could have given evidence about that, his testimony might have furnished an important link; but it was undesirable to set the parties thinking what he might be called to prove or to indicate to either side gaps in the evidence which might be supplied otherwise (for instance by fabrication). Therefore it was not mentioned in the reasons for the transfer order.

12. It was impossible to say off-hand that the objections made by the first accused D'Mello to his fellow-casteman were without foundation, and therefore I gave that as the reason for the transfer order. Though I was then quite prepared to discredit the one-sided allegations, yet there was no time to go into them. It could merely be noted that the accused did say something against the committing Magistrate. The inquiry was one which I thought should be pushed forward at once, and the desirability of being able to call the Magistrate to whom complaint was first made and who went to the scene of offence in the first instance and made some inquiries on the spot as a witness seemed of importance. Therefore transfer was made forthwith, not to Mangalore as prayed by the pleader for the accused, but to the Magistrate of the next taluk.

13. I would ask Government to consider what motive I could have for inserting in the explanation called for by the Hon'ble the Judges anything which would be contradicted by the copy of the order of transfer which I submitted as an enclosure though it was not called for, and which may have been the source from which the Judges ascertained the reason given for transfer.

14. It should not be forgotten that I took interest in the prosecution. The Local Government prosecutor was of course instructed at sessions and the Government Pleader at Madras to oppose the appeal.

From D. W. G. COWIE, Esq., Acting Registrar, High Court, Appellate Side, to the Chief Secretary to Government, dated Madras, 6th December 1895, No. 2516, Judicial.

In forwarding herewith an explanation of the District Magistrate of South Canara, Ref. on C. No. 3636-Magl., dated the 28th ultimo, addressed to Government regarding certain observations contained in the proceedings of this Court, No. 2295, Judicial, dated the 4th idem, forwarded to Government with my letter, No. 2297, Judicial, dated the 11th November, I am directed to state that the unsatisfactory nature of the reasons given by the District Magistrate for his action was commented upon by the Public Prosecutor at the hearing of criminal appeals Nos. 296 and 308 of 1895 and that the High Court has nothing to add.

From W. H. WELSH, Esq., District Magistrate of South Canara, to the Chief Secretary to Government, dated Mangalore, December 1895.

In obedience to G.O., dated 26th November 1895, No. 2437, Judicial, I have the honour to forward Mr. Slight's explanation.

2. With reference to the inquiry whether I have anything to add to the explanation on High Court Proceedings, dated 5th September, Judicial, a few lines are submitted herewith. I have already addressed Government with respect to paragraphs 4 and 5 of High Court's proceedings, dated 4th November, No. 2295, Judicial, in this office letter, Ref. on C. No. 3636, submitted through the Registrar of the High Court.

3. Therein a decision was claimed upon the charge of untruthfulness made by their Lordships in paragraphs 4 and 5. If Government is pleased to decide, with or without a formal inquiry, that their Lordships were right in making that particular remark against me personally, then I presume that all further explaining is at an end.

4. If, however, my explanation is believed, I would submit, with all deference, that their Lordships have not treated me with that generous consideration which their officers used to expect.

5. It appeared from the foot-note to the Government Order under reply that certain papers from the Inspector-General's office were to be expected at an early date, but as they have not come this is submitted without waiting for them.

ENCLOSURE.

From A. M. SLIGHT, Esq., District Magistrate, Civil and Military Station, Bangalore, to the District Magistrate of South Canara, dated 11th December 1895.

In reply to your letter, dated 4th instant, Ref. on C. No. 3636/A., Mag., I have the honour to inform you that the circumstances which led me to leave the inquiry into the charge against the two constables of Kundapur station in the hands of the Stationary Sub-Magistrate instead of taking it up myself were, to the best of my recollection, as follows:—

2. When I first heard of the case, I was on tour in Udipi taluk. I sent instructions to the tahsildar to go and make a local inquiry as soon as possible. I returned to Kundapur about the 11th of March. I met the tahsildar and discussed the case with him, and from the information then available I found reason to suppose that a serious offence had been committed, and that the Police Inspector Boyer was trying to hush it up, but that the evidence which the Tahsildar had found available would make the case fairly clear and simple if it could be properly recorded without delay.

3. I had only ten days to stay in Kundapur, with a lot of work to do in that time. After that I had to start on a long tour for the settlement of a number of forest blocks round the north of the taluk. Notices of the dates on which all these would be settled had been published some time before, and there were many claims fixed for hearing. That work could not be put off. It would have been impossible to complete the inquiry before starting; the absconding of the accused and difficulty in getting some of the witnesses would have made it impossible even to begin it. I was not to be back in head-quarters before the end of May.

4. The tahsildar also had to go out on tour for some time on work that could not be put off.

5. It was therefore a question with me whether the programme of forest settlement work should be abandoned, or the inquiry into the case against the police entrusted to the Stationary Sub-Magistrate. If I had given up the forest work then, it would have had to wait till after the monsoon. As it was, some of the blocks to be taken up had been pending settlement a long time, and the whole was only a small portion of the total area notified for settlement. The case of the constables was not one for trial, but only for inquiry with a view so committal. It appeared a fairly clear case, and most of the evidence had already been heard by the tahsildar. The most important thing was to get it recorded without delay. I new that the Stationary Sub-Magistrate (Mascarenhas) and the Police Inspector (Boyer) were not on very good terms, and I did not think there was any likelihood of the Sub-Magistrate assisting to hush up the matter; in fact, the petition of the accused that the case should not be heard by that Magistrate was entirely due, I believe, to the personal feeling of the inspector.

6. On these grounds I considered it best to go on with my own work as already fixed and to leave this case to the Stationary Sub-Magistrate. Before leaving I gave him careful personal instructions to make the record of the evidence as full and accurate as possible, and to submit copies of the depositions to me as soon as they were taken; but then the case was transferred to the Udipi Magistrate, who knew nothing of the results of the tahsildar's local inquiry, and to whom I had no opportunity of giving information or instructions which might have assisted him in getting at the truth in his inquiry, and the accused gained a great deal of time by the failure to arrest the head constable.

EXPLANATION permitted under G.O., dated 26th November 1895, No. 2437, Judicial, to be added to that called for in High Court's proceedings, dated 5th September, and submitted from Camp Kirimanjeshwar in the north of Kundapur taluk on 17th September, to be in time for the hearing in criminal appeals Nos. 296 and 308 of 1895, which I understood were posted for 25th September.

I see it was wrong to hear a petition on behalf of an accused against whom a warrant was out.

2. I am sorry that at the time of hearing it did not occur to me that it ought not to be entertained. The merits of the case as related by the officer in charge of the prosecution were strong in my mind and the question whether the petition was admissible or not did not come up.

3. The Head Assistant Magistrate had not reported the crime demi-officially or otherwise. All I knew was that he was unable to hold the inquiry; nor had any information come except through the Superintendent. It seemed to me therefore not weakness but the strong thing to do to take on myself the responsibility of preventing the inquiry from being held in a court which the accused could object to, and the best chance of proving murder seemed to be to call the Sub-Magistrate who had made the local investigation under section 176, Criminal Procedure Code. I believed that little or no further local investigation was needed, and that torture at any rate could be proved by merely calling the witnesses.

4. I assure Government I had not the slightest notion that by granting transfer I was allowing the accused to make terms with constituted authority as to the conditions under which he was to appear. It was the pleader's business to keep out of sight the fact of a magisterial order being disobeyed, and I was preoccupied with the belief that it would help the prosecution to comply with his request.

5. For convenience of reference some of the previous papers have been printed and are submitted herewith.

(Signed) W. H. WELSH,
District Magistrate.

22ud December 1895.

From M. HAMMICK, Esq., I.C.S., Inspector-General of Police, to the Chief Secretary to Government, dated Madras, 25th December 1895, No. 6134.

I have the honour to forward Mr. Scott's explanation as regards his conduct in the "Tallur" case in South Canara called for in G.O., No. 2437, Judicial, dated 26th November 1895.

2. The High Court in its proceedings, dated 5th September 1895, asked the District Magistrate "to report whether there is any ground for supposing that the Superintendent of Police was in communication with the head constable D'Mello while he was absconding and countenanced that officer's evasion of the warrant which had been issued against him." This is the point on which Mr. Scott, the Superintendent, was called upon for explanation. The High Court also in its proceedings dated 30th October 1895 said: "From these facts we find it difficult to refrain from drawing the inference that the Superintendent of Police assisted the head constable to evade a local inquiry, and at all events passively connived at his absconding after the warrant had been issued for his apprehension."

3. Mr. Scott's explanation is most unsatisfactory. I mentioned in a former letter to Government regarding this Superintendent that he was specially unfortunate when committing his thoughts to paper, and this is a marked instance of it, for it is impossible to gather from his letter how much he knew and how much he did know when he took the course remarked upon by the High Court.

4. The occurrence, viz., the death of the man Shankara Bhatta when in police custody, took place on the 27th February 1895. The police inspector arrived at the scene of the crime on the 1st March. The Magistrate also arrived on the 1st or 2nd *after the inspector* and left the inquiry in the inspector's hands and went off on the 2nd. The inspector put in a referred charge sheet on the 8th March to the Head Assistant Magistrate. The Head Assistant Magistrate on the 13th March ordered the Stationary Sub-Magistrate of Kundapur to inquire into and dispose of the case. The Stationary Magistrate issued the warrants for the three accused on the 14th March. On the 16th March the inspector submitted the Sub-Magistrate's letter enclosing the warrants to the Superintendent of Police for orders. On the 19th March the Superintendent endorsed the letter with following order:—

"The warrants must be executed. District Magistrate has transferred the case to the Udipi Magistrate. It is not unlikely that the head constable will voluntarily appear before that court. Warrant might be sent to Udipi for execution." The head constable appeared on the 5th April.

On the 18th March a transfer of the case from the Kundapur Stationary Magistrate was asked for in the District Magistrate's court and the Superintendent was present in the District Magistrate's court when the application was put in for transfer by the vakil of the head constable and the Superintendent then asked the vakil to advise the head constable to surrender without delay.

5. The above are the facts and it certainly must be held that the Superintendent passively connived at the evasion of arrest on the part of the head constable. I think I may say that hardly any other officer in the police would have acted in this manner. Obviously, and the course was so obvious, that I cannot understand Mr. Scott not having followed it. Mr. Scott should have insisted on the warrant being executed and the head constable surrendering himself before he took any step whatever on his behalf. He should have refused to go to court at all or assist the vakil in any way until he saw the constable himself. His conduct was most improper.

6. His defence is apparently that he sympathised with the constable to such an extent in his fear of having to appear before the Kundapur Stationary Magistrate that he felt bound to interest himself in his behalf and obtain a transfer of the case before he insisted on his appearance; but certainly no amount of feeling for the head constable should have permitted him to countenance this evasion of a legal warrant, and I have nothing to say to justify Mr. Scott in his view. It is to be noted also that even here, where the seriousness of Mr. Scott's fault depends to a great extent on the question how far the head constable's fears were legitimate, Mr. Scott takes no pains whatever to explain why it was that head constable D'Mello so feared Mr. Mascarenhas, the Sub-Magistrate appointed by Mr. Slight to inquire into his case. He dismisses it by saying "he did dread as well he might appearing before the Magistrate." It must be remarked also that this very Sub-Magistrate left the inquiry into the case originally in the hands of the inspector which certainly did not look as if he had any special anxiety to work the case unjustly against this head constable.

7. I think this much may be said for Mr. Scott. I believe he did honestly believe that the police would not get a fair trial by the Kundapur Sub-Magistrate. I was in Mangalore myself on the 22nd March, four days after the transfer of the case, and I had then only heard of the case as far as I recollect from Mr. Scott himself. I had conversation with him about the case and the impression I gathered then, as far as I remember, was the case was a false one as against the police and Mr. Scott I remember then was particular in assuring me that the enmity between the local magistrate and the police was such that no fair trial could have been gained from him. I have since then been through the evidence as reported to me carefully, and I shall be very much surprised if the case against the defendants is successful. It is a mass of contradictions and as difficult a case to unravel as any case that has come before me. The original statements so conflicted with the medical evidence that it was impossible to put any faith in them, and I believe that, in spite of all the High Court has said, the only verdict a Judge could have come to was very much that arrived at by Mr. Holmes, viz., that the unfortunate man, who met with his death, died while under *illegal* custody in the hands of the police by what means was not proved.

8. It may also be said for Mr. Scott that he had no direct communication with the head constable D'Mello. He did not know where he was, and, although no doubt had the Superintendent insisted on the head constable's attendance before him the head constable would have appeared. I do not think it can be said that he actively assisted him. He certainly omitted even to suspend the man from the date of his absconding and ordered the suspension to run from the 5th of April instead of the 14th March, another circumstance which shows how ignorant

Mr. Scott is of his duties as Superintendent. The head constable should of course have been suspended from the date of the issue of the warrant. It is clear that Mr. Scott's action all through was the result of the obstinacy with which from the beginning he adhered to the police inspector's view that the head constable was the subject of unfair treatment by the Sub-Magistrate.

9. However in this case I venture, with all due respect to the magistracy, to to say (and I state it here because it is not the only case that I have come across where a similar course has been followed) that the police did not in this case receive the treatment from the Magistrate that they should have received, or that they must receive if the police are to be worked satisfactorily. Here was a case where close to the Divisional Magistrate's head-quarters, still closer to the local Stationary Magistrate's office, a man was found to have been killed while in police custody in the most suspicious circumstances. There could only be three causes for his death, an accident, which was not at all probable, suicide or murder, and in any case the matter was one which called for the most prompt and thorough investigation.

The local inspector, a man who has a high reputation as a police officer, reached the spot with the utmost speed. The Divisional Magistrate never turned up at all, and the Sub-Magistrate, after making a very brief inquiry, left the matter to the inspector. I venture to say that this is not the way in which such matters should be treated. The inspector held an inquiry, and I believe perfectly honestly arrived at the conclusion that the case as against the police was false. His inquiry was as exhaustive as was possible, and, though (as no doubt must almost always be the case) the inspector, after finding the witnesses' stories were not believable, was inclined to look upon the whole case as one concocted against the constables, nothing is, I believe, on record to show that he misbehaved seriously during the inquiry. He has, it seems to me, quite rightly put in a referred charge sheet; for, if he believed the complaint of murder false, I, with very much respect to the High Court, venture to think the course he took was proper, and that he would have done wrong had he charged and arrested men against whom he did not believe he had a case. The Head Assistant Magistrate in his proceedings ordering a magisterial inquiry stated that "arrangements already fixed make it impossible for the inquiry to be held by this court." I do not know what his arrangements were, but here again I venture to think that a charge of murder against police officers, in regard to an inquiry made by them in which *primâ facie* a man had been detained longer than was legal in police custody, was a matter which should have had precedence of almost any other work. I am certainly quite sure that when I was a Head Assistant Magistrate I should have looked on the matter as one demanding my personal and immediate attention, and I should have allowed other work on hand to stand over and inquired into the case myself, and I believe this is what would have conformed to my District Magistrate's views on the subject. Mr. Slight, however, thought differently, and in a proceedings of great brevity handed the case over to the Magistrate who had not thought it worth his while to stay and complete his original inquiry. In all this I venture to think the police should have been differently treated. Cases of this gravity are happily not very frequent, and I venture to suggest that Magistrates might be reminded of their importance when they do occur. I myself am of opinion that in all cases of serious accusation of torture or worse by the police the police themselves are not the officers best entrusted with investigation. If only in such cases a Divisional Magistrate would at once come to the spot and make the investigation himself, or, at all events, have it made by the local inspector under his immediate supervision, the results would be more satisfactory in all cases, and it would not afterwards leave the suspicion that the police officers had hushed up matters.

In a recent similar case in Kistna the magistrates neglected their duty in very much the same way, and although in a recent police order No. 87, *Police Gazette*, dated 26th October 1895, I have ordered the police in all such cases in future to bring the facts immediately before the District Magistrate for his orders, I venture to suggest that if the Government impressed upon the magistracy their duty in such cases it would have a good effect.

10. In the present case I blame Mr. Scott very much for his action in allowing the head constable to evade the warrant against him, and I further blame him, as I have done already, very much for his inactivity all through the case. I distinctly warned him when in Mangalore to do everything to get the case thoroughly sifted. I further endorsed on his weekly report submitting the first report on the case, which reached me only on the 3rd April, and which Mr. Scott might have despatched before the 26th March, that, in my opinion, the case was a very serious one and that the story that the man accidentally fell into the well was not to be believed and that I much doubted the theory of suicide. I warned Mr. Scott then that the case was to be gone into most carefully, and that the inspector, if he was at all inclined to screen his men, was to be taken off the case. I asked also to see the Magistrate's judgment as soon as possible.

I again told Mr. Scott, when he told me in his weekly report, dated 11th May, that the case was committed to sessions, that I wanted particulars of what had happened before the Magistrate and that every step in the case should have been reported. I told Mr. Scott then to submit a full report on the case, and asked him what was his opinion on the conduct of the police. I remarked that it was scandalous that a Superintendent should have treated the case as he had done. All he told me in reply was that Mr. Boyer, the inspector, had not been allowed to be present in the Magistrate's court when the case was going on and so he could say nothing.

Again on the weeky report of the 25th May I asked for information about this case. Mr. Scott gave me the most unsatisfactory replies.

11. Mr. Scott's treatment of the case from start to finish was as unsatisfactory as it could be. He gave me no information as to what he thought of the conduct of the men or the inspector. He failed from the first to realise the gravity of the charge made. He did not visit the scene of the crime until he had to do so in his regular course of inspection, and *when* that was he does not even take the trouble to say in the letter he now forwards as his explanation.

12. At the same time as I have already told Government I believe Mr. Scott's chief fault is his neglect of his office work. I believe that in this case Mr. Scott did keep himself fairly well informed of what was going on. He neglected and he continually neglects to keep me similary informed. His present explanation shows what he thinks sufficient in this respect. He has given me more anxiety than almost any other Superintendent, and this in a district in which police work is comparatively light. I connot recommend his transfer, and I can only hope that he may profit by whatever action Government may think proper to take in this case.

13. I think, as I have stated above, that the Superintendent did not receive the amount of assistance and directions from the Magistrate that he was entitled to get. Like many other Superintendents he required to be guided and in the old days of early police administration I think the local Magistrates would have done more than they did in this case. Unfortunately the feeling that the Magistrates are as much responsible as anybody for the satisfactory working of the police in their divisions is very much dying out, and, while ready to criticise, they do not assist. I earnestly hope the Government will take this opportunity of drawing the attention of all Magistrates to their duties in this respect.

14 I enclose all the records in the case submitted by Mr. Scott. There are points on which the Inspector Mr. Boyer's conduct in the case will require further notice; but as to this I propose waiting until the second trial is over.

ENCLOSURE.

From S. P. C. SCOTT, Esq., Superintendent of Police, South Canara, to the Inspector-General of Police, dated Camp Beltangadi, 10th December 1895.

In reply to official memorandum, current No. 4989-Genl., dated 7th November 1895, I have the honour to reply as follows:—

Every paper connected with the case has been forwarded under a separate cover. I did visit

the spot when I was inspecting the division. In my written order that the warrant must be executed I added (although it was quite unnecessary because every one knew it) that head constable D'Mello would probably surrender as the case had been transferred from Sub-Magistrate Mr. Mascarenhas, who was known to bear ill-will towards him. I learnt this from more than one source, one being head constable D'Mello's vakil. Head constable D'Mello never wished to evade an inquiry by a Magistrate, but he did dread as well he might appearing before Sub-Magistrate Mr. Mascarenhas. When I wrote the order that the warrant must be executed I had no idea where head constable D'Mello was, nor did I at any other time know this. I did not assist the head constable to evade a local inquiry unless the order of transfer was made. I knew that the head constable would conceal himself and evade arrest so delaying the inquiry. I was as anxious as any one for a local magisterial inquiry. I was of opinion that this should have been done in the first instance. Sub-Magistrate Mr. Mascarenhas was at the scene of the alleged offence before the inspector, who was many miles away, could get there. He remained there about twenty-four hours and left the spot directly the inspector arrived. I did what I could to support the application for the transfer of the case as the best means of expediting the local inquiry. I went to the District Magistrate about this and was present when the application was put in by the head constable's vakil. I asked the vakil to advise the head constable as soon as the order was passed to transfer the case from Mr. Mascarenhas to surrender without delay. I did not passively connive at the head constable's absconding after the warrant had been issued for his apprehension. I have not once seen him except when he was in the dock at the Sessions Court from the date the offence is alleged to have taken place up to the date of this letter, neither was I at any time directly or indirectly (except when I sent my advice through his vakil to him as stated above) in communication with him. As his superior officer I thought it my duty to interest myself in his case and to urge the transfer to another court. The transfer could in no way prejudice the case.

I regret I could not answer earlier. I was away in Tellicherry when the official memorandum reached me. It took some time to collect the papers, and with such serious charges against me I naturally took some time for thought.

The papers sent with the official memorandum are herewith returned, also those received with your endorsement dated 29th November 1895.

From M. HAMMICK, Esq., I.C.S., Inspector-General of Police, to the Chief Secretary to Government, dated Madras, 25th March 1896, No. 1330.

With reference to my letter, dated 25th December 1895, No. 6134, relating to the Kundapur murder case, I have the honour to submit the sessions judgment in the second trial and a letter from Mr. Scott in regard to that judgment.

ENCLOSURES.

IN THE COURT OF SESSIONS, SOUTH CANARA.

SESSION CASE No. 15 OF 1895 (*re-trial*).

Present:

H. G. JOSEPH, Esq.

Queen-Empress

v.

(1) *Francis D'Mello*, (2) *Mahomed Usman*, (3) *Paul Machado* and (4) *Linga Bhatta*.

(Committed by Mr. A. Devappa Punja, Stationary Magistrate of Udipi.)

Charge.—Against first, second and third.—(1) Wrongful confinement, section 342, I.P.C., (2) voluntarily causing hurt or grievous hurt, section 323 or 325, I.P.C., (3) causing hurt and grievous hurt and wrongful confinement for the purpose of constraining a person to confess or restore stolen property, sections 348, 330 or 331, I.P.C.

Against fourth.—Abetment of the above offences, sections 109, 323 or 325, 348 and 330 or 331, I.P.C.

Assessors.—Messrs. (1) U. Ananda Rau (Saraswati Brahman) and (2) Constantine Aiman (Protestant Christian).

Opinion of first assessor.—First accused *guilty* under all counts; second accused *not guilty* under section 342, I.P.C., but *guilty* under sections 323, 325 and 331, I.P.C.; third accused *not guilty* on any account; fourth accused *guilty* of abetment of offence under sections 342 and 348 only.

Second assessor.—First and second accused *guilty* on all counts; third accused *guilty* under sections 342 and 348, I.P.C. only; fourth accused *guilty* of abetment of all counts.

Finding of the Judge.—Concurred with the second assessor.

Sentence.—First, second and fourth accused each sentenced to nine months' rigorous imprisonment; third accused sentenced to one month's simple imprisonment.

Judgment.—This case—originally fixed before this court at the June Sessions of 1895—was remanded for retrial by the High Court and taken up at the January Sessions of 1896.

2. On Tuesday, February 26th, 1895, some police from the Kundapur kasba station went to the village of Tallur to inquire into a case of theft alleged to have occurred there in the house of the schoolmaster Shanti Murthappa. The schoolmaster only lately moved into the house in which the theft was committed. It had been previously inhabited by a woman named Putti; it is said that Shankara Bhatta, the son of prosecution fourth witness, had had relations with this woman and that fact is confirmed by the admission of prosecution fourth witness that the house into which she moved was provided for her by him and his son.

Putti was naturally questioned as to the means of entrance into the house and she mentioned the name of Shankara Bhatta as one also acquainted with this, whereupon Shankara Bhatta was also sent for and his father. Shankara Bhatta was "being inquired" by police—they deny that he was under any restraint—until at any rate 8-30 on the succeeding evening, Wednesday February 27th. On that evening the body of Shankara Bhatta was taken out of the well in the compound of Shanti Murthappa. The inquest report (which was drawn up by the first accused, the head constable) says that this occurred at 9 P.M.; the prosecution say at about midnight.

That night—the time cannot be accurately fixed, but it must have been very shortly after the body was taken out—prosecution fourth witness went to the potail (prosecution fourteenth witness's) house and complained that his son had been beaten by police and his life was out The potail refused to stir that night, and in the morning, February 28th, he went to the house of Shanti Murthappa where the body was lying and an inquest was held, and report (exhibit N) drawn up. This report would seem to have been sent with the body to the apothecary at Kundapur; it bears his initials as received at 5 P.M.

3. The inquest was held at daybreak. Tallur is only 3 miles from Kundapur, but there are some rivers to cross on the way. The potail who was questioned by the court as to this inquest report denied having sent it or knowing anything of it being sent; but his own report (exhibit D) which he says was sent off at 7 A.M. bears the Magistrate's date of receipt as 7 P.M. The Ugrani Rama, court fourth witness, who carried this report, says he was sent at 8 A.M. and gave it to the Magistrate at court at 10 A.M. and returned to Tallur at 2 or 3 P.M. The potail says that the Ugrani returned before midday and reported to him that the report had been delivered. On the morning of that day, February 28th, the Kundapur Magistrate (prosecution third and defence sixth witness) received at his house a verbal complaint from prosecution fifth witness Shivaya Bhatta (brother of prosecution fourth witness) and another and instructed them to give this complaint in writing, which was accordingly done, and exhibit C was put in before the magistrate at 4–30. This was a complaint against the police charging them with the murder of Shankara Bhatta.

The Magistrate on receipt of the complaint referred it to the police inspector for report, and wrote to the apothecary to hold *post mortem* and send his report to the inspector direct as the complaint had been referred to him.

Next morning, March 1st, the Magistrate, before he was leaving his house for office (10–30 A.M.), received exhibit E,* an occurrence report (exhibit F is an enclosure to exhibit E); and after concluding his day's work at Kundapur started about 4–30 P.M. for Tallur. On his arrival he made inquiries and examined a few witnesses that evening. Next day, March 2nd, he made an inspection of the locality; and on the arrival of the inspector at 3 P.M., the Magistrate left the inquiry to him and returned to head-quarters.

* It is called a crime report, but it ignores any crime at all.

4. On the 5th March, the Magistrate who had reported to his Divisional Magistrate (the Head Assistant Magistrate) received an order to submit a report without delay, and on that sent an order to police inspector to submit a charge sheet that evening without fail. On the 8th March the Magistrate received a reply from the inspector that he would submit his report shortly, and prosecution fourth witness put in a petition asking that the complaint referred to the police might be withdrawn as they were spoiling the case. On this the Magistrate sent for the inspector, who promised to submit report soon, and was told to do so next day at latest.

The inspector sent no charge sheet nor report of any kind to the Kundapur Magistrate, but on March 8th submitted a referred charge sheet, a document of very great length (which may perhaps account for the delay in its submission), to the Head Assistant Magistrate. On that same day another petition was presented to the Kundapur Magistrate by prosecution fourth witness asking that the four accused now before the court (three police constables and Linga Bhatta) might

be arrested at once and saying that the inspector had served on him a notice that the complaint had been referred as false.

5. The Head Assistant Magistrate refused to accept the police referred charge sheet and ordered a magisterial investigation, and also refused the request of the police inspector to transfer the inquiry to some other magistrate than the Kundapur Magistrate; and on the 14th March the Kundapur Magistrate having received the above order, took up the case on his register file. The case remained before the magistrate until March 20th, when he received an order (from the District Magistrate through the Head Assistant Magistrate) transferring the case to the Udipi Magistrate by whom the case was committed to this court. While the case was before the Kundapur Magistrate, after making vain efforts to procure by any means the arrest of the first accused, he commenced the trial in his absence and examined nine witnesses, in fact the prosecution evidence in the case, so that at the time of transfer the case was really ripe for committal.

6. Thus we have on the record—

I. Statements recorded by the Kundapur Sub-Magistrate on 1st March 1895—

Exhibits V_1, Q, V_{10}.

(1) Prosecution fourth witness Ramakrishna Bhatta.

(2) Linga Bhatta, fourth accused.

(3) Shanti Murthappa, also one of the accused before the committing magistrate, but discharged by him; (examined as second court witness and defence fourth witness).

Exhibits V_2 to V_9, V_4 and V_9 being also marked as G and K.

II. And the statements of nine witnesses (besides Ramakrishna Bhatta on whose complaint the case was filed) examined by the Kundapur Sub-Magistrate;

Exhibits VI_1 to VI_{10}—VI_4 and VI_9 also marked as H and L.

III. Of twelve witnesses examined by the commiting Magistrate (the nine above and three more);

IV. Of eleven witnesses examined before the Sessions Court at the first trial (one man, a police constable Rasquinha, was omitted from the above list);

VII_1 to VII_{10},—VII_4 also marked as exhibit J.

before the witnesses were examined in the present trial.

These statements have been filed for prosecution and defence as marked in the margin; and also in this trial for the first time the note-book of the Inspector Boyer was filed (exhibit VIII) as containing his record of the examination which he made of the same witnesses during his inquiry March 2nd—8th.

The above summary is necessary as an introduction to a discussion of the evidence in this case to show (1) the undisputed facts ascertainable from the records, (2) the previous history of the case, and, finally, (3) the very large number of times, under varying circumstances, statements of the prosecution witnesses have been recorded—all those records being now presented to the Court.

7. Now to consider the evidence. The prosecution statement is that from the time Shankara Bhatta (deceased man) was called by the police on 26th February until his body was taken out of the well he was in police custody, and that while the police so detained him he was beaten to try and induce him to give information about the offence committed in Shanti Murthappa's house and restore the stolen property. And it is to this statement that the various counts of charge are directed. The defence reply to this charge is that the police did nothing but examine Shankara Bhatta as a witness (in accordance with the provision of section 160, Criminal Procedure Code); that he was never confined; and that he was never beaten at all for any purpose.

8. The prosecution further say that the police after having ill-used Shankara Bhatta to such an extent that he was really dead—or at least appeared to be so—threw his body into the well where it was found, so that it might be thought that he had committed suicide and their misdeeds be so concealed.

That the body was taken out from the well is undisputed; that it was taken out about midnight and not at 9 P.M. is supported (apart from the direct evidence on the point) by the fact that the potail's reason for not coming out at once—when complaint was made to him by prosecution fourth witness—was that "it was night and dark." This certainly points to midnight rather than 9 P.M. Even a village magistrate, such this man shows himself to be, could hardly have refused to come and inquire into the complaint of murder by the police at 9 P.M. That the inquest report represents the police (*i.e.* the accused's) version of the affair in the first instance is, I think, clear. The potail's denial that he was present at the inquest or knew what was written in the report—as also his similar statement that though he was present on 26th and 27th till 8-30 while Shankara Bhatta was detained by the police, Shankara Bhatta was never even examined in his presence—is palpably false, but I do not think that gives any reason to doubt (rather the contrary) that his statement that he signed (in two places) in that report under the influence of the first accused is true. The witness began (before he denied all knowledge) by saying that first accused "must have written it," and then explained that his reason for thinking so was "there was no one else there who could write." The other witness examined on this

point, Shanti Murthappa, also very unwillingly admitted that it was written or dictated—and finally said it was written—by first accused.

9. The question of how the body came into the well is not one to be decided in this case. For the defence theory of suicide there is absolutely no evidence, except exhibit N—the inquest report—a document clearly drawn up for the especial purpose of suggesting that conclusion—and certain statements said to have been made by the witnesses to Inspector Boyer. Even if he did commit suicide, the only reason for his doing so would be that suggested by the committing magistrate, viz., either because he could not bear the police torture or because he wished to escape more. And this cannot advantage the accused much, except as an answer to a charge of murder—indeed exhibit N would appear to have been drawn up to assist an answer to such a charge. The evidence that the police were seen to throw the body into the well is not, I think, in itself of great independent value in assisting the conclusion they must have done so—based on the fact that there is no other explanation of the body being there except suicide or his having tumbled in by accident.

It is not necessary for the decision of the case to decide the point except in so far as the fact of the body being so found in the well and taken out is coherent with the other prosecution evidence. And with reference to that I think there can be no doubt that the evidence on the point goes in every way to corroborate the other prosecution evidence and so renders the prosecution theory of the way he came into it most probable.

10. So also as to the cause of death. It is not in any way necessary to the decision of the case to find how Shankara Bhatta died. If the evidence of the apothecary Vittal Rao, prosecution fifteenth witness, is to be believed there can be no doubt that the immediate cause of death was a rupture of the left pulmonary artery. The apothecary also considered that the rupture might have been caused by external violence—such as could be inferred from the bruises, &c., which he found on the body of the deceased.

If Surgeon Captain Donovan (Court first witness) is right in his opinion, the rupture *could not* have been caused by any such injuries as could so be inferred. He says nothing but a blow on the front of the upper part of the chest would cause a *rupture* of a pulmonary artery, and that previous general ill-usage would not be a predisposing cause. The examination of Vittal Rao makes it clear that what he saw was a rupture, not a cut, and could not have been caused by him in the course of his *post mortem*; and if that rupture could not have been caused by any of the injuries, marks of which were found on the body, the cause of rupture must be said to be unexplained and unexplainable. I am not myself satisfied that the opinion is altogether correct, but it was given with certitude, and I did not feel called upon to take further medical expert evidence since (as I have already said) the decision of this point is in no way essential to a decision of the charge before me.

Again, as to the medical evidence on the question of drowning, the effect of the evidence is merely this: the absence of froth, &c., in the bronchial tubes and trachea and windpipe, although it is not conclusive proof that the deceased was not drowned, militates very strongly against such a supposition and would argue that he must have been insensible * when he reached the water. So also it may not be a physical impossibility that bruises such as found on the body of Shankra Bhatta could *not* have been caused by his falling round and round and dashing against the sides of the well; but that bruises distributed over the body (inside the limbs, &c.) could have been so caused (or in lifting the body out in a cradle) is so very improbable that the possibility of its so happening may be left out of account.

* As noted above, that Shankara Bhatta was unconscious and not dead if he was thrown into the well by police is quite possible.

11. While writing on this point, I would say that there does not appear to have ever been any reason for supposing that murder was intended by the police. The worst that could be said would be that the man having died in their hands after they had beaten him, they put the body into well with a view to conceal their offence, fearing no doubt a charge of murder. If the medical evidence had shown beyond doubt that the rupture which was the cause of death might be attributed to the ill-usage said to have been inflicted and which might have been inferred from the result of the *post mortem* examination, then it would have been a question for consideration whether a charge of culpable homicide would have had to be added; but with the evidence before me, I did not consider this necessary or advisable.

12. I have now to consider the effect and credibility of the prosecution evidence on the charges against the accused and their defence. The evidence is that police officers † from Kundapur came to Tallur on February 26th to investigate the theft supposed to have occurred in Shanti Murthappa's house, they sent for Shankara Bhatta and his father, prosecution fourth witness, to the house of fourth accused ‡ Linga Bhatta, that the two men were left there till evening, that when the police allowed them to go away for their evening meal, they ordered Shankara Bhatta only to come back after his meal, but

† *i. e.*, first accused, the station house officer, a Muhammadan constable of the same station, and another constable.

‡ It is urged by both prosecution and defence that the man though a distant relative (a Dayadi) of prosecution fourth witness is on terms of enmity with him.

prosecution fourth witness refused to allow his son to come back alone and returned with him. Prosecution fourth witness slept on an outside (gate) pyal and Shankara Bhatta inside on the house-pyal with first accused on one side of him and second accused on the other.* At about 2 A.M. Linga Bhatta, fourth accused (who it is said had gone away the previous evening to consult an astrologer at Gangoli) came and asked the police to hand over Shankara Bhatta to him for a private inquiry. The police agreed and Shankara Bhatta was taken away to the pyal of Vishwanatha Bhatta. Prosecution fourth witness then went home and fetched his younger brother Shivayya Bhatta (prosecution fifth witness) to Vishwanatha Bhatta's house and there all three (prosecution fourth and fifth witnesses and fourth accused) exhorted Shankara Bhatta if he had committed the theft to confess and give up the stolen property but he denied all knowledge.

After this the party went† back to the house of Shanti Murthappa, the schoolmaster (prosecution fourth witness says he was kept at a distance by second accused) who met him on their way back) and Shankara Bhatta was made to sit on a katte there in charge of third accused. Then Shivayya Bhatta ‡ was taken to fourth accused's yard and beaten. Prosecution fourth witness was watching meanwhile from the shop of Vitla Prabhu (No. 18) first and afterwards from the shop of Subraya Prabhu (No. 16) to which he was moved by the police. No. 16 as will be seen from the plan is farther removed from No. 5 and 1 than No. 18 which is actually at the corner of the compound of No. 1. At midday prosecution fourth witness went for his meal and asked for his son to be allowed to go also, the police said he would be sent later and he was sent in charge of third accused. In the evening prosecution fourth witness again went home for his meals—Shankara Bhatta being detained the whole time in the compound of fourth accused—and coming back after his evening meal (about 9 P.M.) went to the gate pyal of fourth accused; from there he says he saw his son dragged from the katte where he had been sitting during the day to the house pyal of fourth accused, where he was beaten and kicked till he fainted, and then water was given to him and revived with. When his son was so beaten prosecution fourth witness called out and was then driven away from the pyal of fourth accused and went again to No. 16. It would seem that Shankara Bhatta now gave information that he had some rings pledged with Rama Bhatta, prosecution seventh witness. This man was sent for and produced four rings, but Shanti Murthappa said they were not his. The rings were then returned to Rama Bhatta. After this it is said that Shankara Bhatta was taken away by the police—Linga Bhatta and Shanti Murthappa accompanying them—to the east to a distance to a place called Ashvathan katte, No. 9 ("Aswatha" is the Peepul tree; a katte is a raised platform).

* It should be noted here that the prosecution witnesses do not speak before this court of having seen third accused till the next day, Wednesday 27th; butthe accused offers no evidence to show that he did not come with the other two policemen.

† The house of fourth accused No. 5 on plan and that of Shanti Murthappa No. 1 are almost contiguous.

‡ The beating of Shivayya Bhatta is worthy of notice because subsequently when Shankara Bhatta had fainted and water was given to him first accused said that the water had been successful in bringing his uncle round and should therefore be tried with him.

13. Up to this time we have principally the evidence of prosecution fourth witness supported by that of Shivayya Bhatta, prosecution fifth witness, Venktesha Prabhu, prosecution sixth witness, and Rama Bhatta, prosecution seventh witness, so far as they were witnesses of what occurred.

From this time the evidence is—

(1) that of Subbi, prosecution eighth witness, a woman whose house the party would have passed on their way to No. 9. She says that she heard them passing and was able to distinguish the police by their dress. She says there was moonlight; other witnesses say it was dark. As a matter of fact the calendar shows that the new moon was on February 24th, so there would not have been much. She had formerly stated in addition that she heard cries of Shankara Bhatta as he passed and saw the party returning by the back of her house later. When questioned about this, she said that she had no recollection of making such a statement and did not know anything more than she now stated. She was an old woman and the events occurred a year ago. I do not think this difference in her statement need at all argue that what she now says is untrue;

(2) that of Thimmanna Bhatta, prosecution ninth witness. He says that he saw the party pass and followed them watching from two places—first a tree No. 25 on plan, and again from No. 26—and saw Shankara Bhatta being beaten first near the temple at No. 7, and finally at the Ashvathan tree. He says that when so beaten the man cried out for a time, then the cries ceased, then he thought he heard moans and then—silence. And that then the other men lifted him up by the arms and legs and carried him away. He says he saw a group of four or five men. He recognised that some were police by their dress and knew fourth accused and the schoolmaster.

Besides the evidence of these two witnesses, we have only that of prosecution tenth and eleventh witnesses, two men who, having started after dinner that evening to go and see a play, were unable to cross a river in flood—the tide being high—and came back. On their way they heard cries from the Ashvathan tree and going nearer to see what it was, they heard low talking. The only words they could distingnish were "Catch, hold and lift." They say that as they knew the police had come for detection of a crime, they thought this would be their "putting pressure on some one"—and went home.

14. This is the whole of the direct evidence in support of the charges. That Shankara Bhatta had been beaten and beaten severely is proved by the medical *post mortem* examination. Whether such beating is proved to have been inflicted by the police must depend on whether the evidence is believed. Though it is necessarily small in amount and somewhat scattered, I do not think that, taken with the admitted circumstances, it canjbe considered insufficient. There was nothing in the way in which the evidence was given before me to make me mistrust it. There is also some evidence in corroboration given by the prosecution twelfth witness Devadiga Venkata, who says he was acting as servant to the police after they came to Tallur, but I do not attach much value to his evidence.

15. The only witness who was cross-examined at any length was prosecution fourth witness. This was directed to showing—

(1) That he had stated in his first petition, exhibit C, that the beating was on Tuesday.

The words might be taken to mean this—the statement being a loose one. The witness being questioned said the beating was really on Wednesday and that he had not stated to the contrary.

(2) That he said in the same petition that he was "confined" on Tuesday night, whereas his evidence now shows that he was allowed to go home. The witness said his son was "confined;" and he did not choose to leave him.

After this the cross-examination was almost entirely limited to filing the previous statements made by the witnesses.

In the address on behalf of first accused, his vakil by way of contradiction between the former statement of witnesses and those now made only pointed out the two above noted (and a few more of the same kind) and relied on contradictions to be found in statements made to Inspector Boyer with regard to which the witnesses were cross-examined (exhibit VII series) in the former trial before this court. Inspector Boyer was examined as a defence witness. First accused's vakil (and I think with a wise discretion in his client's interest) examined him very shortly and put in his note-book exhibit VIII, as containing the statements made to him. He was warned that the note-book lay under the drawback of not having been previously produced, but contented himself with asking the witness whether extracts from it had not been sent daily to his superiors.

The evidence given by Boyer—

(1) as to his statement taken from Thimmanna is "I do not think that from the place which he pointed out to me he could have seen the place he says he saw" and

(2) with regard to Subbi he says "from inside the tatti of Subbi's verandah she could not have seen outside." In reply to a question by one of the assessors as to whether there was not an entrance through the tatti he said "yes, but from where Subbi told me she was, she could not have seen out." He further stated that Subbi had told him that from the same *front* verandah she had seen the party returning at the *back* of her house.

16. This rather suggests that the witnesses were questioned by the inspector in the manner ordinarily adopted by a vakil in examining an adverse witness—which is hardly calculated to get on the record in a fair light the evidence given.

I am satisfied that the fact that the statements of the witnesses as entered in Mr. Boyer's note-book vary from those made before the various courts which have recorded their evidence is not a reason for distrusting their truth. And this fortunately need not mean that Mr. Boyer wilfully falsified his record of evidence, but he seems to have approached the inquiry in a spirit which rendered it unlikely that he would learn the truth from the witnesses. To mention one point only—he says that during the whole of his inquiry (March 2nd to 8th) he had first accused with him. And I think it is hardly probable that if he had been quite unbiassed he would have considered it his duty—in the interest of the accused—to take the extreme measure of acting on a suspicion which he entertained that the Magistrate to whom the case had been referred by the Divisional Magistrate would not give first accused a fair trial, and, therefore, ignoring his order, and sending in a referred charge sheet to anothor Magistrate. Especially, since the only reasons he is able to give for his suspicion are (1) that the Magistrate repeatedly urged him to complete his inquiry quickly and told him to charge the case, (2) that whon the accuced first came to his division he gave reports saying that the Magistrate was his enemy. On these reports no inquiry was made and no action taken.

Indeed, looking generally to the way in which the charge against first accused in this case had been dealt with by his departmental superiors, I think that, supposing head constables had reason to believe that charges against them of abusing their powers were likely to be so dealt with by their superior officers, it would be very improbable that they would not take some advantage of that fact.

17. It now remains only to consider how far the evidence brings home to the several accused complicity in the offences charged. With regard to accused one and two, there in no distinction to be made either in the charge against them nor the evidence.

With regard third accused, there is no evidence to connect him with the beating; the only evidence in fact is that he was in charge of Shankara Bhatta during his detention on the 27th February on the katte in fourth accused's compound and conducted him to his meal and back.

Fourth accused is charged with abetment of all the offences.

One of the exhibts, viz., exhibit Q, is the statement made by this man as a witness when examined by the Kundapur Sub-Magistrate on March 1st. I considered it admissible in evidence under section 33, Evidence Act, since (1) the man being now an accused person is "incapable of giving evidence; and (2) the statement was taken in the presence of the present accused (who might have cross-examined if they had wished).

The evidence against him shows that he was from the first taking part in the proceedings—that he went (he says himself he was sent) to consult the astrologer at Gangoli; when he came back on the night he had Shankara Bhatta entrusted to him for a time for a private examination. And here I think it is important to notice that on his return from his private examination, prosecution fourth witness is left at a distance, prosecution fifth witness is beaten, Shankara Bhatta is kept in custody while the fourth accused only is at least left to do as he pleased. The proceedings are mostly conducted at his house-pyal, and it is there that the first beating—before the removal to the Asvathana katte—is said to have been inflicted. The evidence that he accompanied the police with Shankara Bhatta to the Asvathana katte and returned with them is not, I think, sufficient.

If the above evidence is to be believed, I do not think it is possible to hold that he did not abet the offences which are found to have been committed.

18. The first assessor found first accused *guilty* under all counts; second accused *not guilty* under sections 342 and 348, because he was obeying the orders of his superior officer, *guilty* under sections 323 and 325 and 331; third accused *not guilty* on any count and fourth accused *guilty* of abetment under sections 342 and 348, not under sections 323, 325 and 331.

The second assessor found first and second accused *guilty* on all counts; third accused *guilty* under sections 342 and 348, and *not guilty* under sections 323, 325 and 331 and fourth accused *guilty* of abetment of all counts.

The duty of obeying an official superior does not extend to the doing of unlawful acts; the plea of obedience to the order of first accused cannot therefore be held to acquit accused two and three for any offence against law they may be found to have committed, but may be considered inextenuation of punishment.

I agree with the assessors in finding *first accused* guilty on all counts of the charge and with the second assessor in finding *second accused* also guilty on all counts, and *third accused* guilty only under sections 342 and 348, and *fourth accused* guilty of abetment of all the offences proved against accused one and two.

To acquit the accused in this case it would be necessary to hold that Shankara Bhatta was only examined by the police as a witness in accordance with the provisions of section 160, Cr. P. C., which would mean not only that the whole of the prosecution oral evidence is found to be concocted, but also that the circumstances do not throw on the accused the obligation of explaining the injuries, the signs of which are found on the corpse, and the fact that the corpse was taken out of the well.

Holding this to be impossible, I can find no sufficient reason to doubt that the offences of illegal confinement and grievous hurt were committed—and committed as shown by the prosecution evidence. If they were so committed the circumstances leave very little doubt that they were committed for the purpose of obtaining information as to the suspected crime or restoration of the stolen property.

Looking to the very slight grounds for suspicion against the unfortunate man at first sight, it seems extraordinary that such measures should be used against him. I am afraid it points to the fact that such measures are not extraordinary—the excessive use of them in the present case being due to the determination of the first accused to obtain detection if possible.

20. Quite apart from the melancholy event—the death of the unfortunate man—the offence of illegally detaining and ill-treating a suspected man is a very serious offence on the part of an officer in the position of first accused. His long service is rather an aggravation than a plea in mitigation in such a case. Still it makes the dismissal from the service—which must necessarily follow on his conviction—for such an offence in itself a heavy punishment.

I do not think I can inflict a less punishment than nine months' rigorous imprisonment. The sentence on second accused is the same. The third accused is guilty only in that he should have known that he ought not to obey any illegal order of his superiors. He is sentenced to simple imprisonment for one month. I can see no reason for making any distinction between the sentence for abetment and principal offence (while, as a mattor of fact, the same imprisonment to fourth accused means a very much slighter punishment to fourth accused than to accused one and two). He is sentenced to nine months' rigorous imprisonment.

MANGALORE,
14th January 1896.

(Signed) H. G. JOSEPH,
Sessions Judge.

APPENDICES.

I.

THE WITNESSES EXAMINED ARE

Prosecution.

(1) J. L. Boyer, Inspector of Police; (2) K. Rama Rao, Inspector of Police; (3) C. L. Mascarenhas, former Kundapur Magistrate; (4) Ramakrishna Bhatta; (5) Shivayya Bhatta; (3) Venkatesha Prabhu; (7) Rama Bhatta; (8) Subbi; (9) Thimmanna Bhatta; (10) Shesha Shetty; (11) Mahalinga Shetty; (12) Devadiga Venkata; (13) Kusa Billiya; (14) Chikaya Shetty; (15) Vittal Rau, apothecary; (16) Constable Balaya.

Court.

(1) Surgeon Captain Charles Donovan; (2) Shanti Murthappa; (3) Mr. S. P. Scott, Superintendent of Police; (4) Ugrani Rama.

Defence.

(1) C. S. M. Abreo; (2) D. J. Rego; (3) J. L. Boyer, Inspector of Police; (4) Shanti Murthappa; (5) Constable Annappa; (6) C. L. Mascarenhas.

II.

THE EXHIBITS FILED FOR

(*a*) *Prosecution.*

A.		Plan of the place prepared by Inspector Boyer.
B.		Do. do. by Inspector Rama Rao.
C.	28-2-95.	Complaint before the Kundapur Magistrate filed by prosecution fourth and fifth witnesses.
D.	Do.	Potail's report to Kundapur Magistrate.
E.	Do.	Crime report to the Kundapur Magistrate.
F.	Do.	Enclosure to E—report of first accused to Kundapur station house.
G.	19-3-95.	Subbi's deposition (prosecution eighth witness) before the Kundapur Magistrate.
H.	6-4-95.	Subbi's deposition (prosecution eighth witness) before the Udipi (committing) Magistrate.
J.	8-6-95	Subbi's deposition (prosecution eighth witness) before the Sessions Court.
K.	19-3-95.	Kusa Billiya's deposition before the Kundapur Magistrate.
L.	5-4-95.	Do. do. before the Udipi Magistrate.
M.	28-2-95.	Certificate granted by the Kundapur Civil Apothecary Vittal Rao.
N.	Do.	Inquest report.
O.	29-4-95.	Deposition of Inspector Boyer before the committing Magistrate.
P.	31-3-95.	Inspector Boyer's letter to the Udipi Magistrate.
Q.	1-3-95.	Deposition of fourth accused Linga Bhatta before the Kundapur Magistrate.
R.	1-5-95.	Statement of first accused before Udipi Stationary Magistrate.
S.	Do.	Do. of second accused before Udipi Magistrate.
T.	Do.	Do. of third accused before Udipi Magistrate.
U.	Do.	Do. of fourth accused before Udipi Magistrate.

(*b*) *For defence.*

I.	29-5-89.	Takid to Station-house office of Karkal from the Karkal Sub-Magistrate.
II.	1-6-89.	Report of first accused to do. do. do.
III.	6-3-95.	Petition of Ramakrishna Bhatta to the Kundapur Stationary Magistrate.
VI.	24-3-95.	Petition of Ramakrishna Bhatta to Udipi Stationary Magistrate.
IV_1. IV_2.	28-2-95.	Portion marked in exhibit C.
V_1.	1-3-95.	Deposition of Ramakrishna Bhatta before *Kundapur* Magistrate.
V_2.	19-3-95.	Do. of Venkatesha Prabhu do. do.
V_3.	Do.	Do. of Rama Bhatta do. do.
V_4. (also J).	Do.	Do. of Subbi do. do.

V_5.	19-3-95.	Deposition of Thimmanna Batta before *Kundapur* Magistrate.	
V_6.	Do.	Do.	of Shesha Shetty do. do.
V_7.	Do.	Do.	of Mahalinga Shetty do. do.
V_8.	Do.	Do.	of Devadiga Venkata do. do.
V_9.	Do.	Do.	of Kusa Billiya (also Exhibit K) do. do.
V_{10}.	Do.	Do.	of Shanti Murthappa do. do.
VI_1.	5-4-95.	Do.	of Ramakrishna Bhatta before *Udipi* Magistrate.
VI_2.	6-4-95.	Do.	of Venkatesha Prabhu do. do.
VI_3.	Do.	Do.	of Rama Bhatta do. do.
VI_4.	Do.	Do.	of Subbi (also Exhibit H) do. do.
VI_5.	Do.	Do.	of Thimmanna Bhutta do. do.
VI_6.	31-12-95.	Do.	of Shesha Shetty do. do.
VI_7.	Do.	Do.	of Mahalinga Shetty do. do.
VI_8.	5-4-95.	Do.	of Devadiga Venkata do. do.
VI_9.	Do.	Do.	of Kusa Billiya (also Exhibit L) do. do.
VI_{10}.	29-4-95.	Do.	of Potail Chikaya Shetty before *Udipi* Magistrate.
VI_{11}.	31-12-95.	Do.	of Shivaya Bhatta before Udipi Magistrate.
VII_1.	31-5-95.	Do.	of Ramakrishna Bhatta before *Sessions* Court.
VII_2.	7-6-95.	Do.	of Venkatesha Prabhu do.
VII_3.	8-6-95.	Do.	of Rama Bhatta do.
VII_4. (also G).	8-6-95.	Subbi's deposition before Sessions Court.	
VII_5.	7-6-95.	Thimmanna Bhatta's do.	
VII_6.	6-6-95.	Devadiga Venkata's do.	
VII_7.	10-5-95.	Kusa Belliya's do.	
VII_8.	Do.	Chikkaya Shetty's (Potail) do.	
VII_9.	5-6-95.	A. S. Vittal Rao's (Apothecary) do.	
VII_{10}.	11-6-95.	Deposition of Inspector Boyer do.	
VIII.		Note-book of Inspector Boyer.	
XI.		Diary extract of the Kundapur Magistrate.	

From S. P. C. SCOTT, Esq., Superintendent of Police, South Canara district, to the Inspector-General of Police, dated Mangalore, 2nd March 1896, No. 352/Genl.

In reply to your endorsement, dated 15th February 1896, on judgment in South Canara session case No. 15 of 1895, I have the honour to report that second and fourth prisoners are said to have appealed and that their appeals are to be heard on 11th March 1896.

First prisoner is said to be preparing his appeal and the third prisoner having been sentenced to only one month's imprisonment has put in an appeal for a revision.

With regard to paragraph 16 of the judgment, I do not understand on what evidence the Judge formed his opinion that the Inspector (Mr. Boyer) "questioned the witnesses in the manner ordinarily adopted by a vakil in examining an adverse witness." Mr. Boyer in his investigation certainly arrived at the proper conclusion, namely, that the accusation of murder was false and that there was some evidence of assault, but that it was not worth much. I think Mr. Boyer's notes of investigation do show in a fair clear light the evidence given. At the first trial the Judge was of opinion that the evidence was not good enough to convict on.

The action of Mr. Boyer in not carrying out the Kundapur Sub-Magistrate's order to put in a charge sheet against the accused requires some explanation. It occurred under the following circumstances :—

Mr. Boyer was on the spot engaged in the investigation and was about half way through it when he got a peremptory order from the Kundapur Sub-Magistrate to send in a "charge sheet." Mr. Boyer was not prepared to do so (the charge was one of murder at that stage of the case) because, as far as he had gone, there was reason to think that the complaint was a wilfully false one. Mr. Boyer should have written to the Sub-Magistrate by return messenger to explain that he could not at that moment comply with the order. So far I think Mr. Boyer was in fault but this seems to me a most trivial error. It is hardly fair to write about the inspector "ingoring" the order.

Having finished his inquiry Mr. Boyer found the charge of murder false and he thought it advisable to send his report to the Head Assistant Magistrate. With the evidence Mr. Boyer had collected he could not possibly have framed a charge sheet. Mr. Boyer was in an awkward position with an order from a Sub-Magistrate who was known to bear ill-will towards one of the accused to charge that accused when there was reason to believe that the case was a false one. Mr. Boyer showed considerable prudence I think in laying the case before the Divisional Magistrate.

The latter part of the 16th paragraph is a little difficult to understand. The Judge implies I take it that the head constable knew that his departmental superiors were ready to back him up in abusing his powers and he took advantage of it. As a matter of fact we have had nothing

to do with the case after the first investigation by the inspector. It was taken out of our hands at once. I was with the Deputy Inspector-General of Police, Southern Range, in camp when the matter was first reported and almost immediately after with the Inspector-General of Police. I had no opportunity before the case was taken up by the magistracy to take any part in it or to influence it in any way.

I am not certain that I understand this part of the paragraph. The Judge wishes to imply something ugly and appears to be afraid to say it in plain language.

From M. HAMMICK, Esq., I.C.S., Inspector-General of Police, Madras, to the Chief Secretary to Government, dated Kavali, 31st July 1896, No. 2995.

I have the honour to submit the copy of the High Court's proceedings in the appeal of F. D'Mello, the head constable convicted in the Sessions Court, South Canara, referred to in my letters, dated 25th December 1895, No. 6134, and 25th March 1896, No. 1330.

Enclosure.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the 18th day of July 1896.

Present :

The Hon'ble Sir Arthur J. H. Collins, *Kt.*, Chief Justice, and the Hon'ble Mr. Justice Benson.

(Criminal Appeals Nos. 49, 50 and 107 of 1896.)

Mahomed Usman, appellant in No. 49 (second prisoner); *Linga Bhatta*, appellant in No. 50 (fourth prisoner); *Francis D'Mello*, appellant in No. 107 (first prisoner).

Appeals against the sentences of the Court of Session of the South Canara division in case No. 15 of the calendar for 1895 (re-trial).

These appeals coming on for hearing after service of notice on the appellants, and counsel not appearing on their behalf: Upon perusing the petition of appeal and the record of the evidence and proceedings before the Court of Session, and upon hearing the arguments of the Acting Public Prosecutor in support of the conviction, the Court delivered the following

Judgment.—We are of opinion that the appellants in these three appeals have been rightly convicted. Looking to the fact that the first and second prisoners are police officers and have been convicted of having caused grevious hurt in order to constrain their prisoners to confess and to restore property, we consider that the punishment of nine months' rigorous imprisonment which the Sessions Judge has imposed is unduly lenient, but having regard to the length of time during which the appellants have been under trial, and to the further consequences which their conviction will entail on the two police officers, we do not think it necessary to take any steps with a view to the enhancement of the sentences. We confirm the convictions and sentences and dismiss these appeals.

(By the Court.)

C. G. TODHUNTER,
Dy. Registrar, Appellate Side.

Order—No. 1806 Judicial, 14 Nov 1896.

The papers read above relate to the proceedings of certain officers in the district of South Canara,—the District Magistrate, Mr. W. H. Welsh, the Head Assistant Magistrate, Mr. A. M. Slight, the Superintendent of Police, Mr. S. P. C. Scott, and an Inspector of Police, Mr. Boyer,—in regard to South Canara sessions case No. 15 of 1895.

2. The facts of this case are given in the judgment of the Sessions Court and the order of the High Court (on appeal) printed above. Shortly stated they were as follows :—In February 1895 a theft occurred in the house of one Shanti Murthappa of Tallur, a village some three miles from Kundapur, the head-quarters of the Head Assistant Magistrate and a Stationary Sub-Magistrate. The police investigated the case and suspected one Shankara Bhatta of the crime. They arrested him on 26th February and he remained in their custody until the early morning of the 28th. A cry was then raised that he had thrown himself into a well in Shanti Murthappa's yard. He was taken from the well dead, and an inquest on his

his case as soon as the retrial of sessions case 15 was over. This retrial has now been concluded, but no further communication has been received. The Inspector-General will be requested to frame at a very early date such definite charges against him as may appear to be warranted by the record (the records sent up to Government are not in all cases entirely complete), to call upon him to show cause why he should not be dismissed from the public service and thereafter to submit the case to Government for orders.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To the District Magistrate of South Canara. with one s.e.
" A. M. Slight, Esq., I.C.S.
" the Inspector-General of Police. with 28 s.e. & 52 encls. & cmo 6041
" the Public Department (with extract from notes).
Copy to the Hon'ble the Chief Justice with C.L. with 2 s.e.

Exd. S. J. Pereira.

Government {1896} of Madras.

JUDICIAL.

Recd. } *Enclosures*
Regd. } *Spare copies*

G.O., No. 1807, 14th November 1896.

NOVEMBER.

Police Torture Cases.

Directing that in the absence of strong reasons to the contrary the preliminary investigation into cases of complaints against police officers of causing hurt to persons in their custody should be conducted by the Divisional Magistrates themselves.

body was held. The result of the inquest was the drafting of a report that he had jumped into the well and committed suicide, but his relations questioned this verdict and, in consequence, the body was sent to the Kundapur hospital for examination. The evidence of the civil apothecary who conducted the examination showed that Shankara Bhatta did not die from drowning, that his body was covered with a number of bruises which could not have been caused by a single fall, and that the cause of death was the rupture of the left pulmonary artery, an injury probably due to external pressure applied to the chest.

3. Eventually the head constable of Kundapur police station, Francis D'Mello, and two constables of the station who had been engaged with him in investigating the theft case were charged in the Sessions Court under sections 348 and 331, Indian Penal Code, with wrongfully confining and causing grevious hurt to Shankara Bhatta to constrain him to restore stolen property, and a fourth person was charged with abetment of these offences. The trial of the case (calendar case No. 15 of 1895), resulted in the acquittal of the third and fourth accused and the infliction of a sentence of three months' simple imprisonment upon the first and second accused,—D'Mello and one of his constables,—under section 342, Indian Penal Code (wrongful confinement).

4. The first and second accused appealed against the conviction, and the High Court, at the hearing of the appeals, formed the opinion that the Session Court's judgment was seriously defective, and that many irregularities had taken place and accordingly called upon all four accused to show cause why they should not be retried. In the end the High Court in the order and proceedings read in G.O., No. 2437, Judicial, dated 26th November 1895 above, directed the retrial of the case, and in its letter in the same Government Order drew the attention of the Government to the case and to the conduct of the local officers in regard to it.

5. The case was retried by a different Sessions Judge as ordered by the High Court, and resulted in the conviction of all four accused, the third accused being sentenced to one month's simple imprisonment and the others to nine months' rigorous imprisonment. The conviction and sentences were upheld on appeal by the High Court which remarked that it considered that the punishment of nine months' imprisonment for offences of such a nature was unduly lenient.

6. The High Court's strictures in the order and proceedings passed by it at the hearing of the original appeal upon the conduct of the case by the Sessions Judge will be dealt with in separate proceedings. The matters which are at present for consideration are its remarks against the District Magistrate, the District Superintendent of Police, and Inspector Boyer, and the conduct of the Head Assistant Magistrate (in leaving the case to a Sub-Magistrate instead of taking it up himself) referred to in paragraph 2 of G.O., No. 2437, Judicial, dated 26th November 1895.

7. The case of each officer, with the remarks passed against him and his explanation in answer thereto, will be considered in turn and separately.

First, as regards the District Magistrate, Mr. W. H. Welsh. In the first of its proceedings in G.O., No. 2437, Judicial, dated 26th November 1895, the High Court details certain irregularities which were permitted at the outset of the preliminary inquiry into sessions case No. 15. The Head Assistant Magistrate had rightly refused to comply with the recommendation of the police in a referred charge sheet sent up by them that the case should be struck off the file as false, and, although the head constable D'Mello had asked that it might be disposed of by some other Sub-Magistrate, had ordered the Sub-Magistrate of Kundapur to investigate it. Warrants were issued for the accused on the 14th March and D'Mello then absconded. On the 16th the police reported that they could not find him, although the complainant, the deceased's father, told the Sub-Magistrate that he was hiding in a certain house in Kundapur. On the 17th D'Mello presented a petition through a vakil to the District Magistrate alleging that the Sub-Magistrate of Kundapur was at enmity with him and asking that the Head Assistant Magistrate's order refusing to transfer the case might be overruled and that it might be sent to any other magistrate for disposal. The District Magistrate did not ask the Head Assistant Magistrate to report upon the matter, or the Sub-Magistrate to

explain the allegations made against him, and sent no notice to the complainant to show cause why the case should not be transferred, but on the 18th passed an *ex parte* order directing the transfer of the case to the Udipi Sub-Magistrate. The order merely said:—"It is impossible to say that the objections of the accused persons to this Magistrate are without foundation. The application for a transfer is therefore admitted." The High Court, in the penultimate paragraph of the proceedings already referred to, asked the District Magistrate to "explain how he considered it compatible with his duty to hear such a petition presented on behalf of a person who was at the time absconding from public justice before he had surrendered in obedience to the law," and why he ordered the transfer without notice to the complainant and without giving the Sub-Magistrate an opportunity of explaining the allegations against him. Mr. Welsh's reply and the High Court's remarks thereon are among the papers in G.O., No. 2437, Judicial, dated 26th November 1895 above. Upon receipt of the latter he wrote his letter of the 28th November 1895 to Government containing a further explanation and, finally, upon receipt of G.O., No. 2437, Judicial, dated 26th November 1895, submitted an additional statement in continuation thereof. These papers are printed above.

8. His Excellency the Governor in Council has considered the facts of the case and Mr. Welsh's explanations with care and has arrived at the conclusion that the High Court's strictures upon him in its proceedings of the 4th November 1895 are just and deserved. He appears to have acted with a want of care and perspicacity in granting the transfer as he did. The High Court's proceedings do not appear to His Excellency in Council to impute any intentional untruthfulness to Mr. Welsh as that officer apprehends, but the remarks in paragraphs 4 and 5 thereof are, in the opinion of His Excellency in Council, warranted by the manner in which Mr. Welsh has succeeded in persuading himself that he granted the transfer for reasons which can scarcely have been in his mind at the time.

9. Next as to the Head Assistant Magistrate, Mr. Slight. In paragraph 2 of G.O., No. 2437, Judicial, dated 26th November 1895, this officer was called upon to explain why he left the preliminary inquiry in this important case to a Sub-Magistrate instead of taking it up himself. His explanation is contained in his letter of the 11th December 1895 read above. His Excellency the Governor in Council is of opinion that in all the circumstances of the case Mr. Slight's action is not deserving of blame. Orders will, however, be now issued that, in the absence of strong reason to the contrary, the burden of proving which shall be upon the Sub-Divisional Magistrate, all cases in which the police are charged with causing hurt to persons in their custody shall in future be investigated by the Sub-Divisional Magistrate himself.

10. Thirdly, as regards the conduct of Mr. Scott, the District Superintendent of Police. The charges against him and his reply thereto are clearly set out in the letter from the Inspector-General of Police, dated 25th December 1895, No. 6134, printed above and need not be further recounted here. His Excellency the Governor in Council concurs with the Inspector-General's opinion that Mr. Scott must have passively connived at the head constable D'Mello's evasion of arrest, and considers that had he so chosen, the ignorance of that officer's whereabouts which he pleads could have been removed. Throughout the case, moreover, there is clear evidence that Mr. Scott weakly relied upon Inspector Boyer at all points, although it should have been apparent to him that there was the strongest suspicion that this officer was doing everything in his power to screen his subordinates. His Excellency the Governor in Council views Mr. Scott's conduct in this matter with great displeasure, and he will accordingly be directed to revert to the grade next below that in which he is now acting and will be debarred from promotion therefrom pending the pleasure of Government.

11. Lastly, as regards Inspector Boyer. The concluding portion of the High Court's order of the 30th October 1895 remanding sessions case 15 of 1895 for retrial and read in G.O., No. 2437, Judicial, dated 26th November 1895, makes serious charges against the inspector, and in the last paragraph of his letter, No. 6134, dated 25th December 1895, the Inspector-General of Police promised to deal with

his case as soon as the retrial of sessions case 15 was over. This retrial has now been concluded, but no further communication has been received. The Inspector-General will be requested to frame at a very early date such definite charges against him as may appear to be warranted by the record (the records sent up to Government are not in all cases entirely complete), to call upon him to show cause why he should not be dismissed from the public service and thereafter to submit the case to Government for orders.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To the District Magistrate of South Canara. with one s.e
„ A. M. Slight, Esq., I.C.S.
„ the Inspector-General of Police. with 28.e & 52 Encls. & cno 6041
„ the Public Department (with extract from notes).
Copy to the Hon'ble the Chief Justice with C.L. with 2 s.e

Exd. S. J. Pereira.

237

Government {1896} of Madras.

JUDICIAL.

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G.O., No. 1807, 14th November 1896.

NOVEMBER.

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Directing that in the absence of strong reasons to the contrary the preliminary investigation into cases of complaints against police officers of causing hurt to persons in their custody should be conducted by the Divisional Magistrates themselves.

238

No. 1807, Judicial, 14th November 1896.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

Order—No. 1807, Judicial, dated 14th November 1896.

More than one case has recently come to the notice of Government in which complaints against officers of the police of causing hurt to persons in their custody have resulted in apparent miscarriages of justice owing to the preliminary investigation and inquiry having been conducted with a want of promptitude, care or energy.

2. The Government accordingly directs, that in the absence of strong reason to the contrary, the burden of establishing which shall be upon the Divisional Magistrate, the preliminary investigation and inquiry into all such cases shall in future be conducted by Divisional Magistrates themselves.

(True Extract).

A. T. ARUNDEL,
Acting Chief Secretary.

To all District Magistrates.
„ the Inspector-General of Police.

Exd. S. J. Pereira.

1,000—13-8-95.

239

NOTE FOR THE CHIEF SECRETARY.

Resubmitted to Cs. for approval of addition to D.O. to Mr. Hammick at end. Submitted that the file need not go again to H. with reference to W's remarks at top of the draft D.O.

W. Bruce 14.11.

The Press will also be asked to hurry up with their issue W. Bruce

7/11/96

When I was at Mangalore in Oct. I found that Mr. Scott was incapable of riding. He had been suffering, I was told, from an illness pronounced by the nature of paralysis. Mr. H. should enquire into this, and Mr. Scott should, if to be found desirable, be brought before a Med. Bd. An addition to this effect will be made to the D.O.

A. St 12.11.96.

further
It is believed that he is seriously enfeebled & incapable of riding. I am to ask that you will enquire into this & send him before a Medical Bd if found desirable

D.O.

My dear Hammick - 96

In connection with the police torture case in South Canara Govt. has ordered that Scott shall revert to the grade next below that in which he is serving & be debarred from promotion pending the pleasure of Govt. I am to add that this order will probably weaken his authority in South Canara, & I am to ask that you will consider again the opinion expressed in para 12 of your letter on the case, No. 6134 25.12.95, that you cannot recommend his transfer, with a view to ascertaining whether there is any district in which he would be likely to do less harm than in South Canara.

I am also to point out that in your letter No. 3090 6.8.96 recommending Scott for grade promotion you did not note that he was at the time in this serious trouble

G.
73
300—30-7.05.

NOTE FOR THE Public Dept. —

(To accompany Mr Ryan's Ltr of 9th inst. —)

Note by the Hon^ble Blois with ref^ce to W. W. H. Welsh.

"The truth is that W. W. has not sufficient intelligence ..... in which his opinion will be required."

Note by Hon W. Grove.

"He is a weak man who will always be liable ---- should be in the same district."

Note by R^t. Hon Governor.

"We should take an early opportunity of noticing him".

11.12.96

238

242

First copy sent to Press.

Returned for Signature

Despatched.

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

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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

N.B.—
A = Print in ful ,
B = Not to be printed,
P = Print abstract only.
Q = Print heading only.

35

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Judicial Dept 1896

G.O. No 1808 dt. 14-11-1896

18-2-81 1467/R.H 4

Rest

for

7/7/81

outh

Canara Sessions cases 33 & 38 of 1894 and 15

of 1895.

despatch No 9

Forwarding to the Rt Hon. the Secy of state a copy

of Pros: No 1808 & Jud. dt 14 Nov 96 and soliciting the

grant to Mr W.C. Holmes, I.C.S., of permission to resign

the Indian Civil Service on a pension proportioned

to the length of his service.