

(1) பக்கங்களின் எண்ணிக்கை 90.

(2) புதுக்கித் திருப்பிய நாள் 9 செப் 90

(3) ஆதரங்குறிப்பவர் கருக்கொப்பம் 10/9

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

Judicial

துறை

அரசாணை எண்.

மு. கோப்பித் தாள் எண்.

1694

அச்சகம்

1890

நாள் :

31-10-1890.

19/9

மதுக்கலோ கண்டயடி கையாளலோ கட்டாது

ஆவண, கா-1-18,000-15-6-87.

C. No. 3927

Salem Collector's Office,

3rd October 18

No. 1678

From

G. STOKES, Esq.,

Col. & Dist. Magt. of Salem.

To

The Secretary to Government,

Judicial Department.

Madras

SIR,

I have the honor to sub-
mit for the order of Government
the papers connected with the Salem
Case No. 29 of 1878 on the file of the
Salem Sessions Court with the request
that Government will, if they please
arrange to have an appeal against
the verdict filed in the High Court.
I am authorized to take the
enclosed and to have it indorsed by a
lawyer and the receipt of the same

no irritated and is li- by to prove,
the future, a source of irritation
involuntary of him to die
was killed was the when gone
the richest and most beautiful
class of Peruvians
The facts of the case are very
simple. The 1st accused is a man
rich & very well known in the
marriage procession and the
town. It is alleged that some
Cubai boys then stop at the
procession during its course but
there is nothing to connect the de-
ceased with this. When the procession
arrived at the house of the accused
the bride and the bridegroom and the
rest of the procession were there. The old
monger boys picked up one of the
bones off the balcony when the

deceased and other Cuban boys do
the same. The evidence is that then
the 1st, 2nd, 3rd, 5th and 6th accused, all or some
cried out "Pödu - Pödu" and abused.
The expression may mean either "Beat"
or "put down", but it means more
naturally the former. Thereupon one of
the torch-bearers hit the deceased on one
side of his head with his torch, a
description of which is given in the
judgment, and another hit him on
the other side another kind of torch,
and the deceased fell down. The 4th
witness, who went to lift him up
was hit under the eye and hurt. The
skull of the deceased was fractured
and he died the next day without
recovering consciousness. The nature
of his injuries was such that they
might have been caused either by
one or two blows, the medical officer
could

do not certainly say which. About
the facts there is no dispute.

The difficulty which the judge felt
in the case was partly as to the credi-
bility of the witnesses and partly
as to the identification of the accused.
In regard to the 1st, 2^d, 3^d, 4th and 5th accused
I think the judge's finding may be
accepted. The occurrence was sudden
and unprovoked, and even if the
evidence is believed, but only, there is
no doubt that the 4th took part in
an unprovoked assault in which
murder was committed or that they
were culpable homicide.

5. I think it is only against the
evidence of the 4th accused and perhaps
the 7th, that an appeal should be pre-
ferred. I say perhaps the 7th for it is only
in recent subsequently that the case against
the 7th is far stronger and more

than against the 7th though strong against
him also. The statements of the witnesses
against the 4th accused are set out below.
2^d witness - "The 4th prisoner hit the deceased
with an iron torch. It was with the torch
(Ex. A) shown me that the 4th prisoner beat the
deceased."

I did not notice whether, when the 4th
accused beat his torch was burning or had
been extinguished. It was the blow that
was dealt by the 4th prisoner that first
fell on the boy.

I asked that night the oilmen
and washmen had beaten. I did
not say that the 4th and 7th accused had
beaten."

3^d witness - "As soon as they said Padi-
-Padi the 4th prisoner struck the
deceased on the head with the cir-
cular torch. As soon as the 4th blow
was struck the boy dropped down.
It was with a torch similar to the
last A that the 4th prisoner beat the boy."

on the 4th prisoner lay to the bag.
The torch was not burning. As soon as
the 4th prisoner dealt a blow to the
deceased blood gushed out. I saw
that blow. I know how the 4th prisoner
beat the deceased. I don't know whether
he beat with one hand or both.
When beating the deceased, the 4th prisoner
was on the ground.

4th witness - "The 4th prisoner beat
the deceased with a torch like a
wheel. When I went to lift him up,
the 4th prisoner & another man beat
me. It struck me on the left eye-
brow. After the deceased was beaten
by the 4th prisoner he fell down. I
do not know whether the 4th prisoner
beat the dead suffer with one hand
or with both. I do not know what
he was in."

5th witness -

The 6th prisoner struck
the deceased on the right side of the
head.

head with the torch. As soon as the
deceased got these two blows he fell
down in front of the palanquin. The 4th
prisoner poked me with the iron point
of the round torch on the left shoulder.
I do not know whether after the 4th
prisoner beat him blood flowed out
of the deceased's head or not. I pointed
out 4th and 6th prisoners. It was with
the torch he beat the deceased with that
4th prisoner beat me. He poked me
on the front side of my left shoulder.
Excepting the 4th and 5th prisoners no one
beat me. When the 4th prisoner beat
the deceased, the torch should have
been only burning. I did not notice
I could say how he beat the deceased.

6. The grounds on which the judge
has decreed to 2^d witness as regards
the 4th accused are -

(1) that in cross examination he was
unable to state of the torch with which

2^d That, contrary to the evidence of the
witness, he says he is the first
to inform him of the injury to his
nephew

7. With regard to the 1st it may be
observed that the mere fact that he
failed to notice one accident and
professed ignorance of it will not
show that the witness did not ob-
serve those that he saw he did not
this cannot detract from the value
of his testimony for the contrary it might
show that he was unwilling to see and
would only speak to the redoubting
condition his knowledge

With regard to the 2^d question
is whether the 1st witness makes a
mistake or the second. I am of opi-
nion that in his disturbed state of
mind the first witness made the
mistake

not
mistake at the second and that
this point is of no moment.

I think therefore that these grounds
are entitled to no weight and that
this witness' evidence is unimpeach-
able.

8. The evidence of the 3rd witness the
judge finds no special reasons to dis-
trust (Vide Page 5 Lines 22 & 23 of the Sessions
judgment).

9. The judge distrusts the evidence of
the 4th witness because he told the
magistrate that he did not notice the 7th
accused at all and that he "did not"
see any of the other defendants except the
4th do nothing but that in the Sessions
Court he had shown by the evidence
saw 7th accused strike deceased
with a torch. He also remembers

"There seems no reason to doubt that
the 4th witness was present. He received
a wound or injury near his eye which

to establish this & he was
fixed he must have been close to
assailant; and should be able
to recognise him, but it does not
follow that he was the same man
as struck the deceased. But his
general truthfulness in this case
is now unfortunately laid open to
doubt by the admission this witness
referred to above. In my opinion, and
from experience I think that all that
can be inferred from an admission like this
to testimony is that there is some
doubtful of its truth on the whole
evidence & this rejected there
could never be any evidence accept-
ed, nor any case in the country.
17. On the evidence of the 5th witness
I do not care to rely. I have been
informed that this witness is a
false witness and it is remarkable
that his evidence was

67 with the sh with which the
4th prisoo. heard. As soon as the
deceased got these two blows
he fell down in front of the
palanquin.
12. The judge comments on the evidence
of the 2nd witness against this accused in
the same term as against the 4th prisoner
and adds the two witness evidence
"for reasons easily stated is open to doubt".
13. The judge then proceeds to comment
as follows the question of the identifi-
cation of the accused:-
"So much has been of great impor-
tance in determining the correctness of the
identification & if there had been any
evidence as to how it was first made
by the witnesses. I count, in such cases,
ought when if it was made by each
witness separately (or) unseen by other
persons."

witnesses) and if the person identified
was selected among others of the same caste.

Here there is no information at all
except in the case of the 5th witness who
according to the Inspector (who was
examined by the Magistrate at the request
of the defense) picked out the 4th and 6th
accused among some 20 other persons.

But even then it is not shown that
there were other washermen among
those twenty five. I cannot feel at
all satisfied that this identification
of the accused was satisfactorily arrived
at and is correct.

14. In regard to this I would remark
that if the Court would evidence
as to how the identification was made,
it should have called for it and not
accepted the case.

23. That the defense have never questioned
the manner in which the identification
was

was made.

3. In making questionals as in the case
of the 5th witness, it is found that the
identification was regularly made
as from the evidence of the Police Inspector
the accused who were picked out
of a lot of 25 persons among which was
at least another washerman being the 7th
accused.

From the Honorable
Court,
most obedient servant
[Signature]
District Magistrate

Judicial Department.
C.N. 3927

From the Collector

and Dist. Magistrate,

Salem.

To

The Hon. Secretary
to Government
Judicial Department
Madras.

Dated 3rd October 1890

No. 1678

Dr. J. P. W.

Subject.

Suggesting appeal against
acquittal of a person
convicted in C.C. 452 of 1890
in the file of the Salem Session
Court.

Yours faithfully,
J. P. W.

Recd 6/10

3927

8

8

I have great objections to
reviving such a case as
this, & doubt much an appeal
is likely to be successful.
Now a case of murder always
occurs between Hindus & there is
great ill feeling between
them in Salem which will
be aggravated by an appeal.
The Court thinks the escape
of the Hindu assassin
will do harm, but that
harm has been already
done & since the case was
decided two months ago,
has led him to subside.
Fresh harm will be caused
if the law is worked as
the Court proposes & a
Hindu is thus placed in
peril. The acquittal was
on a charge of murder
not manslaughter. In

Page 4 line 10, & an
 appeal against it can
 only be gained by show-
 ing that murder was com-
 mitted. This is a very
 serious matter & an
 appeal should not be
 made if there is any
 doubt. It seems however
 that doubt as to the i-
 dentification is justified
 - Vide page 6 line 10 to
 page 7 line 11.

JF
 16/10/22

On the whole I
 concur with the
 concluding remarks
 in the following
 note - JF
 October 20
 1922

Alam Jussim Coe

Ev. 31st Oct 1922

The Govt can
 direct an appeal
 against the decision
 in this case.

(Turned over)

Mr. Gustav C. S. J.

(Turned over)

1/11/22

9

See - work
to be done
2/1/57

To the Dist. Mgr. to
with enclosed

10

10

READ AGAIN ORDER OF GOVERNMENT, DATED
18, No. , MISSISSAUGA.

ENCLOSURES

CURRENT NO. 37

ENCLOSURE WITH INFO.

ORDER OF GOVERNMENT.

STANDARD WITH INFO.

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Judicial DEPARTMENT.

G.O., DATED 31-10-70

No. 1876

When given for copying

[Despatch Abstract].

Declining to enter an appeal
against the acquittal of a
prisoner in Calcutta case
No. 19 of 1870 on the plea of the
defence being not fair.