

- (1) Number of pages 14
(2) Date of repair _____
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MADRAS RECORD OFFICE

(GOVERNMENT OF MADRAS)

Daniel Naidu Achius

Judicial

DEPARTMENT

G.O. No.	301	Press
B.P. No.		Mis.
Dated	17.2.18.92	196

Not to be folded or roughly handled

Court of Sessions of Trichinopoly Division.

C. C. No. 42 of 1891.

Heads of charge to the Jury:—

Names of accused:—

1. Vellaikutti Thethuvandan.
2. Marudaimuthu Kovirayan.
3. Masi Aiyropirian.
4. Vellala Subban.
5. Vala Rengan.
6. Marudaimuthu Paprian.
7. Palanyandi Papriyan.
8. Arumugha Papriyan.
9. Marudaimuthu Thethuvandan.
10. Sanjidi Malavarayan.
11. Dorasamy Thethuvandan.
12. Vellakutti Thethuvandan.
13. Idumba Papriyan.
14. Raman Thethuvandan.

Offence.

- i. Dacoity Section 395 I. P. C.
- ii. Also Section 126 (b) Act (IX of 1890).

Verdict of Jury.

Guilty against all the prisoners of dacoity Section 395 I. P. C.

Opinion of Assessors.

Guilty Section 126 (b) Act. IX of 1890.

Finding of Judge.

Guilty Section 126 (b) Act. IX of 1890.

Sentence.

The prisoners are each sentenced to transportation for life.

The first accused having pleaded guilty on the first day of the trial was found guilty on his own plea of the offences charged and removed from the dock. On the 2nd day, understanding that the Public Prosecutor wished to examine him as a witness for the prosecution he was recalled and sentence passed upon him of transportation for life. He was subsequently examined as a witness for the prosecution on the trial of the remaining accused.

This is a case which has aroused much public interest and you no doubt before you were elected to serve on the jury have heard it discussed. I ask you to be careful in dismissing from your minds any thing you may have heard out of Court, and confine yourself to deciding the issues between the Crown and the prisoners at the bar on the evidence alone.

2. You will also remember that the prisoners must not be convicted except on evidence that raises in your mind a strong belief in their guilt; not a mathematical certainty, for that is not always possible; but such a strong assurance as you would not hesitate to act upon in a matter of importance affecting your own interests.

3. Till that reasonable certainty is produced in your minds it is not necessary for the prisoners to enter upon their defence, and if they have set up pleas (such as those of alibi) which they have not proved that would not suffice for their conviction, unless the case for the prosecution was of itself sufficiently strong to induce in your minds a belief such as I have mentioned in their guilt.

4. I do not wish you to think that I agree with the suggestion that the prosecution has been unfairly conducted by the Police or in this Court; on the contrary it seems to me on the whole that it has been fairly conducted; but I allude here to two matters that may prejudice these prisoners unless I take steps to correct them.

5. One was the statement of a Paducottah Policeman that the prisoners, or some of them, were "suspected" characters. It is allowed for the prosecution that none of the prison-

ers have ever been convicted before, and you must take them as persons hitherto of good character. That the police choose to suspect them proves nothing, for they may suspect people on very inadequate grounds. I should rather say it goes in favour of the prisoners; for it is the duty of the police to watch suspected characters, and it is therefore a circumstance favoring the defence that there has been no evidence in the case of any one of so large a number of persons as to his whereabouts or movements or even that he was absent from his usual haunts on the night in question.

6. The second point is as to a question that was improperly put to the father of the 6th accused viz. "Did you not say that only one of your sons was concerned in this dacoity?" He denied the imputation and you must take the denial as true. But even if it were otherwise it would be no evidence against the accused. He may have said it out of some passing anger with his son, or because he was misinformed. A man may be convicted on his own confession, but it is not yet law that he can be convicted on the confession of his relatives.

7. You can have no reasonable doubt that a dacoity was committed and the question you have seriously to consider is whether the accused or any of them took part in it.

8. The main evidence against them is that of the two witnesses Sangili and Vellaikutti. Sangili is an approver and gives his evidence under a promise of pardon. If the case stood upon his evidence alone, I should have to caution you that it would be highly dangerous to rely on it unless it was corroborated by independent evidence. You might legally do so if you chose to believe it. There are cases no doubt in which I could tell you that an accomplice could be safely believed with corroboration; but this is not such a case.

9. You have, however, here also the direct evidence of Vellaikutti. He was convicted and sentenced before he stepped into the witness box, and has no hope of pardon. I am constrained by the opinion of a very high authority (Sir Barnes Peacock in the Queen v. Elahi Bax, B. L. R. Suppl. Vol. 459) to tell you that that makes a very great difference and his evidence is much more credible than that of the approver and does not stand in such need of corroboration.

10. If therefore you believe the evidence of Vellaikutti, you may look to it for confirmation of Sangili's story which you could not do if Vellaikutti were also an approver. But before believing it you must weigh it carefully. An approver, as a learned authority (Pitt Taylor) has said, is "usually an interested, and always an infamous person". Vellaikutti is not interested in the result of this trial, but it still remains true that he is an infamous person.

11. You must therefore weigh his evidence carefully and will probably require confirmation. I will, therefore, tell you what sort of confirmation you should look for. It should be external, that is something quite independent of the approver's statement, going to show that the accused was connected with the offence. It need not corroborate the whole of the approver's evidence for in that case there would be no necessity to take his evidence at all. But it must tend, not merely generally to corroborate the approver as to the circumstances of the crime, but to show that the accused was connected with it. Moreover, if there are several accused there must be corroboration against each. It was formerly supposed that if the approver was corroborated as to some of the prisoners that was enough. But that is not now the law.

12. The only accused as to whom it is suggested there is any corroboration are the 2nd and 3rd, the two gangmen Marudaimuthu and Masi; and the 6th and 12th, Marudaimuthu and Vellaikutti. I take the case of the 2nd accused first.

13. It is clearly proved that it was his duty to sleep at the Station that night in company with Iyavoo (the 17th witness), and that he was reported the next day by Iyavoo for not having so slept. If you believe that he did not sleep at his post that night it would be a corroboration of the story told by the approver and Vellaikutti; not because of his absence, for that might be otherwise explained; but because it does not appear how Vellaikutti or Sangili could know that it was his duty to sleep on that particular night.

14. I would also say that if it appeared that he were really absent from his duty he ought to be able to prove where he was. That is not contrary to what I said to you before about the hardship of requiring a prisoner to prove an alibi. For here his attention would be at once directed to the matter by his neglect by duty. He would be required to give an expla-

nation of his absence; and the occurrences of that night would at once stamp the circumstances on his mind. It is very different therefore from the case of a man who is asked some months afterwards to fix his movements on a particular day.

15. The question is then, was he really absent from his post that night? As to that there is a contradiction between the evidence of Iyavoo and the Assistant Station-Master. Iyavoo says that he slept that night at the usual place near the tool box, whereas the Assistant Station-Master says that he slept at the Station Master's Bungalow and he gives a reason for it viz. that it was raining and a person sleeping at the tool shed would have got wet.

16. The Station-Master is therefore the more likely to be right and you will probably come to the conclusion that what it comes to is this, that up to half past 8 at night when the special train had passed, the prisoner Marudaimuthu had not come and reported himself as usual to the Station-Master, who then went to his meals. He may of course have come later or he may have come without reporting himself.

17. Then there is further corroboration as to the 2nd and 3rd accused viz. that they were produced before the Deputy Magistrate who has been examined as a witness, with Muthukaruppa Karakachi, the man who committed suicide; that he said in their presence that they were concerned in the Railway dacoity; that these accused both admitted their guilt and promised to produce a bag and papers which were stolen in the dacoity and were accordingly taken to Navalpatti for that purpose. When there Muthukaruppa managed to escape and commit suicide and the prisoners refused to give any further information.

18. If you believe these circumstances they would afford a corroboration of the story of the approver and Vellaikutti. The Deputy Magistrate has not been cross examined to any extent as to the circumstances but two witnesses are called for the defence to show that at Navalpatti when questioned by them these accused denied all knowledge of the crime.

19. I read you the material portions of the statements of the Deputy Magistrate and of these witnesses. You must say which you believe. The witnesses describe themselves as the ryots of Navalpatti; one of them says the other (Venkatachella Kadaran) is the head of the village, but the latter dares not say so himself; on the contrary he says there was the Village Munsiff present and assisting in the questioning and he is not called. None of the prosecution witnesses were asked about these men, but nothing has been shown against them and you must take them to be respectable persons. The only observation that strikes me is that from their statements it would clearly appear that they questioned the accused just before Muthukaruppa committed suicide i.e. after the Deputy Magistrate had already questioned them. If you believe that the Deputy Magistrate had already questioned them in the presence of Muthukaruppa and got an admission of their guilt it would not seem likely that he would afterwards want these witnesses to question them.

20. Another point made against these accused is that Sangili picked them out in the sub jail, though he says he did not know them before the crime. I do not think that of much importance as corroboration, because his picking them out would merely prove that they were persons he knew by sight. All that could be said is that if he did not know them well enough to know their names, it could hardly be that he had any grudge against them. It would simply go to show absence of malice.

21. That is all the corroboration as against the 2nd and 3rd accused. As regards the 6th and 12th there is the corroboration of the 31st and 32nd witnesses who speak to their having been asked by these accused on the day before the dacoity to join in it. If you believe those witnesses that would be corroboration. There are slight discrepancies in their evidence which I point out, which do not seem to me of much importance. Vellaikutti said they promised to join, and did not come whereas the witnesses say they refused from the first. No doubt they are anxious to make their conduct appear in as favorable a light as possible. One of them is certain that Monday was mentioned whereas the other says that the day was not mentioned. They neither, as they say, intended to go and would not perhaps pay much attention and it often happens that one man catches a portion of a conversation which another misses. If they were tutored witnesses, would such discrepancies exist? You will recollect I questioned them

separately on a point not specifically alluded to before viz. as to the exact place where this occurred. As far as one could see they had no chance of previous communication and their answers agreed. On the other hand you must remember that they cannot on their own showing be very respectable witnesses or they would not have been asked to join in this crime. They have in fact been convicted of sheep theft. There are however degrees in crime and a man may commit a petty theft of sheep and yet revolt at a crime like the present.

22. I have now clearly pointed out to you what corroboration there is, but I repeat to you the observations I have previously made, that you may if you like convict even on the evidence of an approver which is not corroborated. (I here repeated my previous remarks as summarized in paras 8-10-11).

23. The principal evidence as I have before told you against these accused is the testimony of Vellakutti and Sangili. I am not going to go over again in detail the stories of these two men. I have no doubt that they made a deep impression upon you which is still fresh in your minds, and you have heard all that has been said by the pleaders for the defence and by the Public Prosecutor. It is not necessary for me to go over the accounts of these two men in detail, because although they have been cross-examined at great length, there is no suggestion made for the defence that any discrepancy has been established between their two stories.

24. The only observation I have to make upon their evidence is of a general nature. You have to consider the suggestion for the defence that this occurrence was not a planned dacoity, but an act of spite on the part of some night watchmen among the staff that were dismissed in July; and that finding the cash chests drop at their feet, the perpetrators carried them off. Two engine drivers have been called to speak to previous occurrences on the railway, going to suggest that mere malice was at work. But the evidence of the respectable witnesses who were in the train that night will convince you that there was a mob of some 20 or 30 persons at the spot, and so many people would not have been necessary to remove the rails, nor is it very likely they would have dared to remain on the spot if their object was not plunder. I don't think that you could listen to the evidence of those two men, Sangili and Vellakutti, without being convinced that there really was a planned dacoity and that they took part in the events they narrate. That seemed to me especially the case with Vellakutti who gave his evidence, it seemed to me without hesitation, under a very severe cross examination. The Public Prosecutor combatted at length, and I think conclusively, the supposition that the notes given up by Vellakutti at the search of his house had been picked up by the Police at the spot. I don't think that was suggested by the defence. There may have been at an early stage of the case an intention of relying on some such theory, but that intention was very wisely abandoned. The only point that struck me as curious was the retention by the approver and Vellakutti of those two worthless bags and the useless railway receipts. The theory that I formed was that these articles were secreted and kept by these two men in order to furnish corroboration if they afterwards found it expedient to become approvers. That theory still seems to me to hold good as to the bags, but the Public Prosecutor has suggested another object for the retention of the receipts, which is probably the true one, viz. that they would show the total amount of booty, and assist the dacoits in afterwards adjusting the shares taken by each man.

25. I have already dealt with the defence witnesses called for the 2nd and 3rd defendants and as to those called for the others there is not much to say. You have heard the evidence of the witnesses who speak to a dispute between some of the accused and Darmalingam, the witness who went with Sangili to the Magistrate and you will be able to form your own conclusions about it. I must point out to you that Vellakutti admits that there was a land dispute between him and the 11th accused last year, and that he brought a criminal charge against him which was dismissed as false. As to the details of that dispute we know nothing more.

26. I now leave the case in your hands and in so doing repeat to you that the accused are all previously unconvicted men of good character and that it certainly does appear difficult to understand how such men could be induced to commit so atrocious a crime as the present.

At the conclusion of the trial of the accused for dacoity (Section 395 I. P. C.) the jury, who had found all the prisoners guilty of that offence were then as assessors asked their opinion as to the offence under Section 126(b) of the Railway Act with which the prisoners were separately charged, and answered that they found them all guilty under that Section.

As the jury have found the prisoners guilty of dacoity, in the exercise of their undoubted discretion I did not consider it necessary to differ from the opinion they expressed as assessors especially as the second charge was purely formal, and merely proceeded with at the desire of the Public Prosecutor. I may say, however, that I entertain strong doubts as to the prudence of convicting on the uncorroborated evidence of such miscreants as Sangili and Vella Kutti and that there is corroboration only as against the 2nd, 3rd, 6th and 12th accused. At the same time, apart from the character of the men, there is nothing to be said against their testimony and in point of fact I have rarely heard better evidence than that given by the convict, Vella Kutti. I therefore concur with the assessors and find the prisoners guilty of an offence under Section 126 (B) Act IX of 1890. The accused have been convicted of a planned dacoity in the course of which they wrecked a mail train and narrowly escaped sacrificing the lives of many hundreds of passengers. The chief organiser has escaped the penalties of the law by a voluntary death. I do not think it proper to make any distinction of guilt between the prisoners before the Court and I am of opinion that leniency would be altogether misplaced. I accordingly sentence all the prisoners before the Court to Transportation for life.

TRICHINOPOLY,
SESSIONS COURT.
18th December 1891.

(Signed) H. H. O'FARRELL.

Sessions Judge.

(True copy)

(By order)

Narasayakumar
Shrinivas

To The District Magistrate
of Trichinopoly
with reference to his letter No 37/Chin
dated 21st Dec 1891.

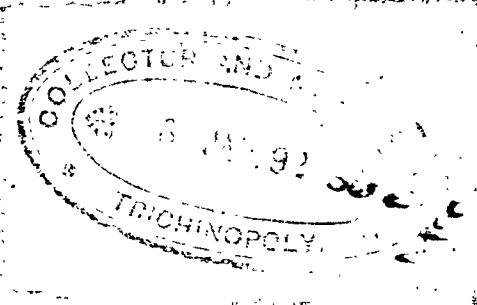
Trichinopoly District Magistrate's Office
2nd February 1892.

No. 14/2

From H. H. Kelch Esq.
District Magistrate
Trichinopoly

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

Sir, The Superintendent of Police
has informed me that the following
5 persons concerned in the Railway
dacoity case disposed of by the
Sessions Judge in. c. c. No. 42 of
1891; viz. Piyaru Tholathiyar,
Palla Karuppan of Singalur, Palla
Karuppan son of Pambayam, Palla
Sadayam and Naugappan. These
- Kondam are still awaiting
arrest and that the evidence against
them is the same as that upon
which prisoners Nos. 4 to 14
have been convicted and sentenced
to transportation for life.



For perusal.
11-1-92

11-1-92

2070

2403 - 24-11-91 - 1st
2330 - 12-11-91 - 1st
2043 - 6-11-91 - 1st
1085 - 24-10-91 - 1st

H. M. & M. J. C. ...

For orders

As to whether the proposed reward may be granted. The S.G. will of course come up about the conduct of the Police.

11 Feb

1892.

DEPARTMENT.

FROM

THE COLLECTOR OF *Madras*

TEICHINOPOLY.

To

The Chief Secretary to Government,

Judicial Department.

Madras

CHIEF SECRETARY
13 FEB 92

Dated 2nd
Despd. *11 Feb 1892*
Recd.

No. 14
2

Enclosures. 1

Requesting sanction for offering a reward of Rs 200 for the arrest of the each of the 5 accused in the Roub-
may Dacosty case who are still evading arrest.

15/2

[3]

DEPARTMENT.

Papers to be read in Proceedings

Again G.O., dated 18, No.

Again G.O., dated 18, No.

Current No. of 18, dated from

Current No. 489 of 1892, dated 27th from *The L. Magistrate, Trichinopoly*

17 February 192

The L. Magistrate of Trichinopoly is authorized to offer a reward of Rs 200 for the arrest of each of the 5 persons referred to.

(From orders)

16 Feb

To the L. Magistrate, Trichinopoly.
Ant. Guf.
15/2

DESPATCHED
13 FEB 92
IN M.S.

ORDINARY, MS.

*Recd
8/17/12*
12/19/12

Judicial DEPARTMENT.
G.O., DATED *7-2-72*
No. *331*

INDEXED.

When given for copying

[Despatch Abstract.]

*Authorizing the Dist. Magt
of Richmond to offer a
reward of Rs 200 for the
arrest of each of the 5 persons
connected with the Railway
Sabotage case.*

Dated

196

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