

Law (Ed) (1930) Department.

K SERIES.

G.O. No. 4716

DATED

7.11.1930

(8 sheets)

[Despatch Abstract.]

Convict -

Commutation of sentence - Tholi alias Govindammal -

Transportation for life - North Arcot, S.C. No. 17 of 1930 - Reduced
to 3 years rigorous imprisonment.

BACK

No.	Department.	Date.	G.O.

FURTHER PA

No.	Department.	Date.	G.O.

பாதுகாப்பு பிரிவு
செய்யுபுலவர் பெயர் : சி. ராமசுந்தரன்
செய்யுபுலவருக்காக எடுத்துக் கொள்ளப்பட்ட நான். 24.10.30
செய்யுபுலரு முடித்த நான். 26.10.30

சுப்பிரகீசு
சுப்பிரகீசு
சுப்பிரகீசு

சுப்பிரகீசு
சுப்பிரகீசு
சுப்பிரகீசு

சுப்பிரகீசு
சுப்பிரகீசு
சுப்பிரகீசு

DEPARTMENT.

29.10.30
4549B

29.10.30

Received



192

Registered

192

Subject.

ENCLOSURES.

No.

H.C.J No. 11160/30.

Spare copies

Station Madras, Dated the 28th October 1930.

From (Name) M.R. Ry. Rao Bahadur S. Andisundarachari Avl,
B.A.B.L.,

(Designation) Ag. Deputy Registrar, App. Side,
High Court.

To The Secretary to the Government of Madras,

Law (General) Department.
(with enclosures).

Sir,

Reduction of sentence-Tholi alias Govindammal-
S.C.No.17 of 1930-Sessions Court, North Arcot.

I am to forward for the orders of Government
letter No.5952 dated 24th July 1930 from the Sessions
Judge, North Arcot, in which he recommends that the
sentence of transportation for life passed by him on
Tholi alias Govindammal, the accused in S.C.No.17 of 1930
on his file, under Section 302, I.P.C, may be reduced
to three years' rigorous imprisonment and to state the
accused has not appealed to the High Court and that the
time for appealing has expired.

A copy of the judgment in S.C.No.17 of

1930 noted above is enclosed.

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

Snoisunooarachai
Ag. Deputy Registrar, App. Side. 25/6

V.S.

SV
28 X 30

C.F. 82 2-20

No. 5952

OFFICE OF THE

SESSIONS JUDGE OF

STATION

NORTH ARCOT, VELLORE,

Date

24TH JULY, 1930.

From

L. C. Horwill Esq., I. C. S.,

Sessions Judge.

To

The Secretary to Government,

Law Department, M A D R A S.

Thro'

The Registrar,

High Court of Judicature, MADRAS,

SIR,

Sections 401 C. P. C. and 55 I.P.C. - S.C.No. 17 of 1930 on the file of this Court - accused Tholi alias Go-vindammal - sentence of Transportation for life on - re-duction of to 3 years R. I. - recommending. 47 cf. at A

I have the honour to recommend that the sentence of Transportation for life awarded under section 302 I. P. C. to the accused be reduced to three years' R.I.

2. There is no special reason in this case which does not apply to all cases of infanticide. To quietly smother a young baby with no sense of being and under-standing does not require the same violent, active and vicious intent as is required to take away the life of an older being fully possessed of the instinct of self-preservation and the value of life. The mother feels that, painlessly and without cruelty, she is shielding an unwanted child from the miseries of life.

3. The murder of an illegitimate infant causes pain and grief to none and, in an over-populated country, causes no injury to the State.

4. I do not, however, recommend the reduction of the sentence below three years' R. I. The accused

was not a woman of good reputation who might be
~~was~~ that the ~~existence~~ ^{birth} of a child would ruin
and outcaste her. She was already leading a
dissolute life and had no further reputation to
lose. She ^{personally} rid herself of the child
~~truly~~ because she did not want the trouble of
rearing it. In so doing she acted in an inhuman
and unmotherly manner.

Your obedient servant,

Chennai 26/7/30
SESSIONS JUDGE.

M. S. N.

5 / 4 / 1936
In the Court of Session, of North Arcot Division, Vellore.

PRESENT:—L. C. HORWILL Esq., I. C. S.,
Sessions Judge.

Thursday the 24th day of July, 1930.

SESSIONS CASE No. 17 of 1930.

P. R. No. 3 of 1930 committed by M. R. Ry., R. Michael, B. A., 10
Second Class Magistrate, Vellore.

Name of Accused:—

Tholi *alias* Govindammal.

Offence:—

Murder Section 302 I. P. C.

The accused was defended by M. R. Ry., B. Ranganatha
Mudaliar, Advocate, Vellore. (Appointed by the Crown)

Names and castes of Assessors:—

1. Abdul Jabbar Saheb. (Mahamadan)
2. Govinda Reddiar. (Vellala).
3. Jayaratna Chettiar. (Chetti).
4. Anna Nainar. (Jain).

20.

Opinion of Assessors:—Not guilty.

Finding of the Court:—Guilty.

Sentence or order:—

Transportation for life, but recommended to Government
that this sentence be reduced to R. I. for three
years under Section 401 C. P. C.

This case coming on for trial on the 22nd day of July, 1930
and having stood over for consideration till this day the Court
delivered the following 30

JUDGMENT:—

The accused is charged under Section 302 I. P. C. with the
murder of her newborn child.

2. P. W. 1, a young boy, was tending his cattle near a tank
(Devikulam) in Sirukulambur when he saw a body floating. He
raked it ashore with his stick and finding that it was the corpse of
a male infant, ran to the village and told his school-master, P. W-2,
of his gruesome discovery. P. W. 2 informed P. W. 3, the Village
Munsif of Sirukulambur, and he in turn sent reports to the police and
the Sub-Magistrate. The Sub-Inspector, P. W. 14, reached the 41

village the same night and conducted an inquest the following morning. P. W. 12 was present at the inquest. They discovered a mark on the neck of the child as if the skin were peeling off. The Sub Inspector arrested the accused and sent the corpse to the Vellore hospital for post-mortem examination through P. W. 15.

3. P. W. 4 is the Assistant District Medical Officer, Vellore. He conducted the post-mortem on the child and found characteristic signs of death by asphyxia, such as congestion of the lungs and the brain and engorgement of the right side of the heart. It was pointed out to him by the learned advocate for the defence that the condition of the organs was consistent with death by sun-stroke. In asphyxia, however, the signs of congestion are naturally more marked than in sun-stroke and what this witness describes as 'dripping of the scalp when cut' is peculiar to asphyxia and is an indication of extreme congestion. In the whole of his twenty years experience he has never known of a young child dying from sun-stroke and it has to be remembered that this death was in February.

4. P. W. 5 is the Lady Assistant Surgeon in charge of the maternity section of the hospital. She deposes that the accused gave birth to a male child and was discharged from the hospital at her own request eight days later. Both mother and child were then in a sound state of health.

5. P. Ws. 6 and 7 are two scavengers of the maternity ward in the hospital who depose that the accused offered to sell the baby to P. W. 6 for eight annas. P. W. 6 refused as she could not afford it. P. W. 11 is a midwife in the same hospital who assisted at the accused's delivery.

6. P. Ws. 8 and 10 depose that the accused was married to a man in Oosur and after living with him for six months or so, left him for P. W. 8 with whom she had illicit connections while living in the house of her father, P. W. 10. The matter was brought to the notice of the caste-headman, P. W. 9, who summoned a panchayat and awarded the husband Rs. 32 damages to be met by P. W. 8. The marriage was thereby annulled. As the accused continued to misconduct herself with P. W. 8, her father sent her away from his house. From then until after the offence she did not return to him and he does not know where she went.

7. Two days after the accused was remanded, P. W. 14 sent a requisition to the Stationary Sub-Magistrate, Vellore (P. W. 13) requesting him to record a confession from the accused. On 14-3-1930, twelve days after the requisition, the Magistrate did so. It is to the effect that on account of her shame at giving birth to a child which was not that of her husband she threw it on the ground, pressed her foot against its neck, and threw it into the tank.

8. The accused stated in the Lower Court that the child was sickly even while she was in the hospital and died on her way home. As she was unable to dig a pit to bury it she threw it into the pond. In this court, she adds that her confession was given because of the inducement held out by the police that she would be let off if she said that she killed the child. She has examined no witnesses.

9. There is nothing on the record to show that the Magistrate summoned the accused and asked her if she wished to make a confession and then sent her back to the sub jail for a day or two to think over it again nor did he, apparently, on the day that he recorded the confession, give her an hour or so for the same purpose. However, the Magistrate may have done so for he was asked no questions about

this while in the box. As pointed out above, the accused was in jail for fourteen days beyond the influence of the police before being called to give her statement. Some objections have been raised to the manner in which the confession was recorded. The first is that the Magistrate did not warn the accused that she was not bound to make a confession and the second is that he also did not give his reasons for believing her statement to be voluntary. With regard to the first point, there is no obligation on the Magistrate recording a confession to put his warning in the form of an interrogatory. He has appended a certificate to the effect that he warned the accused that she was not bound to make a confession and, in the absence of any cross-examination on that point, the certificate must be accepted. With regard to the second point, it is true that the Magistrate did not record his reasons for believing that the statement was voluntary but the explanation is simple in that there could have been no reasons for believing that it was not voluntary. He questioned the accused as to whether she had been interviewed by the police, what they had said to her, and whether they had threatened her. Although he should perhaps have given his reasons, I do not think that under the circumstances his failure to do so can affect in any way the value of the confession made.

10. The confessional story is also reasonable and probable. Those present at the inquest saw a small mark on the neck which may or may not have been caused by the foot of the accused in the manner stated by her. The Medical Officer did not find any external marks of injury but he examined the body about 36 hours after it was taken from the water at which time decomposition must have set in. In any case, it requires so little force to stifle a newly born child that she could have done so without causing any external marks of injury at all. There is no evidence in support of the sun-stroke theory and it is not true that her child was ailing even while she was in the hospital. It was not likely, therefore, that the child died from natural causes or by accident. The evidence of P. Ws. 6 and 7 shows that she was anxious to get rid of the child.

11. Even apart from the confession it seems impossible to resist the conclusion that the accused committed the murder. She left the hospital, only 4½ miles from the village, with the child in sound health and threw it away secretly an hour or so later. I find her guilty of murdering her infant child.

12. The Assessors do not accept any part of the Prosecution evidence not even that the child found belonged to the accused. This the accused has never denied and the circumstantial evidence puts the matter beyond doubt. The accused must have passed that well: and the infant recovered was of the same age and sex as the child of the accused.

13. I sentence the accused to 'Transportation for Life' and, for reasons mentioned separately, recommend to Government that this sentence be reduced to R. I. for three years.

(Sd.) L. C. HORWILL,
Sessions Judge.

PROSECUTION WITNESSES.

- | | |
|------------------------|---------------------------|
| 1. Govindan. | 8. Chinnathambi. |
| 2. Pachia Pillai. | 9. Muthukrishnan. |
| 3. Muthial Reddi. | 10. Kuthiveethu Munian. |
| 4. Dr. A. N. Verghese. | 11. Chintamani. |
| 5. Dr. D. Costa. | 12. Arunachala Pillai. |
| 6. Rosij. | 13. Mr. R. Michael. |
| 7. Kuthiammal. | 14. Mr. Syed Abdur Rahim. |

15. P. C. Sheik Karim.

DEFENCE WITNESSES—None.

PROSECUTION EXHIBITS.

A	26-2-1930	Village Munsif's report to the police.	
A-1	26-2-1930	Do. to the Sub-Magistrate.	
B	27-2-1930	Inquest Report.	
C	28-2-1930	Post-mortem certificate.	
D	28-2-1930	Certificate issued by P. W-5 concerning condition of accused.	
E	14-3-1930	Confession of accused recorded by P. W-13.	10
F		Plan of the scene of offence.	
G	1-5-1930	Statement of accused in the Lower Court.	

DEFENCE EXHIBITS.

I	10-4-1930	Portion marked in the deposition of P. W-6 in the Lower Court.
II	10-4-1930	Portion marked in the deposition of P. W-7 in the Lower Court.

(Sd.) L. C. HORWILL,
Sessions Judge. 19

(True Copy)

L. C. Horwill
Sessions Judge

To
The Registrar, High Court of Judicature, Madras.
The District Magistrate, North Arcot, Vellore (3 copies).
The District Superintendent of Police (3 copies).
The Inspector General of Police, S. C. No. 17 of 1930 through the Superintendent of Police, North Arcot.
The Superintendent, Central Jail, Vellore.
The Prisoner through the Superintendent, Central Jail, Vellore.
The Public Prosecutor, North Arcot.

Record Press, Vellore.]

[No. of words. 1513.

h710

New Order Asept

Commutation of Sentence

1 of [49/4 A] From the Deputy Regr. High Court No. 4.C.2

1160/30 dated 28.10.30.

A.S.

In S.C.M. 17 of 1930, the Sessions Judge, N. Arcot, convicted the accused of the offence of murdering her newborn child and sentenced her to transportation for life. While passing the sentence, the learned Sessions Judge has recommended to Govt. that the sentence may be reduced to R. I. for three years, for the reason stated by him in pp 3-4 cf.

2. The High Court while forwarding the letter from the Sessions Judge, N. Arcot, say that the accused has not appealed to the High Court and that the time for appealing has expired - please see page 1 cf.

3. The Sessions Judge ^{does} ~~thinks~~ recommends reduction of sentence below that of ~~transportation for life~~ ^{three years rigorous imprisonment}. In a similar case of murdering a newborn child, the sentence of transportation was reduced to 3 years ^{simple imprisonment} ~~R. I.~~

U

12.2.30

In a more recent case, of kidnapping two new-born children which came up to Govt. for consideration in August 1930, the sentence was reduced to 3 years' rigorous imprisonment - ~~while G.S. No. 3336 L.G.~~ (R) dated 7.8.30.

4. Subd. for orders.

[Faint handwritten notes and signatures]
The sentence may be reduced to three years' rigorous imprisonment.



C. 2. 1930: (The views of the sessions judge expressed in para 3 of his letter are rather queer.)
H.C. 1/2/30
A.S. 6.11.30

A.S. A draft order is subd. for approval.

[Faint handwritten notes and signatures]
6.11.30
7/11

	Date.	Initials.
When received for Fair-copying.		
When copied		
When examined		
When signed		
When despatched		

53 7.11. 4716 Law (Legal) DEPARTMENT.

Convict.
Commutation of Sentence
- Tholi alias Govindammal -
Transportation for life - North
West S.C. No. 17 of 30. 1930 -
Reduced to 3 years' R.I.

READ AGAIN G.O. No. _____, dated _____ 19__

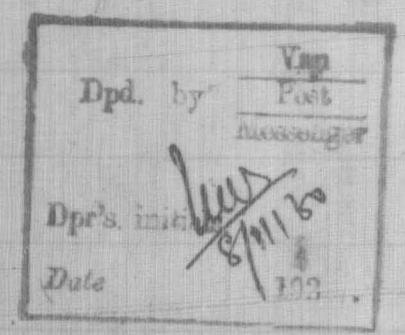
READ ALSO:-

C. No. 4914 A From the Sg. Regs. High Court, No. 1160/30, dated 28.12.1930.

19__
19__

ORDER.
Mis.

No. 4716, dated 7-11 19 30.



2. The Hon'ble the C-J (with C.L.)

1. Sessions judge, N. Asot (in duplicate for comm. to the prisoner and the Supt. Central Jail, Kollase).

2. D. M. N. Asot thro' the Sessions judge, N. Asot (in duplicate)

3. S. G. of Police (with a para copy)

In exercise of the powers conferred by Sec. 55, J.P.C. and Sec. 402 of the Code of Criminal Procedure, 1898, the Governor-in-Council is pleased hereby to commute the sentence of transportation for life passed on Tholi alias Govindammal by the Sessions judge, N. Asot in S.C. No. 17 of 1930, to one of rigorous imprisonment for three years.

6.11.30
7/11