

Law (General) (1930) Department.

Ms. SERIES. ✓

G.O. No. 5090

DATED 2-12-1930.

(95 Lines)

[Despatch Abstract.]

Convict - Commutation of sentence - Nachammal - Transp. in
for life - Coimbatore S.C.No.73 of 30 - Reduced to
three years' rigorous imprisonment.

BACK PA

No.	Department.	Date.

FURTHER

No.	Department.	Date.

பாதுகாப்பு பிரிவு

செப்பனிருவர் பெயர் : சீ. ராமச்சந்திரன்
செப்பனிருவதற்காக எடுத்துக் கொள்ளப்பட்ட நாள். 03.11.2009
செப்பனிட்டு முடித்த நாள். 03.11.2009

சுபாதிக்கம்
முதல் முதிபாள
கையொப்பம்

சுபாதிக்கம்
2ம் முதிபாள
கையொப்பம்

சுபாதிக்கம்
உதவியாளர்
கையொப்பம்

DEPARTMENT.

Received 192 Registered 22 NOV 1930 192

Subject.

ENCLOSURES.

No.

No. 2464

Spire copies

Station Madras, Dated the 21st November 1930.

From (Name) Rao Bahadur M.R.Ry., S. Andisundarachari, Avl., B.A., B.L.
(Designation) Ag. Deputy Registrar, Appellate
Side, High Court.

To The Secretary to the Government of Madras,

Law (General) Department.
Madras
(with a copy of the Judgment).

Sir,

b2cf

I am directed to forward letter D.No.5934/30 of the
Sessions Judge of Coimbatore dated the 10th day of September
1930, recommending the reduction, to 3 years Rigerous Imprison-
ment, of the sentence of transportation for life, passed on
Nachammal - accused in Sessions Case No.73 of 1930 on his
file. A copy of the judgment in the case is enclosed.

b2cf

I have the honour to be,

Sir,

Your most obedient servant,

S. Andisundarachari

Ag. Deputy Registrar, App.Side.

BCR.

21/11/30

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5090
Subject

Reference under Section 401, Cr.P.C- Accused Nachammal-
Sessions Case No. 73 of 1930, on the file of this court.

D.No. 5934

Sessions Court, Coimbatore.

Dated 10th September 1930.

From

M.R.Ky. Rao Bahadur A.V. Govinda Menon Avargal, B.A.B.L.,
District Judge

To

The Secretary to Government,

Law Department,

Madras.

Through

The Registrar,

High Court,

Madras.

Sir,

I have the honour to make the following reference under
Section 401, Code of Criminal Procedure.

2. One Nachammal, aged 25 years (accused in Sessions,
Case No. 73 of 1930 on my file) has been sentenced by me to
transportation for life on a charge of murdering her child
aged about 10 days, by throwing it into a well. The facts of
the case are fully set out in my judgement, a copy of which
is enclosed.

3. The child was illegitimate: and it is not improbable
that the accused committed the crime in a moment of extreme
desperation caused by her paramour's neglect of her. She had
been discarded by her relations and refused maintenance by
her paramour. I am of opinion that the ends of justice will
be met by reducing the sentence to one of rigorous imprisonment

for three years.

I have the honour to be,

Sir,

Your most obedient servant,

A. V. Govinda Menon

Sessions Judge

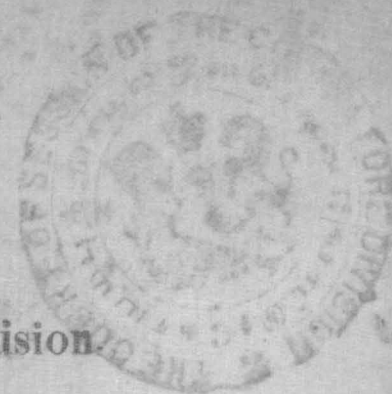
ave

Encl:- Judgement copy.

KVN



5090



In the Court of Session of the Coimbatore Division

PRESENT :

M.R.Ry. Rao Bahadur A. V. Govinda Menon Avargal, B.A., B.L.,
Sessions Judge.

Friday, the 22nd day of August 1930.

SESSIONS CASE No. 73 of 1930

NAME OF PRISONER...	Nachammal.
OFFENCE	Murder, Section 302, I.P.C.
NAMES AND CASTES OF ASSESSORS	1. P. N. Rama Rao, Brahmin. 2. S. V. Venkataramana Ayyar, Brahmin. 3. Nagamanikka Mudaliar, Vellala. 4. Narayana Ayyar, Brahmin.
OPINION OF ASSESSORS	Not guilty.
FINDING OF THE JUDGE	Guilty as charged.
SENTENCE	Transportation for life.
NAME OF PRISONER'S ADVOCATE	Mr. G. Sundaram Ayyar, Advocate, appointed by Court.

Committed by M.R.Ry. A. S. Venkataramana Ayyar, Stationary Sub Magistrate,
Palladam, in Register Case No. 16 of 1930.

JUDGEMENT.

The accused Nachammal, a Pulava Gounda woman aged 25, is charged that, on or about the 7th day of June 1930, at a garden known as Mulaikinathu Thottam, near Vadavalli village, Palladam Taluk, she committed murder by intentionally causing the death of her male child aged about 10 days by throwing it into a well in that garden (Section 302, I.P.C.).

2. P.W. 3, a Pulava cooly aged 50, married the accused about 10 years ago. He says that she lived with him for about 10 days and then left his home. She was afterwards wandering about from place to place. Then she returned to her father's house. It would appear that P.W. 3 at the time of his marriage with the accused had a concubine by name Valliammal. It also appears from the evidence that after the accused left P.W. 3, one Vellai Goundan became intimate with her. The accused became pregnant and went to the house of her relation (P.W. 7) about three months before the occurrence. As she was leading a vagrant life, she was not allowed to mix with her relations but was asked to stay in a shed close to the house of P.W. 7 where she gave birth to a male child, about 10 days before its body was discovered in the well in Mulaikinathu Thottam. P.W. 9, an old Pulava

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woman of 65, swears that the accused gave birth to a male child in P.W. 7's shed and that she assisted her at her delivery. P.W. 7, whose senior paternal uncle's daughter is the accused, says that Vellai Goundan's sister Palaniammal also assisted her at the confinement. P.W. 8 deposes that at about pattiyaal time he returned from his field after the day's work. He then went to sleep. At midnight he got up to make water when he saw the accused with the child in the shed. At cock-crowing time he left for his field when he found neither the accused nor the child in the shed. The shed is only two or three cubits from his house. At noon on Sunday, he got information in the field that the accused had thrown her child into a well. In the evening of the same day, he went to the well and found the child in it.

3. Mulaikinathu Thottam belongs to the ex-maniyagar of Vadavalli. It was cultivated by P.W. 4 who has been in possession of it for the last ten years. On the 8th of June at about noon, P.W. 4 went to the garden to bale water from the well when he found the dead child in it. It had been immersed in the water. He at once mentioned the fact to P.W. 5 who asked him to inform P.W. 6 and one Muthukomarasami Goundan (not examined). P.W. 4 accordingly informed them. These four persons then went to the well and saw the corpse. On their return from the garden to the village, they met the accused whose house was on the way. P.W. 5 who had, in the meanwhile, learnt from the villagers that the child was the accused's, asked her whether it was a fact. On her replying in the affirmative, he asked her why she had thrown the child into the well to which she replied that as she found it difficult to bring up the child, she had thrown it there. Then P.W. 4, 5 and 6 and the other Goundan went to the house of the V. M. (P.W. 10) where P.W. 4 gave a complaint which was recorded.

4. This complaint (Exhibit A) runs as follows:

"At about 12 noon on Sunday the 8th day of June 1930, when I looked into the well in Mulaikinathu Thottam which I cultivate under a lease, I found in the water a dead male child which was about 10 or 12 days old. While I was reporting this fact in the village, I learnt from the villagers that it was the child of Nachammal, daughter of Ayyasami Goundan of the aforesaid village. The said Nachammal was questioned in the presence of some respectable ryots and she stated that she had herself thrown the child into the well."

After recording Exhibit A, P.W. 10 asked one of his menials to fetch the accused, and sent his reports (Exhibits B and B-1) to the Police and Sub Magistrate.

5. Exhibit B was received at the Kamanayakkanpalayam Police Station on the 8th June 1930 by the Station Writer in the absence of the Sub-Inspector (P.W. 11) on casual leave. When he returned from leave on the 9th June he came to know of the occurrence and forthwith went to the village for investigation, reaching it at about 8 A.M. The Station Writer was then investigating under Section 174 Cr.P.C. P.W. 11 took up the investigation and questioned P.W. 3 to 9 thereat. He arrested the accused on the same day. The body of the child was sent for post-mortem examination to P.W. 1, the Sub-Assistant Surgeon in charge of the Palladam hospital, who held the autopsy on the morning of the 10th June. The body was in an advanced state of decomposition and therefore the cause of death could not be definitely predicated. But P.W. 1 is positive that the post-mortem signs indicated that the child must have breathed after its birth.

6. The accused states that she did not throw the child into the well. She admits that the child was born to her and says that she asked Vellai Goundan to give her food and raiment and that he said that he could not find her maintenance if she sat at home. So saying he seized the child and put it into the well. She calls no witnesses.

7. The medical evidence shows that the child must have lived after its birth. The accused admits it. Her plea is that her paramour and not she, threw it into the well. No one actually saw the accused put the child into the well, and the case depends entirely upon the value to be placed on the evidence of P.W. 4, 5 and 6, who say that the accused confessed to them of having thrown the child into the well. P.W. 4 is not shown to have any animus against the accused nor does the accused suggest any. P.W. 5 is a respectable ryot paying a kist of Rs. 60. He too has no motive to give false evidence. Similarly P.W. 6 who is the Oor-Goundan does not appear to have any motive for perjuring against the accused. But he made a foolish statement regarding Exhibit A which he said he had attested. This statement was made rather inadvertently in answer to a leading question. He also stated that he was asked to sign Exhibit A by the Village Munsif after the arrival of the Police. As it appeared to me from the witness' behaviour in the box that he was not weighing his answers properly, I asked him whether he knew to read to which he replied that he did not. He was shown Exhibit A again and after looking at it intently he said that it did not contain his signature and that his statement that it did contain his signature was made out of ignorance. This witness did not strike me as particularly intelligent. The signature which he said was his in Exhibit A is No. 2 (Ayyasami Goundan). The witness' name is Kolandamuthu Goundan. Though I am not prepared to disbelieve him for this slip, I think it perhaps safe that his evidence should be discarded from consideration. P.W. 7's evidence in the lower court was filed under Section 288, Cr. P.C., as he deliberately retracted some of the statements made therein. The Public Prosecutor requested for permission to cross-examine him, which was granted. He then stated that his deposition in the lower court marked as Ex. G, contained many false statements and that he made those statements at the request of the Police. It appears that after the committal of this case, the Police have charged him and some others with rioting at the house of P.W. 6. Possibly this accounts for his present attitude but there is no doubt that the witness has deliberately perjured himself and I am taking separate proceedings against him under Section 476, Cr. P.C. In the circumstances, it is not safe to act upon the testimony of this witness also. But the evidence of the remaining witnesses is clear and cogent as against the accused.

8. The assessors unanimously opined that the accused is not guilty. Asked if they wished to give any reasons for their opinion, they said that they did not. It is not improbable that they were carried away by the appeal made to them by the learned advocate for the defence that it was not likely that a mother would have done such a deliberately cruel act as throwing her babe into a well.

9. As I find no good reasons for disbelieving P.W. 4, 5, 8 and 9 and as the fact of the confession made by the accused is referred to in the earliest complaint (Exhibit A) made by P.W. 4, I cannot see my way to agree with the assessors. Accordingly I find the accused guilty as charged.

10. It appears to me however that this is not a case for capital sentence. There is no doubt that the accused found it difficult to bring up the child properly. The child was illegitimate. Her paramour refused her maintenance. She had been discarded by her relations. For nearly eight days after delivery she kept the child and looked after it. It is not improbable that the crime was committed in a moment of extreme desperation caused by her paramour's neglect of her. In an unreported case from Nagpur (75 Indian Cases 767-Dhanja Kunbi v. Emperor) the learned Officiating Judicial Commissioner and the Assistant Judicial Commissioner observed that it has invariably been held in all the Courts in India that in the murder of her newly born illegitimate child by a woman, there are mitigating circumstances sufficient to reduce the appropriate penalty very much below a sentence of transportation for life. I have not been able to lay my hands on any of the decisions referred to by the learned Judges. But I think, taking the whole of the circumstances into consideration, that this is pre-eminently a case for the infliction of the lesser sentence of transportation for life. I order accordingly. Under Rule 252 of the Criminal Rules of Practice, a reference will also be made to the Local Government through the High Court.

The accused is committed to the Presidency Jail for Women at Vellore.

A. V. GOVINDA MENON,
Sessions Judge.

RECORD OF OPINION OF ASSESSORS.

- No. 1. Not guilty.
- No. 2. Not guilty.
- No. 3. Not guilty.
- No. 4. Not guilty.

Q. Do you wish to give any reasons for your opinion?

- A. No. 1. No.
- No. 2. No.
- No. 3. No.
- No. 4. No.

LIST OF WITNESSES EXAMINED.

FOR PROSECUTION:	...	...	1. C. Chintan Nair, Sub Asst. Surgeon,
			2. Karunakaran Nair, P.O. No. 314,
			3. Kaliappa Goundan,
			4. Ayya Konan,
			5. Ramasami Goundan,
			6. Kolandamuthu Goundan,
			7. Paramagurusami Goundan,
			8. Mandiri Goundan,
			9. Sembathal,
			10. Krishnasami Mudaliar, Village Munsif,
			11. G. S. Sivarama Ayyar, S. I. of Police.
FOR DEFENCE:	...	...	None.

LIST OF EXHIBITS FILED.

FOR PROSECUTION:—

A	8-6-1930.	Complaint of P.W. 4 to the Village Munsif,
B & B-1	8-6-1930.	Village Munsif's reports to the Police and Sub Magistrate,
C	10-6-1930.	Post-mortem certificate,
D	Do.	Wound certificate granted to the accused,
E	9-6-1930.	Plan,
F	30-6-1930.	Deposition of P.W. 1 in the lower court,
G	Do.	Do. P.W. 7 Do.
H	Do.	Statement of the accused in the lower court.

FOR DEFENCE: ... Nil.

MATERIAL OBJECTS PRODUCED.

Nil.

A. V. GOVINDA MENON,
Sessions Judge.

(True Copy)

Sessions Court, Coimbatore,
Dated 11th September 1930

Sessions Judge

To

The Registrar, High Court, Madras.
 „ District Magistrate, Coimbatore, with 2 spare copies.
 „ Inspector-General of Police, Madras, through the Superintendent of Police, Coimbatore.
 „ Superintendent of Police, Coimbatore, with 2 spare copies.
 „ Superintendent, Presidency Jail for Women, Vellore.
 „ Public Prosecutor, Sessions Court, Coimbatore.
 „ Prisoner, through the Superintendent, Presidency Jail for Women, Vellore.

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7/5090

Law (Spec) Dept

Council - Nachammal - Commutation of Sentence.

Pl of [5405 A] from the Dy. Reg. High Court - No. 2464 J

Dated 11.2.30

A.S.

pp 4-8 of.

In S.C. No. 73 of 1930, the Sessions

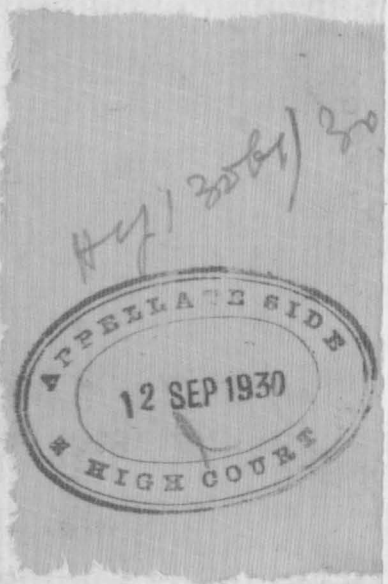
Judge, Comibatore, convicted the accused of ^{the offence of} murdering her child aged about 10 days and sentenced her to transportation for life. Having but while passing the sentence, the learned Sessions Judge ^{stated that a reference would be made to Govt. for reduction of sentence.} ~~has addressed the Court through the High Court recommending~~ ^{he has accordingly recommended} the reduction of the sentence to one of rigorous imprisonment for three years. vide pp 2-3 of. He is of the opinion that the ends of justice will be met by reducing ^{at "A"} the sentence to 3 years R.I.

2) In a similar case of murdering two new born children, which came up to Court for consideration ^{respectively}, the sentence was

① reduced to three years R.I. vide G.O. 3336 A.2 dated 7.8.30. In a more recent case of murdering a newborn child, the ~~same sentence was fixed by the Court.~~ ^{reduction of sentence to rigorous imprisonment}

② ~~for 3 years~~ Please see G.O. No. 4716 dated 7.11.30.

3) Submitted for orders whether the same ^{considering the facts of the case}
 26.11.30. 27/11/30



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8/5090
Law (Genl) DEPARTMENT.