

Public Works (1899) Department.

G.O., No. 268 W

DATED 6th Feb 1899.

[Despatch Abstract.]

M.R. A. Balasundaram Pillai, Accountant.

Approving the Revenue Officer's Report in
having wired to the Executive Engineer, Cuddalore,
to allow _____ to repair his 24 ft. tank,
he having been acquitted by the Criminal Court
of the criminal charges brought against him.

30 JAN. 1899

No. 902000

ASSESSOR CASE,

Calendar Case No. 3 of 1899, on the file of the Sessions Court
of Cuddapah.

(Preliminary Register Case No. 4 of 1898, on the file of E. L. Thornton Esquire
Joint Magistrate of Cuddapah)

The 5th day of January 1899.

PRESENT:—H. MOBERLY, Esquire,
Sessions Judge.

Prisoners: 1. Balasundaram Pillai
2. Bangaramma

(Defended by Mr. John Adam Barrister-at-law)

Against the 1st accused

Offences :—

1. Murder (Section 302 Indian Penal Code)
2. Abetment of murder (Sections 302 and 109 Indian Penal Code)
3. Concealment of birth by secret disposal of dead body (Section 318 Indian Penal Code)
4. Abetment of concealment of birth by secret disposal of dead body (Sections 318 and 109 Indian Penal Code)

Against the 2nd accused

1. Murder (Section 302 Indian Penal Code)
2. Concealment of birth by secret disposal of dead body (Section 318 Indian Penal Code.)

NAME.

Assessors :— 1. Ganne Khan Mayana
2. Syed Miyan

Opinion of Assessors:—Not Guilty.

Finding of the Judge:—Not Guilty.

*Sentence:—*Acquitted and discharged.

This case coming on for hearing the court delivered the following:—

JUDGMENT.

The following appear to be the facts of the case.

About 29th November last a young woman named Kanakamma, who for some 10 or 12 years had been living under the protection and in the house of 1st accused gave birth to a male

child. The prosecution allege that the child was born alive, that it was murdered and then secretly buried so that the birth might be concealed. Hence the charges against the two accused, the first accused being the father of the dead child, and the 2nd accused being the grand mother of Kanakamma, the dead child's mother.

2. Ten witnesses have been examined for prosecution. The 1st witness, Obalamma, is a sweeper-woman employed in the house of 1st accused. The 2nd witness is the wife of 1st accused; the 3rd witness (Appa Rao) is the brother of Kananamma, and he explains how he and his sister, who are in no way related to 1st accused, come to be living in his house. The 1st and 2nd witnesses say that the child was still born, that after the child was born a message was sent to 1st accused, who is Head Accountant in the office of the Executive Engineer at Madanapalli, informing him of the fact, and that the child was buried in the back yard of the house of 1st accused before sunset that day, it being the custom of his caste that a first born child, if born dead, must be buried in the back yard.

3. The 5th witness is the Station House Officer of Madanapalli; the 6th witness is the Village Magistrate of Bandamidikammapalli; the 7th witness is a vetty (Village servant) of Madanapalli, and the 8th witness is the Police Inspector. These witnesses have been called to prove that the back yard of 1st accused was searched on morning of 7th December, that the body of a child was found buried in a dung-heap; that that body was sent to the Madanapalli Hospital, and that the Apothecary (9th prosecution witness) made a post-mortem examination of the body. I am not at all certain that the search was made in accordance with the provisions of the law. One thing is certain that although the body was found at 8.30 A. M. it was not sent to the Hospital till after mid-day and that the Apothecary did not see it till 2 o'clock. A search list was prepared, so the 5th, 6th and 8th witnesses state, immediately after the body had been found, and before the body was sent to the Hospital, yet in the search list it is falsely stated that "the Police have sent the body to the Hospital"

4. The 9th witness is Mr Home, the Apothecary, who examined the body. In his opinion the child had been born dead, and he gave 6 reasons for his opinion. The 10th witness is Doctor Myler, the District Medical Officer, who after hearing Mr. Home's evidence, said that "owing to the length of time that had elapsed between the birth of the child and the postmortem examination and owing to decomposition" no decided medical opinion could be given. He admits, however, that the reasons given by Mr. Home for his opinion that the child was born dead certainly are in favour of the child having been born dead. The 4th witness is a female Hospital Assistant who examined Kanakamma on 13th December. She is of opinion that Kanakamma gave birth to a child about a fortnight previous to 13th December, that the delivery must have been an easy and natural one, and that the child might have been born dead.

5. There is not a scrap of evidence that the child was born alive. The prosecution wants me to disbelieve the medical evidence and to find that the child was born alive. If the whole of the medical evidence were eliminated from the record, there is still the evidence of the 1st and 2nd witnesses that the child was born dead and that evidence is not rebutted. As there is no evidence that the child was born alive the charges of murder and abetment of murder fall to the ground.

6. As to the charges of secretly burying the body and abetment of the secret burial there is not a scrap of evidence. According to the 1st and 2nd witnesses notice of the birth was sent to 1st accused by some underling in the Executive Engineer's Office, who assisted 1st witness to bury the body. The body was not buried at night, but in the day time. The Station House Officer (5th prosecution witness) says that when he asked 1st accused on 7th December if a child had been born recently the 1st accused said "No"; that in reply to his question "Did the child die?" 1st accused said "No"; and that in reply to his question "was it buried in your back yard?" 1st accused said "No". I don't believe the witness, for his note book, which he had not brought to Court and which was only obtained with some difficulty, shows that the questions were put by the Police Inspector.

7. There being absolutely no evidence against the accused I asked the assessors if they believed that there had been any secret disposal of the body and they said "No". I agree with them. I find the prisoners Not Guilty and acquit them.

8. Why the case was committed to this Court I cannot understand. There was absolutely no evidence before the Joint Magistrate that the child had been born alive, consequently the charge of murder could not be sustained. The Joint Magistrate evidently disbelieved the evidence that the child had been born dead; but that did not justify him in presuming that the child had been born alive. It is the duty of the prosecution to prove that the accused is guilty; and in the absence of evidence against him an accused person cannot be called on to prove his innocence. An offence under Section 318 of the Indian Penal Code is triable by a 1st class Magistrate, so there really was no necessity to commit the accused to this Court.

(Signed) H. MOBERLY,
Sessions Judge.

PROSECUTION WITNESSES

- | | |
|-----------------------|------------------------------------|
| 1. Obulamma. | 6. Venkata Subbi Reddi. |
| 2. Nilamba. | 7. Peddugadu. |
| 3. Appa Rao. | 8. T. K. Sundara Iyer. |
| 4. Emily Gopala Nair. | 9. Mr. A.J.Home. |
| 5. Narasayya. | 10. D. John William Glenton Myler. |

DEFENCE WITNESSES:—None.

EXHIBITS

- A.—Panchayetnama about the discovery of the dead child dated 7-12-98.
B, C.—Examination of accused before the Committing Magistrate.

(Signed) H. MOBERLY,
Sessions Judge.

(True Copy.)

(By Order of the Court)
K. S. S. S. S.
Sheris Cader

12-1-1899

24-1-1899

U. Narasayya

CURRENT No.

1898.9

{ P. W.
DEPT.

EXAMINER, P. W. ACCOUNTS.

Madras, 1st February 1898.

OFFICE NOTE No. 118 $\frac{A}{\Sigma}$

W.

189

Government which I would ask may now be
accorded on an early date.

3. No pay has been claimed for
the Accountant from 12th: December 1898,
the date of his arrest. Full pay will now
be passed to him for the period he had to
be absent from his duties.

W
1.2.99

C.

W
2.1.99