

Public (1895) Department.

ORDINARY MS.

G.O., No. 1261

Dated 23-9-97

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2602
7-5-98

White

[Despatch Abstract.]

Lakshminarayana Patnaick. Recording
with remarks the Govt Solicitor's opinion
regarding the further prosecution
of the case against _____.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
for	1171	Pub	4-9-97				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

1 Pub c no 3475 297

No 342

Madras 11th September 1897

From,

William Morgan

As: Government Solicitor

Madras

To,

The Chief Secretary to Government

Government of Madras



Sir,

1. I am in receipt of G.O. No 1171 of the 4th instant - requesting my opinion on the 1st, 3rd, and 4th questions - raised in paragraph 17 of the letter of the Public Prosecutor, Ganjam, to the Collector, dated the 5th of August 1897.

2. With reference to the first of such questions I am of opinion that the Horoscope of Bhagirathi is admissible under Section 157 of the Evidence Act for the purpose of corroborating the evidence of the Astrologer as to the statements made to him by the 2nd accused regarding the date of Bhagirathi's birth. I understand that the Astrologer has deposed to certain statements made to him by the 2nd accused in reference to the birth of Bhagirathi, and if these are relevant as to the date of the birth of the 1st accused (and it appears to me that they are) then the evidence of the Astrologer is admissible against the 2nd Defendant, and any former statement made by the Astrologer whether verbally or in writing (such for instance as the Horoscope) "relating to the same fact", viz: the statements made by the 2nd accused, and "at or about the time when the fact took place" (I understand the Horoscope was written shortly after the information was given by the 2nd accused) would be good corroborative evidence, but such Horoscope would not be evidence per se, nor can it be accepted as in any way proving the truth or the falseness of the Statements as to the date of Bhagirathi's birth. I am further of opinion that the

statements of the 2nd accused as to Bhagiraani's date of birth, as
deposed to by the Astrologer and corroborated by the horoscope, -
are evidence against the 1st accused under Section 32, Clause 5
The statement is of a "relevant fact", it was made by a person -
"who has become incapable of giving evidence", as he is being -
tried jointly with the person against whom the evidence is tendered
-it relates to the existence of blood relationship "between persons"
(Bhagiraani and 1st accused) "as to whose relationship the 2nd -
"accused" (being the father of both) "has special means of -
"knowledge" and "the statement was made before the question in -
"dispute", i.e. the date of birth of 1st accused, "was raised". -
Thus the declaration of a deceased widow (and for the purposes of
Section 32 there is no difference between a deceased person and -
one otherwise incapable of giving evidence) respecting a statement
which her husband had made to her as to who his cousins were, is -
according to Mr Justice Field's Law of Evidence in British India,
4th Edition p 173, evidence against 3rd parties: of course it may
be argued that a statement as to the date of a birth is not a -
statement as to "the existence of any relationship" so as to bring
it within the terms of Section 32, Clause 5, but on the authority-
of the same learned author, the above extract may be fairly inter-
-preted to mean "relates directly or indirectly" in which case I -
am of opinion that the same effect would be given to the word -
"relationship" as is given to the word "Pedigree" in the 3th -
clause of the same Section, and which has been held to embrace not
only particular facts of birth death or marriage, but also the -
times when these events happened: Illustration (1) to Section 32-
is somewhat in point, where the question being "what was the date
"of the birth of A" a letter from A's deceased father to a friend-
announcing the birth of "A" on a given date is said to be a -
relevant fact, notwithstanding that the statement of the "existence
"of relationship" was complete without any mention of the date of-
"A's" birth. It must be remembered as pointed out in the same work
that in construing the Evidence Act, the extension of the admissi-
-bility of evidence is a part of the scope of the Act, and that -
the general tendency of modern reform is to make admission the -

rule, and exclusion the exception. I am aware that in the case
referred to by the Government Pleader 2 Cal. Series 313, and
also in 17 Cal 851, Horoscopes have been held to be inadmissible
but they can be differentiated from the present case as in both
these cases it was sought to put the Horoscopes in as evidence
per se under Clause 6 of the Section the party to whom the -
Statements were made upon which the Horoscopes were based being
dead.

3. Again under the ruling of the Chief Justice of Madras in
the prosecution of Rhodes Morgan vs H.T. Ross for adultery -
(the case is not reported) the 2nd accused's Statements and -
also the Horoscope would be evidence against both the accused
under Section 11 of the Evidence Act: In the case quoted letters
showing considerable familiarity addressed by the wife of the
complainant to the accused, but proved to have been intercepted
prior to delivery, were admitted and accepted by the Chief -
Justice not only as corroborative of the evidence of the wife,
but as showing that the commission of the offence was "highly
"probable". The Section in question is undoubtedly very wide
in its terms, and although personally I do not think that the
above ruling is good law (it has never to my knowledge been
followed) or that the Section was ever intended to apply to
cases such as that above mentioned, or to the present case, it
may nevertheless be argued that the statement by the 2nd -
accused as to Bhagiraani's birth being in-consistent with the
date in issue (viz: the date given by the 1st accused as the
date of his own birth) it makes the correctness of such latter
date "highly improbable" and thereby becomes relevant, and as
such admissible in evidence.

4. With reference to question No 3 I am of opinion, though
not without some doubt, that it will be sufficient for the
prosecution to prove that the date given in the Horoscope and
put forward by the 1st accused as the date of his birth, is
substantially false, and that to justify a conviction it is no
necessary to show that the 1st accused was over 23. By Section
132 of the I.P.C. the essence of the offence is causing a +

public servant to "do or omit anything which such public servant ought not to do or omit", in this case it will be necessary to show that the false information furnished by the 1st accused might have caused the Chief Secretary to give a Certificate which he ought not to have given. It therefore becomes necessary to see what is the nature of the Certificate which the Chief Secretary ought to give under the Regulations. Under the Regulations the qualification for examination is that the candidate shall satisfy the Civil Service Commissioners, inter alia, that he is above 21 and under 23 years old on the 1st day of the year in which the examination is to be held, and that in the case of Natives of India the Candidate must obtain "a certificate of age" from the Chief Secretary, and the point I feel is as to whether the "Certificate of age" is a Certificate of the exact or approximate age, or whether it does not mean a Certificate that the age of the candidate was above 21 and under 23 on the 1st day of the year in which the examination is to be held. If the latter is the Certificate which would properly satisfy the requirements of the Regulation, then if all that the prosecution proved was that the date of birth given by the 1st accused was false, but that though false as to the exact date his age was nevertheless between 21 and 23, I do not think he could be convicted of having intended to get the Chief Secretary to give him a Certificate which he ought not to have given. Looking however to the fact that the words used in the Regulations are "Certificate of age" which in its ordinary significance means a Certificate giving the approximate date of birth - that the information given by the 1st accused purported to give the date of birth - that in his letter to the Chief Secretary of 28th April 1923 he referred to the Regulations requiring him to obtain a "Certificate of age" and asked for a "Certificate to that effect", and also that the usual form of Certificate given by the Chief Secretary is one certifying that the Candidate had satisfied him that he was born on or about a particular date, I am of opinion that the Certificate the 1st accused endeavoured to obtain was one which the Chief Secretary ought not to have given if the true age of the

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1st Accused had been known to him, and that to warrant a conviction under the Section it will only be necessary to prove that the Horoscope furnished by 1st accused was materially false, and to his knowledge.

5. My opinion being favorable to the prosecution, the 4th question requires no answer: I would only say that though the case is by no means as easy one to prove in the absence of the evidence of members of the family or others who can speak with some degree of certainty to the age of the 1st accused, yet that looking to the substantial discrepancy in his statements of his age as from time to time given by him, to his use of a Horoscope which if the evidence of the Astrologer as to Bhagiradhi's Horoscope is believed must be false - to the circumstances under which his quasi duplicate Horoscope was obtained, and to the attempt to throw doubt on the genuineness of Bhagiradhi's Horoscope all of which matters have I presume been proved, I certainly see no reason for abandoning the prosecution, and am of opinion that there is a very fair chance of obtaining a conviction.

6. I have as requested sent a copy of my opinion direct to the Collector Ganjam.

7. *Return the enclosures.* I have the honor to be
Sir

Your Obedient Servant
William Morgan
Acting Government Solicitor

Public (189) Department.

CURRENT No. 3475

Confidential No. 295

Care

From ^{SAT}
The Ag Foot Pleader

Order No 1261023-997
this

No. 529

Recorded.

22/9/17
In reference to the doubt
expressed by the Sub. Pleader
in para 4 of his communication,
regarding the nature of the
certificate required for action
Candidate for the I.C.S.

Dated 11th Sept 1897

Received 15

Registered 16

Enclosures Encl bc no 3073 and
form of certificate sent
Spare copies with sp. 117124-9-97
ret. used 22/9/17

Note Copy of the opinion
has been sent to the Collector

SUBJECT.

Sanjan as required in para 1 of sp. 117124-9-97 vide
para 6 of current
Submitting opinion regarding
the prosecution of the case
against Lakshminarayana
Patnauk.

it is to be desired that
on the certificate passed by the Ch.
also submitted
dependent on the result of the
immediate action
regarding the question whether
the candidate is eligible for the post

BACK PAPERS.

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When given for copying _____
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 When examined _____
 When signed _____

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READ AGAIN G.O., No.
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DATED

FURTHER PAPERS.

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CURRENT

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT

STATE WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
 IN ORIGINAL.

N.B.---

A = Copy in full.
 B = Not to be copied.
 P = Copy abstract only.
 Q = Copy heading only.

more than one for the exam?
 The date of birth, is nearly
 as it can be ascertained, is
 therefore clearly established.

AK.
 23/9/17

The D.M. of Pongor (p. 25)