



# SLATON COMMUTES FRANK SENTENCE

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at the pencil factory at some time between 12:05 and 12:10. Monteen Stover looked at the clock and says she entered at 12:05. A suggestion is made that the time clocks, which were punched by the employees, might have been fast. This proposition was met by W. W. Rogers, who accompanied the detectives to the scene of the murder on Sunday morning, and who testified (page 200): "I know that both clocks were running, and I noticed both of them had the exact time."

Therefore Monteen Stover must have arrived before Mary Phagan, and while Monteen Stover was in the room. It hardly seems possible, under the evidence, that Mary Phagan was at that time being murdered.

## Time Evidence Favored Frank.

Lemmie Quinn testifies that he reached Frank's office about 12:20 and saw Frank. At 12:30 Mrs. J. A. White called to see her husband at the factory, where he was working on the fourth floor, and left again before 1 o'clock.

At 12:30, according to Denham, Frank came up to the fourth floor and said that he wanted to get out. The evidence for the defense tends to show that the time taken for moving the body, according to Conley's description, was so long that it could not have fitted the specific times at which visitors saw Frank. It will be seen that when Mrs. White came up at 12:30 the doors below were unlocked.

Another feature of the evidence is that the back door in the basement was the former means of egress for Conley when he desired to escape his creditors among the employees. On Sunday morning, April 27, the staple of this door had been drawn. Detective Starnes found on the door the marks of what he thought were bloody finger prints, and he chipped off two pieces from the door, and which looked like "bloody finger prints." The evidence does not disclose further investigation as to whether it was blood or not.

The motive of this murder may be either robbery, or robbery and assault, or assault.

There is no suggestion that the motive of Frank would be robbery. The mesh bag was in Mary Phagan's hand and was described by Conley, in his redirect examination, at the trial for the first time. The size of the mesh bag I cannot tell, but since a bloody handkerchief of Mary Phagan's was found by her side, it was urged before me by counsel for the defense that ladies usually carried their handkerchiefs in their mesh bags.

If the motive was assault, either by natural or perverted means, the physician's evidence, who made the examination, does not disclose its accomplishment. Perversion by none of the suggested means could have occasioned the flow of blood. The doctors testified that excitement might have occasioned it under certain conditions. Under the evidence, which is not set forth in detail, there is every probability that the virtue of Mary Phagan was not violated on the 20th day of April. Her mesh bag was lost, and there can be no doubt of this.

## Conley "Depraved and Lecherous."

The evidence shows that Conley was as depraved and lecherous a negro as ever lived in Georgia. He lay in wait and described the clothes and stockings of the women who went to the factory.

His story necessarily bears the construction that Frank had an engagement with Mary Phagan, which no evidence in the case would justify. If Frank had engaged Conley to watch for him, it could only have been for Mary Phagan, since he made no improper suggestion to any other female on that day, and it was undisputed that many did come up prior to 12 o'clock; and whom could Frank have been expecting except Mary Phagan, under Conley's story? This view cannot be entertained except as an unjustifiable reflection on the young girl.

Why the negro wrote the notes is a matter open to conjecture. He had been drinking heavily that morning, and it is possible that he undertook to describe the other negro in the building so that it would avert suspicions.

It may be possible that his version is correct.

The testimony discloses that he was in the habit of allowing men to go into the basement for immoral purposes for a consideration, and when Mary Phagan passed by him close to the hatchway leading into the basement and in the gloom and darkness of the entrance he may have attacked her. What is the truth we may never know.

The jury which heard the evidence and saw the witnesses found the defendant, Leo M. Frank, guilty of murder. They are the ones, under the laws, who are chosen to weigh evidence and to determine its probable value. They may consider the demeanor of the witnesses upon the stand and in the exercise of common sense will arrive with wonderful accuracy at the truth of the contest. Under our law, the only authority who can review the merits of the case and question the justice of a verdict which has any evidence to support it is the trial Judge. The Supreme Court is limited by the Constitution to the correction of errors of law. The Supreme Court found in the trial no error of law and determined as a matter of law—and correctly, in my judgment—that there was sufficient evidence to sustain the verdict.

But under our judicial system the trial Judge is called upon to exercise his wise discretion, and he cannot permit a verdict to stand which he believes to be unjust. A suggestion in the order overruling a motion for a new trial that the Judge was not satisfied with the verdict would demand a reversal by the Supreme Court.

In this connection Judge Roan declared orally from the bench that he was not certain of the defendant's guilt; that with all the thought he had put on this case he was not thoroughly convinced whether Frank was guilty or innocent, but that he did not have to be convinced; that the jury was convinced, and that there was no room to doubt that; that he felt it his duty to order that the motion for a new trial be overruled.

This statement was not embodied in the order overruling the motion for a new trial.

Under our statute, in cases of conviction of murder on circumstantial evidence, it is within the discretion of the trial Judge to sentence the defendant to life imprisonment. (Code, Section 63.)

The conviction of Frank was on circumstantial evidence, as the Solicitor General admits in his written argument.

## "Judge Roan Misconstrued His Power,"

Judge Roan, however, misconstrued his power, as evidenced by the following charge to the jury in the case of the State against Frank:

"If you believe beyond a reasonable doubt from the evidence in this case that this defendant is guilty of murder, then you would be authorized in that event to say: 'We, the jury, find the defendant guilty.' Should you go further, gentlemen, and say nothing else in your verdict, the Court would have to sentence the defendant to the extreme penalty of murder, to wit: 'To be hanged by the neck until he is dead.'"

Surely, if Judge Roan entertained the extreme doubt indicated by his statement and had remembered the power granted him by the Code, he would have sentenced the defendant to life imprisonment.

In a letter written to counsel he says: "I shall ask the Prison Commission to recommend to the Governor to commute Frank's sentence to life imprisonment."  
\* \* \* It is possible that I showed undue deference to the jury in this case when I allowed the verdict to stand. They said by their verdict that they had found the truth. I was in a state of uncertainty, and so expressed myself.  
\* \* \* After many months of continued deliberation, I am still uncertain of Frank's guilt. This state of uncertainty is largely due to the character of the Conley testimony, by which the verdict was largely reached.

"Therefore, I consider this a case in which the Chief Magistrate of the State should exert every effort in ascertaining the truth. The execution of any person, whose guilt has not been satisfactorily proven, is too horrible to contemplate. I do not believe that a person should meet with the extreme penalty of the law until the court, jury and

Governor shall have all been satisfied of that person's guilt. At the proper time I shall expand and enlarge upon these views directly to the Prison Commission and Governor.

"However, if for any cause I am prevented from doing this you are at liberty to use this letter at the hearing."

It will thus be observed that if commutation is granted, the verdict of the jury is not attacked, but the penalty is imposed for murder which is provided by the State and which the Judge, except for his misconception, would have imposed. Without attacking the jury, or any of the courts, I would be carrying out the will of the Judge himself making the penalty that which he would have made it and which he desired it should be made.

## A Similar Commutation Approved.

In the case of Hunter, a white man charged with assassinating two white women in the city of Savannah, who was found guilty and sentenced to be hung, application was made to me for clemency. Hunter was charged, together with a negro, with having committed the offense, and after he was convicted the negro was acquitted. It was brought out by the statement of the negro that another negro, who was half-witted, committed the crime, but no credence was given to the story, and he was not indicted.

The Judge and Solicitor General refused to recommend clemency, but upon a review of the evidence, and because of the facts and at the instance of the leading citizens of Savannah who were doubtful of the guilt of the defendant, I commuted the sentence in order that there should be no possibility of the execution of an innocent man. This action has met with the entire approbation of the people of Chatham County.

In the case of John Wright, in Fannin County, two men went to the mountain home of a citizen, called him out, and shot him and were trampling on his body, when his wife, with a babe in her arms, came out to defend her husband. One of the men struck the babe with his gun and killed it. Wright was tried, found guilty, and sentenced to death. Evidence was introduced as to his borrowing a gun, his threats, and his escape after the shooting occurred. At the time he was an escapee from the Fannin County Jail under indictment for felony.

I refused to interfere unless the Judge or Solicitor General would recommend interference, which they declined to do. Finally, when he was on the gallows, the Solicitor General recommended a reprieve, which I granted, and finally, on recommendation of the Judge and Solicitor General, as expressed in my order, I reluctantly commuted the sentence to life imprisonment. The doubt was suggested as to the identity of the criminal, and as to the credibility of the testimony of prejudiced witnesses. The crime was as heinous as this one, and more so.

In the Frank case three matters have developed since the trial which did not come before the jury, to wit: The Carter notes. The testimony of Becker, indicating that the death notes were written in the basement, and the testimony of Dr. Harris, that he was under the impression that the hair on the lathe was not that of Mary Phagan, and thus tending to show that the crime was not committed on the floor of Frank's office.

While made the subject of an extraordinary motion for a new trial, it is well known that it is almost a practical impossibility to have a verdict set aside by this procedure.

The evidence might not have changed the verdict, but it might have caused the jury to render a verdict with the recommendation to mercy.

## Can't Face "An Accusing Conscience."

In any event, the performance of my duty under the Constitution is a matter of my conscience. The responsibility rests where the power is reposed. Judge Roan, with that awful sense of responsibility which probably came over him as he thought of that Judge before whom he would shortly appear, calls to me from another world to request that I do that which he should have done. I can endure misconstruction, abuse, and condemnation, but I cannot stand the constant companionship of an accusing conscience, which would remind me in every thought that I, as Governor of Georgia, failed to do what I thought to be right. There is a territory "beyond a reasonable doubt and absolute certainty" for which the law provides in allowing life imprisonment instead of execution.

This case has been marked by doubt. The trial Judge doubted. Two Judges of the Supreme Court of Georgia doubted. Two Judges of the Supreme Court of the United States doubted. One of the Prison Commissioners doubted.

In my judgment, by granting a commutation in this case I am sustaining the jury, the Judge, and the appellate tribunals, and at the same time am discharging that duty which is placed on me by the Constitution of the State.

Acting, therefore, in accordance with what I believe to be my duty under the circumstances of this case, it is ordered that the sentence in the case of Leo M. Frank is commuted from the death penalty to imprisonment for life.

This 21st day of June, 1915.

JOHN M. SLATON, Governor.