

1916.

GOVERNMENT OF INDIA.
HOME DEPARTMENT.

POLITICAL—A.

Proceedings, September 1916, nos. 264-265.

Judgment of the High Court Appellate Bench in the Supplementary Barisal Conspiracy Case.

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PREVIOUS REFERENCES.

Political A., August 1916, nos. 202-05.
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POLITICAL—A., SEPTEMBER 1916.

Nos. 264-265.

JUDGMENT OF THE HIGH COURT APPELLATE BENCH IN THE SUPPLEMENTARY BARISAL CONSPIRACY CASE.

FROM THE GOVERNMENT OF BENGAL, NO. 10926-P., DATED THE 6TH SEPTEMBER 1916. Pro. no. 264.

The following statement gives at a glance the result of the appeals to the High Court :—

	Sessions Court.*	High Court.
Trailakhya Nath Chakrabarti ..	15 years' transportation	2 years' transportation
Madan Mohan Bhounik	10	10 "
Pratul Chandra Ganguli	10	Released.
Khagendra Chaudhuri	10	7 years' transportation.
Ramesh Chandra Datta Chaudhuri ..	10 " "	Released.

* Political A., February 1916, nos. 258-260.

2. Pratul Chandra Ganguli and Ramesh Chandra Datta Chaudhuri, who were released, have been dealt with under Regulation III of 1818.
Political A., August 1916, nos. 202—205.

3. A copy of the judgment may be sent to the India Office in continuation of the Home Department letter no. 447, dated the 4th February 1916. Draft submitted.
Political A., February 1916, nos. 258—60.

After issue Director, Criminal Intelligence, may see. His Excellency need not perhaps be troubled as he did not see the Sessions Court judgment.

J. A. W.,—13-9-16.

W. BOOTH-GRAVELY,—14-9-16.

S. R. HIGNELL,—14-9-16.

LETTER TO THE INDIA OFFICE, NO. 2668, DATED THE 15TH SEPTEMBER 1916.

Pro. no. 265.

Director, Criminal Intelligence.

Seen and returned with thanks.

H. V. B. HARE-SCOTT,—20-9-16.

Home Department.

Exd. by—M.D.
325HD

(1—2)

PROCEEDINGS OF THE

HOME DEPARTMENT, SEPTEMBER 1916.

Judgment of the High Court Appellate Bench in the Supplementary Barisal Conspiracy Case.

JUDGMENT OF THE HIGH COURT APPELLATE BENCH IN THE SUPPLEMENTARY BARISAL
CONSPIRACY CASE.

No. 10926-P., dated Calcutta, the 6th September 1916.

Pro. no. 264.

From—The HON'BLE MR. J. H. KERR, C.I.E., I.C.S., Chief Secretary to the Govern-
ment of Bengal,

To—The Secretary to the Government of India, Home Department, Simla.

In continuation of my letter no. 1363-P., dated the 24th January 1916, I .
Political A., February 1916, nos. 258—260. am directed to report, for the information
of the Government of India, that the
accused in the Supplementary Barisal Conspiracy Case preferred an appeal against
the order of the Sessions Judge in the High Court. The hearing of the appeal
lasted for 14 days and the Hon'ble Judges then delivered their judgment, a copy of
which is enclosed for the information of the Government of India.

(3—19)

**JUDGMENT OF THE HIGH COURT APPELLATE BENCH IN THE
SUPPLEMENTARY BARISAL CONSPIRACY CASE.**

**JUDGMENT OF THE HIGH COURT APPELLATE BENCH IN
THE SUPPLEMENTARY BARISAL CONSPIRACY CASE.**

PRESENT :

The Hon'ble Sir William Chitty and the Hon'ble Mr. Justice Walmsley.

Criminal Appeal No. 127 of 1916.

For the accused

Mr. C. R. Das and Mr. B. C. Chatarji,
Counsel, and Babus Birendra
Kumar De, Asita Ranjan Ghosh
and Kshitish Chandra Neogy.

For the Crown

Hon'ble Mr. B. C. Mitter, Mr. N. Gupta
and Mr. A. Sinha.

Heard on 19th, 23rd, 24th, 25th, 26th, 30th and 31st May and 1st, 2nd,
6th, 7th, 8th, 9th, and 14th June 1916.

Judgment on the 10th July 1916.

[Verbatim transcript by R. A. Browne, Chief Reporter, *Englishman*.]

MR. JUSTICE CHITTY, who delivered the judgment of the Court, said :—

The five appellants in this case are (1) Madan Mohan Bhaumik *alias* Madan Mohan Chandra Bhaumik *alias* Kuloda Prasad Ray, (2) Trailakhya Nath Chakrabartti *alias* Kali Charan Chakrabartti *alias* Biraja Kanta Chakrabartti, (3) Khagendra Nath Chaudhuri *alias* Suresh Chandra Chaudhuri, (4) Pratul Chandra Ganguli, and (5) Romesh Chandra Datta Chaudhuri *alias* Romesh Chandra Chaudhuri *alias* Paritosh. They have all been convicted by the Sessions Judge of Bakarganj of an offence under section 121 A, Indian Penal Code, and have been sentenced, Trailakhya to 15 years', and each of the others to 10 years' transportation. The assessors were of opinion that the fact of the conspiracy was well established. One assessor thought that Madan and Khagendra only of the present appellants took part in the conspiracy. The other assessor found all the appellants not guilty.

It should be stated that one Chandi Charan Kar was arraigned along with the present appellants. He was convicted on his plea of guilty and subsequently sentenced. This was a supplementary trial. The sanction required by section 196, Criminal Procedure Code, was issued to Mr. Colson on 9th May 1913. It included 44 names. Of these, 37 were arrested, but only 28 were committed for trial. In the Sessions Court the case against two was withdrawn and the trial proceeded against the remaining 26. After a considerable body of evidence had been recorded, 12 of the accused entered pleas of guilty and were sentenced to various terms of imprisonment, while against the remaining 14 the Public Prosecutor withdrew the case and they were accordingly acquitted. It has transpired in the present trial that this was the outcome of an arrangement between the Local Government and those accused persons, with which arrangement the Courts of course have no concern.

Subsequently the present appellants were arrested on various dates and put upon their trial. In the original sanction the 44th accused was said to be a "man known as Paritosh." It was ascertained that Paritosh was a nickname for Romesh Chandra Datta Chaudhuri, and so, in order to remove all doubts as to the identity of this accused, a further sanction to prosecute him was granted to Mr. Colson on 23rd November 1914, and on 7th December 1914 a fresh complaint was lodged against Romesh Chandra Datta Chaudhuri *alias* Paritosh.

In the present appeal no attempt was made by Counsel for the appellants to disturb the finding of the Sessions Judge and the assessors that this conspiracy, known as the Barisal conspiracy, did in fact exist. Indeed, such an attempt must have had but little chance of success, having regard not only to the overwhelming evidence of such a conspiracy, but also to the fact that 12 of the alleged conspirators had pleaded guilty at the former trial and one at this trial and had been sentenced on their pleas. While assuming the existence of the conspiracy, Counsel for the appellants did not expressly admit it, but confined their arguments to the question whether their respective clients had been proved to have been engaged in it. This lightens our labour very considerably. It will not be necessary for us to discuss in detail the evidence adduced in proof of the conspiracy. It will be enough if we state briefly our conclusions with regard to it. The main question for determination in this appeal is the complicity of the several appellants in the offence.

Before dealing with the facts of the case it will be well to dispose of two arguments put forward by Mr. Chatarji for the appellants relating (1) to the sanction and (2) to the charge.

With regard to the sanction, he argued that it must set out the particular conspiracy which is to be the subject of the complaint, that is to say, details of the conspiracy must be given in the sanction. We cannot help thinking that he was refusing the sanction with the charge to which his argument more properly applies. Sanction is granted under section 196, Criminal Procedure Code, which provides that no Court shall take cognizance of any offence under certain sections of the Indian Penal Code (section 121 A being one) unless open complaint made by order of or under authority from the Local Government to do under that section is to remove the statutory bar on such a prosecution. There is no obligation on it to do more. Indeed, to enter into details of the alleged offence in the sanction would be altogether inappropriate. They must be stated in the complaint which follows, and the charges if ultimately drawn.

With regard to the charge, it was argued that it was bad for two reasons; first, by the inclusion among the alleged conspirators of the names of Pulin Bihari Das and Ashutosh Das Gupta, who were convicted in the Dacca conspiracy case and were not in fact members of this conspiracy; and secondly, by a similar inclusion of the names of the 14 persons who were acquitted at the previous trial. We are unable to see the force of this argument. It has been held in *Emperor versus Lalit Mohan Chakrabarti*, 15 C.W.N. 98, that in a charge of conspiring with persons known and unknown, the persons known must be named. But it does not follow that to name persons who did not in fact conspire or may be found not to have conspired vitiates the charge. It may frequently happen in cases like the present that some of the persons accused are acquitted. That would not vitiate the conviction of those found guilty. Still less can the inclusion in the charge as conspirators of persons against whom sufficient evidence may not be forthcoming or who for other reasons appear not to have taken part in the conspiracy.

The facts which we find proved regarding the existence of the *samiti* and its objects are shortly as follows:—This Barisal *samiti* was an offshoot of the *Anushilan Samiti* at Dacca, which came to an end after the trial of the Dacca conspiracy case and the dispersal of its prominent members. It was active in Barisal, Dacca, and other places. While its leaders professed to inculcate religious and high moral principles, its aims and objects were in the main revolutionary, to drive the English from the country and to start some form of national government. The most important oral evidence on this part of the case is that of the three approvers, Rajani Kanta Das, Girindra Mohan Das, and Priya Nath Acharji. They are so amply corroborated in their general account of the *samiti*, as to leave no doubt of the substantial accuracy of their statements. The most incriminating documents have been found. Of these, probably the two most important are the "District Organisation Scheme" (Exhibit 38) and the "Rules of Membership" (Exhibit 39).

These were found on the person of Romesh Acharji when he was arrested on the 27th February 1913. It should be stated that Romesh Acharji was one of those convicted at the former trial. Accounts of the dacoity have been found and put up. Besides incriminating correspondence between members found in Girindra's box, we have what has been called the "Question Letter" [Exhibit IV (13)] written by Sailesh Chandra Mukharji, also convicted at the previous trial; the Third Quarterly Report drawn up by Priya Nath Acharji [Exhibit IV (1)] and a large number of copies of *Swadhin Bharat* [Exhibit IV (17)] and Exhibit IV (17) (b) and (c). With what have been called the "Cipher Lists" [Exhibit V (1), (2) and (3)] we shall deal at a later stage when considering the cases of the several appellants.

The origination appears to have been systematic and complete. The idea " (as it is called) was to be zealously preached among schoolboys and students. On admission to the *samiti* each member had to take vows and so be initiated. There were the *adya* vows for recruits, then the *adya* vows for persons rather more advanced; then came the *bishesh* vow, which was taken on admission to the inner circle. This was taken by Priya Nath. To the most advanced members was administered another *bishesh* vow. The *samiti* was divided into several departments. Priya Nath mentions two—the Organisation and Violence Departments. Girendra says three—the Arms, Action and General Departments. The names speak for themselves, but it may be stated that in addition to the commission of dacoities, the acquisition of firearms and instruction in their use, there were also arrangements for the counterfeiting of coin in order to utilise the metal secured in dacoities. These arrangements for coining appear to have not very successful. The operations of the *samiti* of which we have heard most in this case are those which took place at or from Sonarang. In 1910 Pulin Bihari Das, who had then returned from deportation, ordered the *Anushilan Samiti* generally and Priya Nath and Romesh Acharji in particular to separate from the *Sadhana Sampradaya*, of which Hemendra Acharji was the leader. The separation took place accordingly, and at Pulin's order Priya Nath and Romesh Acharji gave up their studies and became masters of the National School at Sonarang. The Head Master, Proprietor and Secretary was one Makhan Lal Sen, and the school appears to have become the centre, if not the headquarters, of the *samiti*, all the masters and several of the students being members. It was argued that it was most improbable that Makhan Lal Sen, who was said to be a man of the highest integrity and to have written a valuable moral treatise or scheme book, would countenance such a state of affairs. When we enquired what he was doing and why he had not come forward as a witness to character for the defence, we were informed by the appellants' Counsel that he had since been interned under the Defence of India Act. We must not therefore place too much reliance on his alleged respectability. There can be no doubt whatever that a number of the dacoities put forward as overt acts in proof of this conspiracy were engineered and carried out from the Sonarang National School, which, by the way, was closed soon after the Suakair dacoity, which was committed on the 31st March 1911.

It will be sufficient for our purpose here merely to enumerate the dacoities and other offences which have been found by the Sessions Judge to be overt acts of this *samiti*. There is no doubt whatever that these various occurrences took place, and the evidence of the approvers has been so amply corroborated with regard to them as to leave no doubt that they were the work of this *samiti*. They were—

- (1) The Haldia Hât dacoity, 30th September 1910.
- (2) The Kalargaon dacoity, 7th November 1910.
- (3) The Dadpur dacoity, 30th November 1910.
- (4) The Panditchar dacoity, 3rd February 1911.
- (5) The Gaodia dacoity, 20th February 1911.
- (6) The Suakair dacoity, 31st March 1911.
- (7) Reconnoitring for a dacoity at Madarganj, 6th June 1911.

- (8) The Golakpur gun theft, 20th July 1911.
- (9) The Kawakuri dacoity, 20th April 1912.
- (10) The Birangal dacoity, 23rd May 1912.
- (11) The Panam dacoity, 10th July 1912.
- (12) The murder of Sarada Chakrabarti in July 1912.
- (13) The Comilla town dacoity, 1st November 1912.
- (14) The Nangalband dacoity, 14th November 1912.

Such in brief outline is a statement of the case established as regards the *samiti* generally. It remains to consider the case made against each of the present appellants.

The foundation of the case against the five appellants is to be found in the evidence of the two approvers, Priya Nath and Girindra. In the evidence of Rajani, they are not expressly referred to, and his statements may therefore be left out of consideration in this connection. It is necessary first to consider the arguments adduced against the acceptance of Priya Nath's and Girindra's evidence as a whole in order to see whether they are in the main truthful witnesses and whether any, and how much, corroboration of their statements is required. We observe that the arguments in the Court below and in this Court appear to have proceeded upon very much the same lines, and we may say at once, that in the main we are in agreement with the learned Sessions Judge in the conclusions at which he has arrived.

In the case of Priya Nath it was urged that his evidence showed signs of tutoring by the police. The learned Counsel for the appellants expressly excluded from his accusation in this respect the superior police officers, such as Mr. Hutchinson and Mr. Colson, who had to deal with this case. That being so, it is impossible that there should have been any such tutoring as he suggests, because no police officers could possibly have had access to Priya Nath without the connivance and knowledge of those superior officers. The fact is that it was a suggestion and nothing more. Not only is there no evidence upon the record to support it, but the necessary questions were not asked of the various witnesses to elicit answers on which such a charge could be based. If such a case of fraud is to be put forward, it is essential that it should be founded on fact and not on mere suggestion. Thus we are asked to infer that because some admitted visits of police officers are not recorded on Priya Nath's history ticket, a number of other visits took place at which he was instructed as to what statement he should make; and in particular that Kumud Mohan Das Gupta interviewed Priya Nath daily in the Jail at Trichinopoly. We must decline to draw any such inference. No questions were put to Mr. Hutchinson or Kumud Mohan Das Gupta on the point, and it implies the very connivance on the part of Mr. Hutchinson the accusation of which the learned Counsel disclaimed.

We will briefly refer to some of the circumstances stated by Counsel as supporting his suggestion. It was said that Priya Nath was endeavouring to suppress visits of police officers and his interviews with them, and in particular his statement made before Mr. Bartley in the section 110 case against Biren Chatarji, "I saw no police officer before I saw Mr. Hutchinson" was cited. That remark, if read with the context, clearly refers to Hazaribagh, and is not a general statement. It is, moreover, substantially true. Priya Nath had seen a man in plain clothes, but did not know him to be a police officer. He had also seen his uncle, who is a police officer, but did not understand that he was included in the question.

Then it was said that, referring to the Comilla dacoity in Exhibit V, Priya Nath said that Noren Sen had written to him of the arrest of Aditya and others, while before Mr. French in January 1915 he said that it was Paritosh who told him. But before Mr. French Priya Nath referred also to Noren Sen's letter, and there is no reason why he should not have met Paritosh at Chandpur and heard from him about it. It does not appear how he could have got the statement about Paritosh from the police, and the mere fact that he did not say that to Mr. Hutchinson does not show that he must have made another statement to which the examining pleader must have had access and on which he founded his questions. The next instance stands on much the same footing. Priya Nath said to Mr. Hutchinson that Noren Sen told him that Sarada Chakrabarti had been killed by the *samiti*. Before Mr. French he said that

Biren Chatarji himself told him that he had killed Sarada and gave him the details of that occurrence. In the Sessions Court Priya Nath explained that both Noren and Biren were present and told him. This, as the Sessions Judge has pointed out, cannot indicate any tutoring by the police, inasmuch as the police were ignorant of the identity of the headless body found in the tank at Feni.

It was further said that as Priya Nath in his statement at Trichinopoly had given Mr. Hutchinson the dates of all the dacoities in chronological order he must have been tutored, as it would be impossible for him otherwise to remember them. This assumes that he did give Mr. Hutchinson the dates, which is certainly not proved, and is, moreover, highly improbable. The dates were of course well known to the police. In the printed statement (Exhibit V) they appear in brackets, and seem to have been added, probably by Mr. Hutchinson, though that officer was not asked a single question about them. Another instance of alleged tutoring is said to be found in the fact that Priya Nath at first gave 6, Raja's Deori, as the address of Manoranjan Banarji, pleader, the brother-in-law of Pratul, and in a subsequent statement changed it to 6, Raja's Lane. The suggestion here made is not borne out by the evidence; on the contrary, it is directly refuted. That there is a quarter in Dacca, near the Court-house, known as Raja's Deori, is clearly proved. Only one witness, Rajani Kanta Chakrabartti, and he had evidently perjured himself to assist the appellants. In this quarter are several lanes, but all are not named, though most, if not all the houses, bear numbers. Thus it happens that while the number of a person's house is known and correctly given, the street or lane may vary. For instance, Umesh Chandra Chandra's address is 29, Rajar Deori, or 29, Court House Street, whilst Sashanka Babu's is 27, Rajar Deori, or 27, Court House Street. There can be no doubt that 6, Raja's Deori, and 6, Raja's Lane, are one and the same, and what is more, they are identical with 6, Court House Road, which Pratul gave as his address in July 1911.

There are several indications in Priya Nath's evidence to show that he cannot have been tutored. He certainly said things which the police could not or would not have instructed him to say, *e.g.*, that the postal peon assault case was a false case; that the "Sen" letter did not, as the police imagined, refer to Rajani, and that two of the accused in the Comilla dacoity case were wrongly convicted.

On the whole, we find it impossible to draw the inference suggested. We agree with the learned Sessions Judge that the suggestion that Priya Nath was tutored by the police has not been substantiated.

Next the learned Counsel dwelt on several portions of Priya Nath's story, which, he maintained, was so highly improbable as to be utterly unworthy of credit. First, it was most unlikely that the numerous dacoities could have taken place from Sonarang and the National School there. The Head Master, Makhan Lal Sen, it was said, had drawn up the scheme book, in which the main headings were "Religion," "Education," "Philanthropy," and so forth, and in which is to be found no reference to crime. It was unlikely that from such a place a criminal society could emerge or that Makhan Lal Sen would allow dacoities to be committed. Of Makhan Lal Sen we know nothing but what Counsel has told us. The fact remains that most, if not all, the masters and several students were members of the *samiti*, two of the most prominent being Romesh Acharji and his cousin, Priya Nath. There are many circumstances tending to connect the dacoities with Sonarang. The fact of there being punitive police in the district does not mean much. They were for a large number of villages besides Sonarang. It may be that those police were lax in the performance of their duties and their watch on the school was perfunctory. It would not require much ingenuity on the part of the would-be dacoits to evade their vigilance.

Then it was said that the Kolargaon and Dadpur dacoities could not have been committed in the way alleged by Priya Nath, as there was a stop-boat at the mouth of the *khal*, which the dacoits could not possibly have escaped. It is sufficient on this point to say that there is no proof of there having been any such stop-boat there at that particular time. All that Priya Nath says is that

there was one at some time of the year, but he also says that when the water was out a boat could go across country. We do not know what was the precise state of things in November 1910 when these dacoities took place. To say positively that there was a stop-boat and that the dacoits could not have passed it, is impossible.

Then it was urged that Priya Nath's evidence was unreliable, because in his various statements the names and numbers of the persons said to be engaged in the several dacoities or attempts at dacoity varied considerably. We do not think that much stress can be laid upon this. It must be borne in mind that he was speaking of some 14 or 15 dacoities or attempts, in which as many as 30 to 35 persons were sometimes engaged at a time. It would have been a marvellous feat of memory, if on all the occasions when he was called upon to enumerate them he named all the perpetrators of each dacoity or attempt successfully. The only positive contradiction that has been proved against Priya Nath is that on one occasion he said that he was present at the planning of the Suakair dacoity, on another he said that he was not. Considering the enormous mass of detail as to which he was called upon to speak, this is a remarkable record. The learned Sessions Judge was very favourably impressed with the open and straightforward manner in which Priya Nath deposed, and he regards him generally as a witness of truth. We are disposed to take the same view, but we cannot overlook the circumstances under which he came to give evidence and did in fact give it. In the first place, it must be conceded that he was a prominent member of the *samiti*, convicted at the former trial, and so an accomplice in the offence now being investigated. That would not by virtue of section 133 of the Evidence Act make "illegal a conviction proceeding upon his uncorroborated testimony. But it has long been the rule of the Court, and a very salutary rule, to require corroboration in such a case upon material points. This is in accordance with illustration (b) to section 114. That, again, is subject to the qualification that where two or more accomplices have been kept apart and had no opportunity of communication, one may corroborate another. It was argued by the learned Standing Counsel that that was the case here, and that Girindra might corroborate Priya Nath and *vice versa*. But when Priya Nath told his story in this case he had heard the evidence of Girindra recorded at the former trial, in which he (Priya Nath) was an accused. It can hardly be said, therefore, that he had no opportunity to adapt his statement to that previously made by Girindra. Turning to the question how Priya Nath came to make his statement, we find that the proposal was first made by him to Mr. Blackstone, Superintendent of Police, Trichinopoly. In that officer's first letter the only condition imposed by Priya Nath was that his name should not appear and that his cousin, Romesh, should not be implicated on that statement. Later on, however, it appears that he expected a remission of his sentence and hoped for a post in some commercial firm. Though no definite promise was made to him, he undoubtedly expected some reward and gave his evidence in such expectation. This has been realised as we are informed by Counsel for the Crown that Priya Nath was released from jail on 10th January 1916, and has been sent to some distant place where he will be out of danger from his former associates. We are informed that Girindra was also released early in this year, the remainder of his sentence being remitted, and that he has been sent to England by his father. We shall deal with his evidence directly, but we feel bound to remark that action of the Local Government in so releasing these two approvers and permitting them to leave the jurisdiction of this Court might have seriously interfered with the course of justice in this case. Under section 423, Criminal Procedure Code, the appellate Court has power to take further evidence or direct it to be taken. This power is not unfrequently found necessary to exercise. It may be necessary in the interests of the Crown or of the accused or of both. Here, fortunately, the necessity for the further examination of these two witnesses has not arisen. If it had, it is obvious that the Court might have been seriously embarrassed by the men being placed or allowed to go beyond its control. Apart from this, their release soon after a conviction of the appellants was obtained in the Court of Sessions and before the appeal could be decided is certainly open to misconstruction.

There is a further circumstance with regard to Priya Nath. He did not give evidence at the first trial. It was therefore easy for him, without materially altering the true story of the conspiracy, to bring the present appellants into it, or at least to make the part which they played in it more prominent.

We think, therefore, that we must have corroboration of Priya Nath's statement in material points in respect of each of the appellants.

We turn to the evidence of Girindra. He is admittedly an accomplice and many of the remarks made above with regard to Priya Nath apply equally to him. The immediate question is whether we require corroboration of his statement as against the accused. In his case, too, it was suggested that there had been tutoring by the police or by his father, Babu Jamini Mohan Das, at the instance of the police. We had some difficulty in ascertaining from the learned Counsel what was his precise case on this point. He made several insinuations and suggestions, but failed to carry them to their logical conclusions. It is disputed that Mr. Das repeatedly urged his son to tell the truth. As we understood Counsel, it was suggested that Mr. Das was pressing his son to tell what would be acceptable to the police, namely, more than the truth; in other words, what was untrue. It was even suggested that Mr. Das's subsequent promotion was the reward for his compliance in this matter. Such a suggestion can only have one meaning, that Mr. Das and the superior officers of the police force were in league to lay perjured evidence before the Court. Such a suggestion has no foundation whatever in fact. Not a single question was put to Mr. Das or the police officers to indicate that it would be made. We have no hesitation in saying that it never ought to have been made.

At various times in this case Girindra has made no less than eight statements of which a record has been kept. Two of them, Nos. (4) and (6), were volunteered. They are (1) his statement to his father on 27th November 1912, (2) to Babu Annoda Charan Gupta on the same day; (3) to Mr. Cowan on 28th November 1912; (4) on 4th January 1913 in the Arms Act case; (5) to Mr. Seaton on 4th February 1913, Exhibit 6; (6) to Mr. Seaton on 12th February 1913, Exhibit 61 (1); (7) to Mr. O'Sullivan on 6th March 1913; (8) his statement at the former trial.

It was argued on behalf of the appellants that in making these statements Girindra had gone on adding to his story at the instigation of the police. The learned Standing Counsel has pointed out (and this view found favour with the Court below) that Girindra made his revelations with the greatest reluctance, and it was only when compelled by force of circumstances that he revealed further facts. It is unnecessary to analyse Girindra's various statements in order to show that this was the case, because for another reason we think that Girindra's evidence against the present appellants is not to be accepted without corroboration on material points, but we may say that (speaking generally) we agree with the learned Sessions Judge in regarding Girindra as a witness of truth. At the beginning of 1913 Girindra pleaded guilty both in the section 412 and in the Arms Act case and was sentenced to separate terms of imprisonment aggregating $6\frac{1}{2}$ years. Then on 6th March 1913 he made his statement to Mr. O'Sullivan which led to his becoming an approver in the two conspiracy trials. There can be no doubt that Girindra offered to make and did make that and subsequent statements in the hope of obtaining a pardon in respect of his two convictions and of not being proceeded against for the conspiracy which he was about to reveal. We agree with the learned Sessions Judge that both Girindra and his father were under the impression that Mr. O'Sullivan held out hopes of such a pardon before he took Girindra's statement, and Mr. O'Sullivan must be mistaken when he says that he held out no sort of inducement. In Girindra's case, as in Priya Nath's, the fact remains that he has been released before the expiration of his term of imprisonment, and permitted to leave the country. He has therefore obtained what he hoped for. When he made his statement in the present case he was of course still in jail. It is a legitimate inference that he gave evidence against the appellants with the idea present in his mind that their conviction might and probably would result in benefit to himself. It is obvious, therefore, that such evidence must need corroboration before we can accept it.

We will now consider the case made against each of the appellants separately, and take first that of *Madan Mohun Bhaumik*. This appellant, with Khagendra and Pratul, is a Dacca man, while Trailakhya and Romesh Chandra Datta Chaudhuri hail from Mymensingh. We first hear of him in Priya Nath's evidence as one of the members of the *samiti* that met in the Coronation Garden at Dacca. This was in 1912 after Priya Nath had resigned his post in the Middle English School at Belghuria and gone home to Banuri. Priya Nath says, however, that he had met Madan before that, in 1911, when he lived in Tantibazar and was working as a private tutor. Priya Nath claims to have slept at Madan's at No. 28, Tantibazar, on more than one occasion. Madan kept the library of the *samiti*, and had with him the *samiti's* papers, such as a copy of the District Organisation Scheme, a copy of the Rules of Membership, copies of the vows, subscription lists and correspondence. Priya Nath has identified Exhibit V (1) and V (3), the

Cipher " lists, as the subscription lists which Madan used to keep. It was he, too, who used to develop the "idea" in the minds of new members. According to Priya Nath, Madan worked in both departments, and appears to have taken a leading part in the affairs of the *samiti*. He was a member of the innermost circle. It is not alleged that he was engaged in the dacoities from Sonarang, but he was one of those who took part in the Panam dacoity. At first it was intended simply to steal the gold throne of the idol at the house of Gour Chandra Poddar at Panam, but as this was found to be impracticable it was decided to commit dacoity at that house. Counsel for the appellants sought to make a point in favour of the defence with regard to this gold throne. It was argued that the throne said by Gour Chandra Poddar to have been stolen and included in his list (Exhibit 66) was of brass and so the story of the theft of a gold throne could not possibly be true. There is little force in the argument. Gour Chandra says that when he gave the list he did not know the gold throne had been stolen. He is borne out in his statement as to its theft by Aiswarja Kanta Sen (prosecution witness No. 178), a perfectly disinterested witness. There is no doubt whatever that the dacoity was committed in that house and loot of great value carried away.

From Girindra we learn that Madan was one of those members of the *samiti* who used to meet in the Coronation Gardens. Madan lent him books to read, among others, *Deser Katha*, a proscribed book. Girindra speaks of Madan residing at Goalnagar, where he had a library. It was to Madan that he paid his entrance fee and subscriptions. About a month after his initiation, which took place on the 27th April 1912, Madan gave him some cartridges, percussion caps, gunpowder and *samiti* papers to keep. Later on Madan gave him more ammunition and papers. It was sought to make a point of the date of this first deposit, but as the point depended on its being the only deposit, and Girindra certainly received things from Madan in several instalments, it came to nothing. According to Girindra, Madan worked in the "Action" Department. It was from Madan that Girindra at Sailesh's request obtained the answers to the Question Paper [Exhibit IV (13)]. Madan's answers leave no doubt as to the revolutionary nature of the society, some of the objects being to win over the troops to their cause, and to provide arms and ammunition and war training for the members. This was in October 1912. Then we have the evidence about the Panam dacoity, in which Girindra refused to take part. He had a talk with Madan about the commission of dacoities generally, and Madan said that whatever was done for the good of the country was consonant with religion. Madan asked Girindra to take part in the Nangalband dacoity, which he declined to do, and later on he told him of its having been successful. Madan instructed Girindra about the composition of *Swadhin Bharat*. The one which he composed was found in his box. About this time Madan appears to have slept two nights in the *baitakhana* at Mr. Das's. Girindra has told us of his fetching the loot of the Nangalband dacoity from Chasara. On one occasion at least he went at the orders of Madan. We may mention here that Counsel for the appellants argued that the identity of the Nangalband dacoity with the articles found in Girindra's box had not been established. That evidence touches Madan most closely of the five appellants, as he evidently knew all about that dacoity and is said to have been responsible for the transfer of the loot or

some of the loot to Girindra's box in Mr. Das's house. No doubt the witnesses called to identify some of the articles failed to do so. On the other hand, the identity of the other articles was satisfactorily established. The learned Sessions Judge has discussed this point at some length and it is not necessary for us to go over the same ground again, especially as the argument in both Courts was on precisely the same lines. It is sufficient to say that the identification proceedings were conducted with the greatest care. Radhika, the poddar whose house was looted, has identified a number of the articles which had been pledged with him, while Mahim Malakar and Abid Ali have spoken to their property. The item on which Counsel laid most stress was the two pieces of a chain *got*. It was argued that the article found was a piece of a watch chain, *not* a waist chain. The evidence, however, of Rai Mohan Sen, poddar, prosecution witness No. 74, shows that "chain *got*" is the expression used to describe the make of chain which can be and is used either for watch or waist chains. It was probably incorrect to describe the two pieces tied together as two pieces of chain *got*, inasmuch as one piece appears to be a link of a *khalsi*, but they were so described from the outset and there is no doubt as to the identity of the items. What is more, the larger piece is obviously part of a watch chain, and Radhika produced the other part from his house. The *hookachabi* has not been satisfactorily identified, because it has not been shown who took the stem (which undoubtedly fits it) to Dacca. A most important piece of evidence in this connection is the half of the pawn ticket [Exhibit IV (19) (r)] with the word "Nangalband" on it, showing that the articles to which it was attached came from that place. There can be no doubt that the silver articles found in Girindra's box were proceeds of the Nangalband dacoity, as he alleges.

We then come to the events of the 27th and 28th November 1912. It is unnecessary here to recapitulate at length how Mrs. Das's suspicions of Girindra's conduct induced her to summon her husband from Mymensingh by telegram. Mr. Das returned to Dacca shortly after midday on 27th November. When he first asked Girindra who had been with him the boy gave him two false names. While Girindra had gone outside and was kicking a football about in the courtyard, Mr. Das discovered the key of the padlock attached to Girindra's trunk, but not the key of the trunk itself. On his calling Girindra and asking for the key, Girindra, though he had his keys with him, went away, saying he would fetch it. His real object in going was to communicate with members of the *samiti*. He met Ramesh Acharji at the Coronation Gardens and made over his keys to him. They then went to Madan's *basha* and Ramesh brought Madan out. They told Girindra that if the *samiti* property in the box was not handed over to the *samiti*, he would be shot. Girindra came home and told his mother this, but finding it had no effect with his parents, he again went out to look for Ramesh and get the keys. He found Ramesh in Wyer Street and learnt that the keys had been made over to a kaviraj, a member of the *samiti*. They met Satish Chandra De, a servant of Mr. Das, who had been sent to look for Girindra, who told him he would come home directly. Just then they also met Madan, Gyan Ranjan and another man, and Girindra asked Madan if his keys would fit the trunk. Madan produced some keys which Girindra examined by the light of the street lamp and found they would be of no use. Hearing cries at Mr. Das's gate, the youths ran away in different directions. Madan was caught and brought into Mr. Das's house, where Mr. Das detained him, tying his hands with an *alwan*, while he sent for the District Magistrate. Madan, on arrest, was searched and his keys made over to Mr. Maclure, who, about 7 P.M. on the evening of 28th November, searched Madan's room at No. 28, Goalnagar. The articles found are the Exhibit V series, the most important being Exhibit V (1), (2) and (3), the "Cipher" lists and the key to the cipher. It is clearly proved that these were found in a locked almirah which was opened with Madan's own key. Madan's explanation in Court that he was caught while on his way to visit a sick relative has no evidence to support it, and cannot be accepted. There is no doubt that these members of the *samiti* were hanging about in the hopes of carrying off Girindra's box from Mr. Das's house before its incriminating contents were discovered.

Madan was put upon his trial along with Girindra on a charge under section 412, Indian Penal Code. In consequence of Girindra's statement of 4th January 1913, obviously made with the object of exculpating Madan, Madan was discharged. At the original trial in this case he was absconding. He was ultimately found in hiding in Calcutta and arrested on 10th September 1914, when he gave the false name of Kulada Prasad Ray. The most important piece of corroboration of the approvers' stories against Madan is undoubtedly the discovery in his locked almirah of the "Cipher" lists and key, Exhibit V (1), (2) and (3). We attach no importance to the *jhola* shirt and Cawnpore twill shirt found at the same time. It is true that Madan had not attempted to substantiate his explanation of how they came there, but the articles are not in themselves sufficiently distinctive to allow of a definite conclusion being drawn about them. The lists stand on quite a different footing. Madan's statements regarding them are, to say the least, disingenuous. Before the committing Magistrate, in answer to the question, "Do these books belong to you?" he replied, "I do not like to say anything now. I shall answer before the Sessions Judge." In the Sessions Court he said, "I know nothing about the 'Cipher' lists. They are not in my handwriting. I never had them in my possession." Now if this were true, it is obvious that he could and ought to have said so before the Magistrate. The statement, however, is palpably false. It is true that the lists have not been proved to be in Madan's writing, but they were found in his exclusive possession in such circumstances that he must be taken to have had full knowledge of them. They are, therefore, clearly evidence against him. No authority is necessary for such a proposition, but the learned Sessions Judge has referred to remarks in recent decisions of this Court to the same effect. It was suggested on behalf of the appellants, and Madan in particular, that these lists had no sinister meaning; that the adoption of a "cipher" was a mere boyish freak; that they might be absolutely innocent productions. If this is so, it may be asked why Madan did not give the true explanation instead of denying all knowledge of them. It is not suggested that there was any club or association to which they could or did refer. Priya Nath has sworn that they are lists of the members of the *samiti* giving the payment of some of the entrance fees and subscriptions. No reasonable explanation is forthcoming why the lists were being converted into cipher. It is clear that this was what was being done, the cipher list coming last and containing the names or almost all the names that had gone before. We find them grouped under the head of colleges and similar institutions, and we know from the appearances that it was from the students and schoolboys that the *samiti* was recruited. We think that this piece of evidence is most important and clearly establishes Madan's connection with the conspiracy. There is, further, the evidence of Inspector Umesh Chandra Chandra and other police officers, which proves that Madan used to be seen at the Coronation Gardens consorting with the others of the appellants and other members of the *samiti*.

Then the evidence of Girindra is corroborated by Satish Chandra De, who saw Madan show his keys to Girindra under the street lamp. Babu Surendra Nath Ray *alias* Mana Babu has told how he met the three men in the street and took Madan into Mr. Das's house. As to his detention, there is no dispute. As regards Madan, we think that the evidence of Priya Nath and Girindra has been sufficiently corroborated and may be accepted as substantially true. It is idle for Madan to deny all acquaintance with Priya Nath and Girindra and his co-appellants. The statements of the approvers show that they must have known him intimately. As for the appellants, it may be asked how, if they were unknown to one another, did they come to make a common defence in a case of conspiracy?

We are of opinion that the conviction of Madan must be upheld.

TRAILAKHYA NATH CHAKRABARTTI *alias* KALI CHARAN *alias* BIRAJA KANTA.

This man is a native of Kapasatia, Mymensingh, and son of one Durga Charan Chakrabartti. Priya Nath tells us that he first met him in August 1910, when he (Priya Nath) went from Sonarang to Dacca on *samiti* business

after the arrest of the accused in the Dacca conspiracy case. Trailakhya was in the "Violence" or "Action" Department, and according to Priya Nath, took part in the attempt at dacoity at Kedarpur and also in the dacoities at Haldia Hât, Kalargaon, Dadpur, Gaudia, Suakair and Panam. He was one of those who as members of the *samiti* used to meet in the Coronation Gardens in the Autumn of 1912, and was present when instructions were given to Priya Nath to murder Sarada Chakrabartti. Priya Nath has said that the *samiti* had farms in Belonia and Udaipur in Independent Tippera, where members used to go to learn shooting. He mentions Trailakhya as having gone to Udaipur at various times in that connection.

Rati Lal Ray, the Head Constable, was murdered on 24th September 1912. On the following day, as Mr. O'Sullivan, Mr. Maclure, Inspector Umesh Chandra Chanda, and Sub-Inspector Prabhat Ranjan Biswas were passing 28, Julanhari Lane, on their return from the scene of murder, they met a man. Umesh Chandra at once whispered to Mr. O'Sullivan that it was one of the young men whom he had seen in the Coronation Gardens and also with other suspects, talking under the *bot* tree near the Courts. Umesh Chandra did not know his name at that time. Trailakhya on being called by one of his names as Kali Charan Chakrabartti. He was searched and on him were found a whistle and a "Singer Company's" note-book. The whistle, he said, he had bought that day at Narayanganj, but when taken there he declined to point out the shop. The Singer's note-book contained names of stations on the Assam-Bengal Railway, which indicated a journey in the direction of Udaipur. The corroboration afforded by that entry is after all very slight. Trailakhya was put up before Mr. Das under section 109, Criminal Procedure Code, but on 27th October 1912, those proceedings were withdrawn as it was alleged by Trailakhya that the warrant against him in the Dacca conspiracy case had not been withdrawn and the Crown were unable to prove his knowledge of the contrary (see Exhibit 167). Girindra mentions Trailakhya as one of those who met in the Coronation Gardens. Trailakhya also was present when Girindra took the vows at the *Kalibari* at Swamibagh. Girindra also says that Trailakhya was in the "Action" Department. One day, about a month after his initiation, Girindra went to the house of Norendra Nath Sen, where he met Suresh Chandra Mitra, Trailakhya and Romesh Acharji. The three men were cleaning guns, seven or eight in number, and Girindra stayed with them for a great part of that day and helped them. Trailakhya was present when Madan asked Girindra to assist in the Panam dacoity, and it transpired that all those present were to go. On 26th November 1912 Romesh and Trailakhya came to Girindra at Mr. Das's house early in the morning, bringing some books, the lives of Mazzini and Garibaldi, and a book called *Dharmatattwa*. Girindra fetched another copy of the last-named book which was in the house, and he and Trailakhya discussed it. Romesh asked if they could clean firearms there, and on Girindra assenting, he went away and brought an automatic pistol and a revolver, which they cleaned in the *baitakhana*, with closed doors. Trailakhya had his bath there, and then he and Girindra took their meals on the verandah of the *baitakhana*. Mrs. Das became suspicious at hearing sounds (whether they were of the cleaning or of the snapping of the triggers, does not clearly appear), and Girindra persuaded his friends to depart, which they did, taking the weapons with them. Girindra has said that he had heard that one Kali Charan Chakrabartti had been charged before his father under section 109, Criminal Procedure Code, but did not know that it was his friend Trailakhya. This certainly sounds very improbable, and it was strongly for the defence that Girindra must be telling an untruth on this point. It is, however, difficult to see what possible object Girindra could have in denying knowledge of that case. It may be that Girindra, not being an important member of the *samiti*, was not told. One of their cardinal rules was secrecy about each other's affairs. It is not likely that he would have heard of it except from members of the *samiti*. We do not attach any importance to this incident. Priya Nath states that Trailakhya was to go, and did go, to Northern Bengal for purposes of organisation, and that he then assumed the name of Biraja Kanta Chakrabartti. Priya Nath further says that Trailakhya wrote him letters in the name of Biraja from the Rajshahi Division, where he had gone on organisation work.

He identifies the handwriting of Exhibit 133 as Trailakhya's, but cannot identify the address as he does not know his English writing. This letter, which was found in the house of Khagendra, purports to have been written from Calcutta to Bhastara on 17th November 1913, and says:—"I shall probably go to Northern Bengal in five or seven days." It is argued that Priya Nath must be lying because Trailakhya could not have written to him on arrival in Rajshahi at that time as Priya Nath was then in jail. This, however, ties us down to only one visit of Trailakhya to Northern Bengal. Priya Nath was not questioned as to the letters to which he referred, and there is therefore no ground for ascribing them to dates on which he was in jail. That Trailakhya did go to Northern Bengal under the *alias* of Biraja Kanta Chakrabartti has been satisfactorily proved. Ram Panda, the cook (prosecution witness No. 37), identifies him as the Biraja who stayed at Nator at the house of Srish Chandra Chakrabartti, a pleader, where Ram Panda was in service. The time he gives would place the stay before the *Pujas* of 1913. At the search of Srish Babu's house the postcard (Exhibit 152) dated 1st *Bhadra* 1320 (17th August 1913) was found. This purports to be written by one Kunja and is addressed to Biraja Kanta Chakrabartti. The writer has not been placed, but it is strong corroboration of Ram Panda's statement, while Ramani Mohan Mukharji (prosecution witness No. 98) explains how Ram Panda was traced and found. It was suggested that the identity of this appellant had not been established, but the learned Counsel was constrained to admit that there was no other Kali Charan Chakrabartti to whom he could refer as the person indicated. Trailakhya was identified by Satish Chandra De as the man who had his bath and breakfast in the *baitakhana*. It was suggested that Trailakhya's photograph had been by then both taken and published. Satish Chandra De, however, denies that he ever saw or was shown any such photograph. We see no reason to disbelieve him. It also appears that Trailakhya when first arrested and photographed wore a long beard. This he subsequently shaved and again allowed to grow. His appearance must have changed somewhat from time to time, and the photograph would not, therefore, be a very certain guide. It is true that no witness states that he saw Trailakhya at the Coronation Gardens in company with either Priya Nath or Girindra. There is, therefore, no direct corroboration of the approver's story on that point. The fact remains, however, that Trailakhya was seen there in company of other known members of the *samiti*. There is also ample corroboration of the approver as regards him on the several points stated above. At the former trial Trailakhya too was absconding. He was arrested at a bathing ghat in Calcutta on 25th September 1914 by Prabhat Ranjan Biswas. Nothing in particular transpired at the time of his arrest. We think that the evidence of Priya Nath and Girindra against Trailakhya may be accepted and that he was rightly convicted.

KHAGENDRA NATH CHAUDHURI.

This appellant lived at Banglabazar, Dacca, and admits that he was a student of Jagganath College. He was introduced to Priya Nath by members of the *samiti* and was one of those who used to meet at the Coronation Gardens. Priya Nath says that he was in the "Organisation" Department. Girindra says that he was in no particular department. Both, however, agree that he was in charge of the arms of the *samiti*. Priya Nath states that he slept at Khagendra's *basha* on two or three occasions and once saw arms there, three guns and some swords. Priya Nath says that Khagendra was one of the members to whose address business letters of the *samiti* were sent. Khagendra is not stated to have taken part in any of the dacoities. This would be in accordance with the rules; as alleged he was in charge of the arms. Some attempt was made to challenge Priya Nath's knowledge of Khagendra's house and it was said that he had given a wrong description of the size and number of the rooms. We do not attach much importance to criticisms of this kind. Priya Nath appears to have gone there almost always, if not always, at night. He has given correctly the number of those rooms which he would be likely to see, and

he does not appear to have been questioned as to the number of rooms in the house. As to correctly describing their dimensions, it would have been extraordinary for a youth like Priya Nath to have done so. It would certainly indicate a most unusual faculty of observation. Girindra describes an occasion when by Madan's order he, Gyan Ranjan, and Romesh Acharji carried three bundles of arms to Khagendra's *basha*, left them there and carried other bundles of arms from Khagendra to the house of Pratul Ganguli in a lane near Goalnagar. It was argued that Girindra had contradicted himself about the custody of the arms belonging to the *samiti*. In his statement to Mr. O'Sullivan he said: "Ramesh is in charge of arms and ammunition." The witness explained that that statement referred to Barisal and the context shows that his explanation is correct. It is conceded that from August 1913 to November 1913 Khagendra was acting as third Master at the High English School at Bhastara, under the assumed name of Suresh Chandra Chaudhuri. The letter Exhibit 133 found in his possession and proved by Priya Nath to be in Trailakhya's handwriting is strong evidence of association between the two. Khagendra's explanation that this letter was written to him from Calcutta by his uncle, Noresh Chandra Chakrabarti *alias* Biraja, who works at Whiteaway and Laidlaws, has been proved to be false. Noresh Chandra Chakrabarti (prosecution witness No. 129) denies it. Nor is he Khagendra's uncle, though he admits that Khagendra calls him that, because his nephew and Khagendra call each other "*bhai*."

It was urged in criticism of Girindra's evidence against this appellant that his name was suggested to Girindra by the police from the "Cipher" lists. This was clearly not the case. He first stated Khagendra's name on 12th February 1913, and the "Cipher" lists were not deciphered until 10th March 1913. The warrant applied for against him on 24th February 1913 described him as of Dacca College, which was incorrect, and, moreover, not in accordance with the "Cipher" list. After November 1913 Khagendra disappeared. He was finally arrested on 26th January 1914 at Baranagar in connection with what is known as the Baranagar Arms Act case. It is proved by the evidence of prosecution witnesses Nos. 123 to 126 that Khagendra and another man, Harsa Nath, took a house in Baranagar, of which they kept the door and windows always closed. The rent was to be Rs. 11 a month, of which Rs. 7 were paid first and then Rs. 4. Khagendra gave the false name of Khitendra Nath Chaudhuri, in which name two receipts for December 1913 and January 1914 were made out. On 26th January 1914 the house was broken open and a number of parts of guns and repair tools were found. Khagendra was convicted in that case and sentenced to three years' rigorous imprisonment. It was argued that the finding of these things in Khagendra's possession was not admissible in evidence against him in this case. We are unable to see why it should not be. The fact that the possession of the arms, etc., was at Baranagar cannot affect the question. It is not necessary that all the acts of the conspiracy generally or the conspirators individually should be confined to one place or district. In our opinion this incident affords the strongest corroboration of the statement of the approvers that Khagendra was in charge of the arms of the *samiti*.

The prosecution relied very strongly as against this appellant on the fact that his name appears in the "Cipher" lists. Now we have already decided that the lists have reference to the *samiti* and are good evidence against Madan, in whose possession they were found. As against Khagendra and Pratul (whose name is also said to find a place there), the matter rests on a different footing. No doubt in Exhibit V (3) we find "1 P. Gan." and "15 K. K. Chow." for the year 1318. In the list for 1319 both in English and cipher the name "K. Chow." does not appear, though that of "P. Gan." or "Pratul" does. In Exhibit V (1), which is all in cipher and in which the arrangement of names is by colleges, we find "Pratul" in the Dacca College list and Khagendra in the Jagganath College lists. It is conceded that these are the colleges to which Pratul and Khagendra respectively belonged. The learned Standing Counsel argued that the Court could only infer that these are the names of these appellants, and he called to his aid section 10 of the Evidence Act. We are unable to see that that section assists him. What

is required is proof that these are the names of the Pratul and Khagendra now before us. That could only be given by direct evidence, which admittedly is not forthcoming, or by a process of elimination, which certainly here is not complete. It may be a matter of conjecture, and even of reasonable conjecture, but we do not think it goes further than this. It is not even as if the documents had been proved to be in Madan's writing, though even then we should have to be satisfied that in writing "P. Gan." or "Pratul" or "K. Chow." he meant these appellants. We are constrained to hold that it has not been proved that the names stated necessarily refer to these two appellants, and that these lists cannot therefore be regarded as evidence against them. So far as Khagendra is concerned, these lists are not necessary. There is against him sufficient evidence in corroboration of the approvers, and we hold the case against him to have been fully made out. His conviction must be upheld.

PRATUL GANGULI.

Priya Nath first mentions this appellant as one of those who used to meet at the Coronation Gardens. He speaks of him as living at the Minerva Mess and previously at Tantibazar. He had known him at Sonarang in 1910-11. The orders for the murder of Sarada Chandra Chakrabatti are said to have been given in Pratul's presence. In connection with the Panam dacoity, Priya Nath and Pratul took weapons from 6, Raja's Lane, to Narayanganj. It was to Pratul as assistant leader that Priya Nath submitted his Third Quarterly Report [Exhibit IV (1)], which was afterwards found in Girindra's box. One of the addresses of the *samiti* spoken to by Priya Nath was c/o Renubala Dasi, 6, Raja's Lane. Renubala is alleged but not proved to be the infant daughter of Manoranjan Banarji, the pleader and brother-in-law of Pratul. As to this, we may remark that it might very easily have been disproved, as we are told that this Manoranjan Banarji was actually in the Sessions Court, instructing Counsel for the defence. Pratul's statement that his niece's name was Chapala has also not been proved. Official letters of the *samiti* were received, signed "Ganguli," i.e., Pratul Ganguli, the signature having been changed from "Sen" after the arrest of Norendra Nath Sen. Girindra tells us that he was introduced to Pratul at the Coronation Gardens, and that Pratul was present at his initiation and told him to read aloud the vows and rules of membership. As above stated in discussing the case against Khagendra, Girindra says he once took some arms to Pratul's house. He met Pratul at Norendra Nath Sen's *bashat* and talked of the failure of the first attempt to commit dacoity at Nangalband. Now if the evidence of these approvers against Pratul is to be accepted, there is no doubt that it is amply sufficient to convict him of the offence charged. But as we have stated above, we do not think it would be safe to rely upon it without some material corroboration. If the "Cipher" lists, Exhibits V (1) and (3), with which we have already dealt, be excluded, there is scarcely any evidence left that can be called corroboration in the case of this appellant. It is true that Inspector Umesh Chandra Chanda states that he saw Pratul and others in the Coronation Gardens, but this is hardly corroboration of the approvers, as the witness does not say that he saw either Priya Nath or Girindra there. The only witness who connects Girindra with these meetings is Basanta Kumar Das (prosecution witness No. 99). This witness cannot be trusted, for at the time he gives (?) Girindra was in jail. It can hardly be said that the fact that the approvers have given the addresses of the appellants correctly is corroborative of the rest of their statement. It does not follow, therefore, that because we do not accept the arguments put forward for the defence on that and cognate points (e.g., the argument about 6, Raja's Lane, and 6, Raja's Decri), that we consider that as a point made for the prosecution. It only shows that the particular criticism of the approvers' evidence is ill-founded. Counsel for Pratul sought to base an argument on the date of the "Sen" letter (Exhibit V). This letter was marked for a particular purpose, but not put in generally as evidence for the Crown. We were of opinion that Counsel for Pratul was

not entitled to use any part of the letter unless the whole went in, and indeed the date was of no use to him unless we also saw the contents. We accordingly exclude this letter from consideration. One fact on which the prosecution have relied as corroboration against Pratul is that on 15th May 1913, when a search was made at 35, Sutrapur, the house of Manoranjan Banarji, Pratul's brother-in-law, some seven or eight books were found, which, from the name on them, appear to have belonged to Madan Mohan Bhaumik. They were found in a locked trunk under the *taktaposh* in the *baitakhana*. Madan's explanation that he had left the trunk with Lalit Mohan Das is not supported by any evidence. This incident is no doubt some association between Pratul and Madan, but in our opinion it stands alone and is not sufficient. The only other ways in which it could be said that the approvers were corroborated as regards Pratul were by the "Cipher" list and the evidence of association in the gardens. We have dealt with these points and decided that the lists are not evidence against him, and the corroboration as to association insufficient.

The result is that Pratul must be given the benefit of the doubt. In his case the appeal is allowed, and convicted and sentence is set aside. We direct that he be released.

RAMESH CHANDRA DATTA CHOUDHURI *alias* PARITOSH.

With regard to this appellant, the evidence of the approvers, if it could be accepted as it stands, without corroboration, would leave no doubt of his having taken part in the conspiracy. Priya Nath speaks to meeting him first at Mymensingh at the end of 1908 or beginning of 1909. Paritosh had been a student at the Mymensingh City School and a member of the *Sadhana Sampradaya*. His home was at Nandina, thana Bajitpur. Paritosh, according to Priya Nath, came over to this *samiti* when they separated from the *Sadhana Sampradaya*. This appellant subsequently came to Sonarang, and it was there that he was given the name of Paritosh, to rhyme (it is said) with Bhabatosh, the nickname of Rabindra Mohan Sen Gupta, a teacher at the National School and also a member of the *samiti*. Paritosh is said to have been one of those who attempted dacoity at Kedarpur and to have taken part in the dacoities at Haldia Hat and Dadpur. Priya Nath says that Paritosh took the same vows as he did at Sonarang, and that he worked mainly in the Violence, but sometimes also in the Organisation Department. He is said to have been present when instructions were given for the murder of Sarada Chakrabarti. Priya Nath also says that Paritosh met him at Chandpur, when he (Priya Nath) was returning to Durgapur after the vacation, and told him of the Comilla dacoity and arrest of some of their members. We have already dealt with the argument on this point. We can see nothing improbable in Paritosh remaining in the locality after the dacoity. He might, not unreasonably, have thought it the safest course to take. As for Priya Nath being told by some one else, there is no reason why he should not be told by two or more persons of the same occurrence.

Girindra says that he met Paritosh after his initiation, being introduced to him at the Coronation Gardens by other members of the *samiti*. Paritosh, according to Girindra, was concerned in the removal of the Nangalband loot from Chasara to Dacca. Paritosh and Romesh Acharji are said to have come to Mr. Das's house one night when that officer was at Mymensingh. They brought with them the scheme book and rules of membership. Some new rules were added that night, being written partly by Paritosh and partly by Girindra. Paritosh and Romesh Acharji slept that night in the *baitakhana* and went away the next morning. Girindra says he knew this appellant simply as Paritosh and never enquired what was his real name. In speaking of the Nangalband loot to Mr. O'Sullivan, Girindra omitted to mention Paritosh. This, he says, was due to an oversight. It is conceded that against this appellant the evidence of the approvers stands alone. There is no corroboration on a single point. There is corroboration that two Babus slept at Mr. Das's house, but none as to their identity. The learned Sessions Judge has not dealt with this difficulty. We agree with him that

there is no inherent improbability in Priya Nath's or Girindra's statements. Indeed, they bear semblance of truth. At the same time, having regard to the inducement which each had to do his best for the Crown in this supplementary trial, it would not be safe to accept their uncorroborated testimony. We accordingly allow the appeal of Romesh Chandra Datta Chaudhuri *alias* Paritosh, set aside his conviction and sentence and direct that he be released.

We have to consider the question of sentence in the case of the first three appellants. We do not agree with the learned Sessions Judge that Trailakhya has been proved to be more guilty than the other two who undoubtedly took a leading part in this conspiracy. Indeed, Madan as the chief preacher of sedition would appear to merit a higher punishment. We do not, however, think it necessary to discriminate between them. In our opinion the sentence passed on Madan, though heavy, is not too severe. His appeal is accordingly dismissed.

In the case of Trailakhya, we uphold the conviction but reduce the term of transportation passed upon him to one of two years.

In the case of Khagendra, we bear in mind that he was convicted on the 15th June 1914 in the Baranagar Arms Act case and sentenced to rigorous imprisonment for three years. It seems unfair that the possession of arms for which he was convicted in that case should be used as evidence against him in this case, and that he should still be punished as for two wholly unconnected offences.

We accordingly direct that he be transported for seven years, the sentence to take effect immediately on the expiry of his term of imprisonment in the Baranagar Arms Act case.

This appeal, the hearing of which lasted for 14 days, was argued on both sides with admirable temper and fairness. We have to thank Counsel for that, as also for the careful and painstaking manner in which they placed before us the voluminous details of the case. Their intimate knowledge of the facts has saved us much labour and trouble.

PROCEEDINGS OF THE
HOME DEPARTMENT, SEPTEMBER 1916.

Judgment of the High Court Appellate Bench in the Supplementary Barisal Conspiracy Case.

No. 2668, dated Simla, the 15th September 1916.

Pro. no. 265.

From—The Secretary to the Government of India, Home Department,

To—SIR T. W. HOLDERNESS, K.C.B., K.C.S.I., His Majesty's Under Secretary of
State for India.

In continuation of the Home Department letter no. 447, dated the 4th February
1916, I am directed to forward, for the
Political A., February 1916, nos. 258—260. information of the Secretary of State, a
copy of the judgment of the High Court in the appeal in the Supplementary
Barisal Conspiracy Case.

Exd. by—B.A.

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