Crime in India

WITH AN

INTRODUCTION

ON

FORENSIC DIFFICULTIES AND PECULIARITIES

by

SIR CECIL WALSH, K.C.

"The mystery, the romance, the coincidence of real life far transcend the mystery and the coincidence of fiction. . . . I pray that three things, peace, justice, and rule of law, may accompany India and ourselves throughout every stage of that long and arduous journey which lies before us."

Mr. Stanley Baldwin, in the House, 7th Nov. 1929.

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INTRODUCTION

Introduction

THE interest aroused by the collection of *Indian Village Crimes*, published last September, has led me to compile a further collection, of a slightly more varied character. It is true to say that these stories strike a new vein in literature about India. My object has been not merely to interest those who are always ready to read something new, and to give students of criminology illustrations of the strange crimes which are systematically perpetrated in India, and of the difficulties and the fascination of police investigation, as well as of judicial solution, but to present some sort of picture of the mentality, the duplicity and cunning, the indifference to human life, the callous indulgence in false evidence and false charges and the lack of moral fibre which daily manifest themselves amongst the millions of cultivators whom we govern, and of whom the Englishman at home knows so little.

I have tried to make it plain that I do not seek to prove that India, in proportion to its population, is exceptionally criminal. Probably both New York and Chicago can give it points, certainly in organised crime, though most of the outrages committed there are the work of men who are carrying on open warfare against Society, and who, having had a better chance in life, ought to know better. The Indian villager, if left alone, is a law-

abiding person, with unlimited faith in the authority and in the justice of British Rule. He is easily led and easily misled, and is dangerous in crowds if aroused. What I wish to present to the English reader are the difficulties of understanding him, his complete subjection to the influences of tradition and instinct, the almost insuperable task of getting the truth out of him, if he wishes, or is persuaded, to cross it, and the total absence of that public opinion which is the chief moral force amongst civilised people, and the foundation both of Society and of Public Order, and which seeks to prevent, as well as to pursue and to punish, crime. The Indian cultivator has been said to be little, if at all, below the English agricultural labourer in natural intelligence. As I have observed before, his lack of self-control seems to me to be largely due not merely to lack of education, but to lack of that constant association with people superior to himself in education, refinement, and outlook which the English peasant enjoys.

Nothing has impressed me more than the way in which reviewers in the literary columns of some of the best-known journals appreciated the importance of this aspect of the original collection. Miss V. Sackville-West led the way, if I may so speak, in one of her fortnightly Broadcast talks on new books, when *Indian Village Crimes* was just published. 'It is impossible', she said, 'to read these stories as so many short thrillers. . . . The real fascination of the book lies less in the excitement of the records, than in the light they throw upon the working of the Indian village mind, and upon the extreme difficulty of disentangling truth from falsehood in the interests of justice. Indeed, one may read the stories

themselves as merely illustrations of the author's Introduction. False testimony, family ties, loyalty between members of the same caste, false confessions, lack of scruple among the native police, and the mingled complexity and simplicity of witness and criminal alike are among the pitfalls which gape in the path of the judge.' I could not have expressed so clearly the fundamental intention with which I compiled the collection, and with which I am following it up with the present volume. I do not think that the entire records of criminal cases throughout India during the last hundred years contain a more astounding (and yet in the circumstances quite natural) manifestation of the combination of characteristics to which Miss Sackville-West refers than the amazing story, 'The Biter Bit', in Chapter VIII. The case occurred almost wholly between two neighbouring but independent police establishments belonging to two rival Native States, and it shows what may occur amongst these people when, to quote Miss Sackville-West again, 'the motives of rivalry, hatred, fear, or revenge come to complicate the situation'. Again, one might select as a conspicuous illustration of eccentric criminality the story 'A Sacrifice, or a *Crime Passionnel?*' in Chapter III. No doubt, we meet here in England occasional instances of the murder of a mistress, or of a pitiable prostitute, by some half-mad ruffian under the influence either of greed or of a sudden sexual reaction or perversity. But where else but in India could you find a parallel instance of the cold-blooded murder of a pregnant and embarrassing mistress, in which the crime was dressed up with a halo of religious sanctity in a simulation of sacrifice, even although to a Goddess of Destruction, as a sort

of palliation, and was preceded, like the extracts from the Burial Service read by the chaplain at an English execution, by a quasi-public act of sexual connection, such as was said to have happened on that occasion?

Many reviewers, who were more complimentary to my first book than I had any right to expect, regretted that I had not put in more work in elaborating the Introduction. The reason was neither unwillingness of the spirit nor a weakness of the flesh. It was a feeling of compunction lest I should fall into the error, of which lawyers are so often accused, of loading technical discussions with crossed t's and dotted i's, expounding the evident and expatiating upon the obvious, together with the sort of fear under which an advocate is apt to labour that he will spoil his salient points by over-elaboration. I am now emboldened to say some things which I wished to say before, which I think ought to be said, and which I believe find justification in these stories. Some reviewers have expressed in terms of high compliment their recognition of the impartiality and sincerity with which the judiciary in India endeavour to discharge their difficult task. Almost everyone who has worked out there will confirm my belief that this complimentary view is shared almost universally by every class of the Indians themselves. About that I shall have something to say later. But it is difficult for anyone who has sat, as I did, for some years as a member of an appellate court, deciding important and difficult appeals from Sessions trials, not to feel that one of the anxieties of those responsible for the future governance of India ought to be to maintain, and to secure for future generations, the system of English justice, as it has been known

and honoured in the past, not merely in its forms, but in its essence and substance—in other words, in its personnel. My own conviction and anxiety on this matter are not the result of racial feeling, but of experience—sometimes bitter experience. I do not hesitate to say that in such experience I have seen signs of deterioration resulting from what is called 'Indianisation', and that I believe that with more Indianisation there will be greater deterioration. The weaknesses I have in mind do not come from want of trying. Nor are they conscious weaknesses. That is, perhaps, the worst feature of it. My readers will be entertained by an illustration. It is, no doubt, an extreme case, but an extreme case which could not grow at all except in fruitful soil. Man, it has been said, contains within him the germ of his most exceptional action. The case came before me on an application to quash the order of the judge of first instance, in a civil case. A money-lender was in jail. He feared that one of his claims might expire by lapse of time, and become barred by the statute of limitations. So he instructed his brother-in-law to sue the debtor. Now, the plaint, or the statement of claim as we call it in England, must be verified by the plaintiff. The regulations for business interviews with prisoners in jail are elaborate. The Indian, like many Westerners, prefers to dodge regulations. Like the writer, he has probably had bitter experience of the capacity of red-tape for obstruction and delay. He also has a wholesome fear of the price which he may have to pay to some supervising official in order to obtain his consent to a formal application. He finds it cheaper to bribe a subordinate official, and to get the thing done *sub rosa*. In this case the plaint had to be

verified by the plaintiff in the presence of a particular jail official. It was not. It was signed, and verified, by the plaintiff in jail, otherwise than in accordance with the jail rules. When the case came on for hearing, the plaintiff money-lender, who was possibly a rogue making a false claim, had been liberated, and he gave evidence on oath in support of his case. The point was taken by the defence that his plaint had not been verified according to law. The judge might have adjourned the hearing, with the usual penalty, or have required him to verify the plaint in court before him. But he treated the objection as a preliminary bar to the success of the suit. After an elaborate discussion, in a written judgment, of the jail regulations, which were merely rules for domestic management, he held that they had not been complied with, and that the plaint was a forgery! But what was more, he issued notice to the lawyer acting for the plaintiff to show cause why he should not be prosecuted for uttering a forged document! Of course, I had to quash the order. I could not conceive how anyone, let alone a lawyer, could have begun to entertain such a notion. I was new to India, and to an English barrister few things could be more disastrous than an order by a judge in open court that he should be prosecuted for forgery. It had not reached that stage, but, in any case, the preliminary order threw upon the unfortunate counsel a heavy burden of time, money, and anxiety, for which he could never be compensated. My sympathies were enlisted, and I probably used some rather strong language about the proceeding. Now, the point of the illustration is this. The judge was an able judge on the civil side, with some experience, and he was afterwards

deservedly promoted. He came to see me, and asked me if I was angry with him. I did my best to explain the fallacy and consequences of his order, and assured him that I was not in the least angry, but, on the contrary, was pleased to see him. He misunderstood this, and went off and told my colleague who was responsible for the appointments, and promotions, of subordinate judges, that I was pleased with him! But it was evident that he did not in the least appreciate the implications of his order, and could have had but the vaguest notions on the subject of forgery. This instance has always remained in my recollection, together with those which I have mentioned in my former volume, of the judge who acquitted the men who cut off the patwari's nose, and of the judge who fined a husband fifty rupees for half-murdering his wife with an axe and crippling her for life. All these decisions were arrived at with the best intentions. But that, as I have said, is the worst feature of it.

One kindly reviewer expressed the opinion that some of the stories in *Indian Village Crimes* did not reach the level of their titles, that they were not so mysterious as I would have my readers believe, and that it was 'easy to see under which thimble the pea was'. I admit the justice, in part, of this criticism, though in some of the cases, of which ' The Post-Office Problem', in Chapter X. of this volume, is one, I remain in doubt as to where the truth lay. But the criticism leads me to ask my readers to bear three things in mind. It is often easier to form a confident judgment in the cold light of a historical ratiocination, than it is during the hearing, amidst the heat and dust of conflict. Those who are

disposed to question the decisions of juries and judges on acute issues of fact should always remember this. Secondly, in a number of cases, I am reviewing decisions with which I happen to have disagreed, arrived at by men for whom I had the highest respect. My own conclusion may have unconsciously coloured my presentation of the facts in narrative form, and, in any case, one feels a certain diffidence in dealing with judicial decisions conscientiously arrived at in difficult cases, when one is relying partly on one's own judgment in dissenting from them. Lastly, I have necessarily had to deal occasionally with individuals whom I suspect to have been guilty of crimes, of which they have either been acquitted or never charged. In such circumstances, a historian will be apt to magnify doubts which he does not share, and rather to invite the reader to form his own opinion than to force one upon him. I have already said that, with certain unimportant exceptions, all these cases have been compiled from official records. I have done my best to present them to my readers as they were presented in court, and not to compile 'thrillers'. I have been asked whether I have taken points from one case and added them to another, in order to make a more dramatic story. This is not the case.

In this connection it is appropriate to deal with one just criticism. Some reviewers have regretted the narrative form which I have adopted, and the lack of presentation of the actual details of the trials and of the *ipsissima verba* of the examinations and cross-examinations of the witnesses. Nothing, it has been said, can make up for this deficiency. But I had no option. In the

first place, no one who has neither heard a criminal trial in India nor perused the recorded evidence can have any conception of the inordinate length to which they extend, and of the disorder in which the evidence is frequently presented. Even the examination-in-chief is expanded by irrelevant matter and presented in a disjointed manner, without any real effort at either logical or chronological sequence. Every barrister knows that examination-in-chief requires great experience, great tact, and a clear head. One does not realise how difficult it is until one has heard how well it can be done. Some Government Pleaders, who conduct prosecutions in the United Provinces in India, are men of skill and experience. But they are grievously handicapped. Many parts of their 'Instructions' are merely verbal. The noise and distractions in the ordinary subordinate court in India are inconceivable. Even in the great palace where the High Court sits in the capital of the United Provinces, the noises in and about the building are a real handicap, especially in the hot weather when the electric fans are lashing the sound waves. I believe I was the first judge to threaten with fine any member of the public who carried on an audible conversation, or who yawned aloud with blasts which seemed to proceed from a saxophone. But it was impossible to deal with the crows who fought and screamed over the bowls of water used for moistening the *tatties*, or window shutters, and for cooling the hot winds which blew through them. In the lower courts, the judge's typewriter is sometimes one of the worst offenders, even amidst the chatter and din flooding the court-room from the crowded verandahs outside,

through wide-open doors and windows. The witnesses are garrulous and stupid, and the judge, either through lack of previous practice at the Bar or from a mixture of timidity and preoccupation, seldom or never interferes to hold the reins and to keep things straight. But if examination-in-chief is unsatisfactory, what is one to say of the cross-examination?

There was nothing in the average Sessions case which came before me in appeal which was so frequently abused, and so hopelessly mismanaged, as the cross-examination. When Lord Reading was Viceroy, he appointed a Civil Justice Committee, which travelled all over British India with a view to simplifying the appalling complexity and reducing the delay into which the conduct of civil suits and appeals has drifted in India to-day. Nothing which I could say would add to the animadversions upon the prevailing system of cross-examination contained in the voluminous report. It is perhaps true to say that on the civil side it is deliberately unbridled by men who know better; while on the criminal side ineptitude arises from incompetence, and from lack of training and experience. Quantity has to take the place of quality. Witnesses are subjected to every species of attack, often without any foundation, to their discredit; suggestions of their sympathy with, or share in, former litigations with the accused, or with some members of his family, and of imaginary sources of enmity, are flung broadcast. When witnesses are attacked on the merits, the cross-examiner will often elicit additional facts against the accused. A case is now lying before me, not otherwise of sufficient interest to be included in this series,

in which an accused who was condemned to death owed his conviction entirely to a fact dragged out of a witness by his own counsel in cross-examination. The judge said in his judgment that he would have distrusted the statement of the witness if he had said it earlier, or in the examination-in-chief before him, as it might have been taught the witness by the police. But as the witness had said it in cross-examination, and had not been asked the question before, he was satisfied that it was not prompted, but had come naturally as a piece of truth told under pressure.

But from the point of view of an appellate court, which has to examine all the recorded answers, and of the historian who desires to present a duly proportioned account of the evidence, the most bewildering feature is the advocate's almost invariable practice of jumping from topic to topic in the course of the cross-examination, and sandwiching relevant matters relating to the facts of the case between questions to credit, in which various topics are jumbled up together. The object of the method, which is so constant and widespread that it must be founded upon a traditional practice and belief, is to divert the witness's mind, and to return suddenly to some point which he has already answered, in the hope of getting him to trip and to contradict himself, or in the familiar language of the courts in India, to make 'a discrepant statement', on some matter of detail. I am not concerned here to discuss the propriety of this proceeding, or the best method of keeping it within reasonable bounds. My object is to explain why it would be impossible to reproduce an accurate copy of the evidence. No reader could be expected to

plough through it. An appellate court has patiently to peruse pages of this sort of thing in a printed book. Much of it is bewildering or unintelligible without industrious research into other parts of the evidence. Looking for relevant facts in such passages is like looking for a needle in a bundle of hay. To reproduce it in the stories told in these volumes would involve editorial notes and cross references, without adding to the material bearing on the guilt or innocence of the accused, and would multiply by three, four, or five the length of the stories, without adding a syllable of value. I have given verbatim extracts from the evidence in every case in which it was both desirable and possible to do so. The best instance of this occurs in the story 'Proof, or Probability?' in Chapter VII. of this volume. I have seen few capital cases in India in which the evidence was so succinctly and simply given, and in which both the arrangement of the witnesses and the sequence of their respective stories were so orderly and satisfactory. But even in that case, I have been compelled to cut out at least half of the cross-examination, because it was purposeless and irrelevant, and to excise portions of both the examination and the cross-examination because they consisted of idle repetition.

It may be mentioned, by the way, that even the record of the evidence which reaches the appellate court is not always to be trusted. As cases have to be dealt with in two languages, the margin for error is wide. Appeals in the High Court are conducted in English. In the Sessions Courts the language is Urdu. The evidence is taken down by the 'reader' in Urdu script. This looks like a variety of shorthand, and owing to its abbrevia-

tions, contractions, and lack of vowels it is often extremely difficult, even for a trained Indian, to decipher. For instance, the negative 'not', in a long sentence, is often represented by a dot. The full word *nahin* is not used, nor the sign for 'n'. Thus, the whole meaning of a sentence may be reversed by the interpolation, or omission, or disappearance of a little dot. In bonds, and other legal documents, this opens a wide door for forgery and falsification. Nor does the 'reader' in the trial court take down the actual answer. He writes a précis of question and answer, in the *oratio obliqua*, and in his own variety of shorthand. Meanwhile the judge writes his own notes of the evidence in English, translating it from the vernacular in which it is given, as he goes along. The printed book in the court of appeal contains only these English notes of the oral evidence. The judge's version does not always agree with the 'reader's' Urdu version. In the craze for 'The Axe' after the War, the Government made an effort to reduce the amount, and therefore the cost, of this record in two languages. I happened to be one of those who protested, as I had found, in capital cases, how many vital errors, possibly affecting a man's life, might creep into either version. The English notes made by the judge, as they have to be printed, run the gauntlet of a copyist, a compositor, and a proof-reader, none of whom are English, and all of whom are capable of serious mistakes. It may thus happen, though seldom, because we take immense pains to check the various versions on all points where doubts arise, that an appeal is decided on evidence differing slightly from that which was given at the trial. A colleague and I once acquitted in a very serious case, in

which the Sessions judge had taken enormous pains and convicted after a careful trial and a very thorough judgment. One of the features of the case was the discovery of loot which an accused had made to the investigating officer. My colleague found that this man, according to a piece of the evidence, had been locked up in an improvised place, of an inhospitable and uncomfortable character, from seven o'clock in the morning until nine o'clock in the evening, and that afterwards he conducted the police to the place where the loot was found. There seemed no reason for this prolonged confinement, and no explanation of it had been forthcoming. As a consequence, my colleague distrusted the whole of the investigation, and we refused to confirm the conviction. The English judge whom we overruled was a conscientious and earnest worker, and a first-class criminal judge. He was astounded at our decision. After the appeal was over, he sent for all the records, and with much labour finally discovered that the printed notes on which we had worked contained a misprint of 9 P.M. for 9 A.M.! The reader's Urdu note confirmed the A.M. version. The prisoner had been confined for only two hours, as a temporary necessity, and the whole substratum of our suspicions collapsed. Someone engaged in the case might have, and ought to have, consulted the reader's version; but it happened that no one did. It was a long time before the judge—who would soon have been himself promoted to the High Court, if he had not unfortunately died—forgot this incident. It was the worst mistake I ever heard of which remained undiscovered until it was too late, though I have known many others more serious discovered during the hearing of an appeal.

This shows what difficulties hamper judicial work in India, even in such details as the verbal accuracy of the official record.

Some of my readers have complained that they find the names in these stories irksome and difficult to follow. But if one wants to read facts about Indian cases and Indian people, one must put up with Indian names. In this further collection I have used a substitute for the proper name as often as possible. Reading and even spelling names are child's play compared with pronouncing them or recognising them when they are spoken. So the troubles of an English reader are nothing to those of a judge from England who has to listen to a rapid opening in court of a complicated case with a series of strange names, few of which he is able to recognise from their pronunciation, and many of which he cannot spell accurately enough to write them down in his note-book. It actually took me years completely to master this difficulty. The familiar 'howlers' which Indians make of English are nothing to those which some Englishmen make of Hindustani.

Another great difficulty about the language is the transliteration into Roman Urdu. Roman Urdu, as a language, does not exist. It is hybrid, and is mainly for the use of that large class which has a bowing acquaintance with Hindustani without knowing the script. Owing to the use of English vowels which do not exist in Urdu, much of the rendering is purely phonetic. And yet the pronunciation and the quantities are troublesome. *Rām* has a long 'a', and is pronounced 'rarm'. *Dăm* (breath) has a short 'a', and is pronounced 'dum'. There is a well-known story of the wife of a Governor of the

United Provinces, who, on reaching Government House in her rickshaw, after a long pull uphill, was annoyed by one of the *jhampanis*, or carriers, who was panting loudly for want of breath, and she gave him the sack, telling him, to his utter astonishment, that the reason was that he had lost his tail! She meant to say 'breath', but she pronounced the 'u' long, and '*dūm*' long, means 'tail'. It is said that the poor man departed with profuse apologies, promising to return when he had found it, and hoping that he would then be restored to favour. If he had had the courage to reply, 'I don't care a *dām*' (pronounced 'darm', and meaning 'brass farthing'), he would have made quite a good pun and have been etymologically correct. There are wide differences of practice in the spelling of words, especially names, converted into English, or Roman Urdu, and in my judgment there is no real standard of right or wrong. Macaulay wrote of Runjeet Sing, which is phonetically correct, but everyone to-day would write it Ranjit Singh. I am conscious, in my own case, of a looseness of practice, which occasionally produces inconsistency and an appearance of slovenliness, but one is not wrong if one is phonetically correct. One can produce high authority for all the following uses: 'Muhammad' (which is said to be strictly correct), 'Mahomed', 'Mahomet', 'Mohammed', and 'Mahommed'. It is too late to recover unity. It has been destroyed by the learned and the pedants.

No one has yet challenged the statements I made in the course of a futile attempt to institute a comparison between the number of crimes, especially murders, committed yearly in India and England. I have made further

endeavour to look into statistics, but remain of the opinion that no fair generalisation can be based upon them. But I was impressed by an article which I read just after *Indian Village Crimes* was published, contributed by Colonel Aubrey O'Brien to the April 1929 number of *India*, entitled 'Crime in the Punjab'. Now, the Punjab, in its character as an agricultural Province, is very much like the United Provinces, though there are large differences, and the characteristics of the normal inhabitants vary. Its population is about half that of the United Provinces, and the percentage of crime appears to be about on the same level, except for dacoities, the number of which is very high in the U.P. But the percentage of convictions secured in the Punjab is very much higher than in the U.P. Colonel O'Brien's general observations so fully confirm my own impressions, that I quote a few sentences, some of which I have abbreviated and summarised, from his article. 'Crime', he writes, 'is in a very shocking state in India, as a whole.' . . . 'Perhaps the greatest of all factors is the difficulty of obtaining decisions in civil disputes, within a reasonable time.' The Punjabi, he says, takes the law into his own hands, and twists the criminal law to serve his private ends, because it is speedier. A vicious circle is set up. The habit of making false accusations is one that grows, and the element of falsehood is introduced into true cases. In one district of the Punjab, he asserts, containing about half a million inhabitants, there were 62 murders during 1927, and in only nine cases were convictions obtained. He contends that there is little respect for the law, and that the delay in disposing of cases adds largely to the number of crimes.

fellow-servants quietly put out of the world by the men who were threatening to do the same to him, and he no doubt thought, and would have been perfectly justified in thinking, that if he continued to refuse to do as his masters told him, he would be treated in the same way. Whether or not the police really intended him to be a scapegoat, and seriously expected him to be convicted, they put an end to all possible chance of convicting the murderers. Yet Tej Singh and Gopal Singh were the only persons he could possibly be accused of intending to screen.

VI

WIFELY SUBMISSION

IF the Indian peasant woman does not greatly love or admire her husband, in whose selection she has had no say, she shows him the most implicit obedience. The following is a story of a simple village crime which illustrates not only the unreasoning jealousy and bloodthirsty savagery of a husband, but the absolute subjection of a wife. As an example of uncomplaining submission and fatalistic resignation on the part of an unoffending woman, it probably has few parallels. It is simpler to reproduce the evidence much as it was given at the trial of a man named Autar, who was charged with having abetted a husband, named Mangru, in his wife's murder. The first witness was Mangru's mother, and her evidence is an interesting example of the straightforward way in which some villagers will tell their story when they are left alone, even when it involves a mother swearing away the life of her son. She had told the same story at the trial of Mangru, who was condemned to death. Musammat Dhirajia was a widow woman belonging to the *ahir* caste, the members of which are employed in cattle-rearing and in general cultivation. She gave her evidence as follows:

Mangru is my eldest son, and Bansi is my younger son. Musammat Kanjharia was the wife of Mangru. She and I were warming ourselves at a fire one day, a year ago, when Bansi came and said that he had a pain in his head, and asked me to rub oil on it.

impossible to spell out the exact truth. But as all were equally guilty of rioting, assault, and violence, the party accused was bound to be convicted, though individuals might escape; so that one party left the court for the jail, and the other went home triumphant, with the possibility of having to pay with another fight, when they got there. It seemed to me then, and does still, that the better course would have been to charge the ringleaders on either side in a single case, and to bind over the smaller fry to keep the peace. It might be difficult to find spectators who were non-combatants, but it was not always so. And in every case, the smaller fry on both sides could be made approvers and witnesses. They could not be more tainted and prejudiced than the whole number of one side invariably are. The object of the District Magistrate to preserve law and order would be equally served; both sides would be treated on an equal footing; justice would be done; and a considerable body of feeling that inequality and injustice had resulted, and that it was not true that the law is no respecter of persons, would be obviated. One is bound to sympathise with the District Magistrate. 'Never suppose', was the advice given to me by an old Anglo-Indian friend, now deceased, when I first went to India, 'that a man doing his best to hold the scales even, and to keep order in a large and turbulent district, under very trying conditions, is necessarily an arbitrary tyrant.' I never forgot this, and tried to act upon it. But it must be acknowledged, if one is candid, and everyone connected with the law in India knows it, that occasionally arbitrary orders are made; illogical decisions are reached by men untrained in the law; and corrupt judgments are delivered

by Hindu and Mohammedan tribunals according to caste, religious, or community prejudice, and the interference of the High Court, which itself may err, has to be invoked. Sir Harcourt Butler, at one time the Governor of my Province, and one of the shrewdest statesman I ever met, with a profound and sympathetic understanding of the Indian, has more than once remarked to me, and I know that he has said it in public, that the High Court saves the Government ten thousand troops in each Province. No finer testimonal could be given of the confidence felt by Indians in British justice and impartiality, as personified by the High Court. But the statement proves more. It shows, and the fact is not realised by my countrymen at home, what an enormous part the criminal courts and the criminal law play in the lives, and in the government, of the Indian people.

In cases of these confused riots in which death has occurred, and of the still more confused accounts given by the variety of witnesses, all of them contradicting one another on details, it is extremely difficult to assign the precise degree of guilt, even if one is able to get within measurable distance of discovering what each of the accused actually did. The Indian Penal Code has always been considered a masterpiece of codification, and is the admiration of experts in jurisprudence. The beautifully moulded definitions of murder, and of culpable homicide not amounting to murder, set out every phase of thought through which a man's mind may pass when he is engaged in a fight and burning to defeat and injure his enemy. But men do not think aloud in a confused fight when they are 'seeing red' and expecting every minute to be knocked out themselves. How are you to apply

almost metaphysical processes of reasoning to the mental processes of half-mad savages, when you are not quite sure what the real facts are? In practice, these works of art in draftsmanship break down, and the simple English dichotomy of 'murder' or 'manslaughter' is to be preferred. The sentence, which matters most, is a simpler problem; but when you have to give a correct legal definition of the criminal act, you ought to think of the future, and of the precedent for other cases, as well as of the case in hand.

Again, many deaths ensue from imperfect medical treatment, or neglect. An Indian hates hospital, and I have known cases where men have died because they just walked out, before they were cured, when no one was looking. Then there is the enlarged spleen, so common in India, as the result of malaria, and such a frequent cause of death. A ruptured spleen caused by an ordinary blow in the ribs, means haemorrhage and death. The vernacular journals humorously say that the Almighty has endowed the Indian with an enlarged spleen in order to save the European from conviction for murder! I once had to preside over the trial, with a jury, of an English sergeant who had unwittingly caused a man's death. The deceased was an Indian hawker, who had been in jail for indecency to children, and was suffering from a loathsome venereal disease. He never ought to have been allowed to ply the trade. In pretending to show the sergeant's wife some lace, when she was alone in the bungalow verandah, he committed an indecent assault upon her. The wife was a sturdy little North Country woman, and dealt with him properly. She then sent for her husband, who sent for

the man. When the latter arrived, the sergeant told him to 'up with his dukes', and hit him in the ribs, sending him sprawling over a bicycle. The man picked himself up, and ran away. An hour afterwards the sergeant was informed of his death. It was a strong point in his favour that he at once ejaculated, 'Impossible!' I told the jury that a man who went about, under the guise of business, indecently assaulting married women, should first learn the art of self-defence. The trial is memorable because one medical expert witness tried to make out a case of culpable homicide, saying that the deceased died from shock as the result of a blow in the private parts, and that the accused must have kicked him there. There was no evidence of this, though the man might have injured himself in falling over the bicycle. As the Indian counsel who defended the sergeant left the witness alone, I took him in hand. After he had made some remarkable statements and got somewhat confused, one of the jury, which contained a number of Indians, rose and told me that they had had enough of the witness. It is the only time I have heard of such an occurrence.

I have said before, and I have referred to it again in the story 'Proof, or Probability?' in Chapter VII., that there is a sad lack of efficiency and sense of responsibility with regard to forensic medicine generally, and to post-mortems in capital cases. I am told that sometimes Indian doctors do not handle the corpse themselves or even go into the dissecting-room, but stand outside and look through a window while a sweeper or *chamar* (low caste menials) cuts up the body under their directions. It seems hardly credible. But their reports, which I have had to deal with in appeal, have

frequently been vague, bald, unconvincing, and sometimes equivocal. I have felt it my duty on occasions publicly to complain when such work has come from members of the Indian Medical Service, which has the highest of reputations.

Something should be done, officially, to induce these gentlemen to take a serious view of their responsibility in this matter, and to make a study of forensic medicine. Civil Surgeons in India and their subordinates are constantly called upon in important cases, and their report is of vital importance, because they can so seldom be spared to give evidence. I am afraid it is a sample of that tropical inertia, and apparent indifference to efficiency, which is the bane of official and departmental work amongst Indians. So many of them seem to take no pride in their work and in successful achievement for its own sake. So long as they can get a chit, or a personal recommendation from a superior, they are more than satisfied. Two instances of this carelessness and indifference are worth citing. They may seem remote, but they can hurt no one. I was President of a social club of charming Indian gentlemen, of whom I have affectionate and grateful recollection, for their many acts of courtesy and kindness. When I left India after four years' in the chair, the first year's accounts had not been presented, and the first annual meeting was still adjourned! Not long ago, in the Hills, a well-known official died, and a large company attended the funeral. A long procession was formed to the cemetery. When it had gone about half a mile, the widow sent her servant back to the house for a sun hat. Twenty minutes later, he came running back panting, and

shouting, '*Memsahib, Sahib nai hai!*' (the Sahib is not there) and he pointed to the coffin. He had found the deceased man's body still lying on the bed in the bungalow. Those responsible for screwing down the coffin had never troubled to see if it was ready. The Indian always seems to be saying, '*kuchch parwa nahin*' (it doesn't matter).

This sort of slackness is not a complaint which can be brought against the subordinate judiciary, in my Province anyhow, or anywhere else in India, I believe. I knew most of them, and liked and admired them all. They are very hard worked, and sit up to all hours writing judgments which are not delivered, I believe, at the close of the hearing, or in the presence of the accused, in whom the judge appears not to take the faintest interest. The rate of mortality among the Provincial Judicial Service is very high, owing to their long hours, the trying heat and surroundings in court, and the amount of overtime they have to do. But at the same time, however learned in the law they may be and however anxious to do well, I have, with certain rare exceptions, met few who really knew how to try a criminal case. They seem to allow themselves to get out of touch with the realities of life and of human nature. They seem afraid to draw inferences or to have the courage of their opinions. Their judgments are much too long, and they tie themselves up with over-refinement, instead of boldly and clearly deciding the broad issues. They are apt to sit on the fence.

The law requires them, when adjudicating without a jury, to write a judgment setting out the reasons for their decision. This statutory requirement has received

rather an exacting interpretation, and the average Sessions Judge writes long judgments, in which much of the evidence is quoted, with comments, followed by a minute discussion of it from the point of view of the prosecution, another from that of the defence, and a third from that of the judge himself. But this only constitutes the 'general' review of the case, and several passages follow in which the individual case of each accused is separately discussed, and the evidence affecting him reconsidered. The consequence sometimes is, in a long and difficult case, that the appellate court is confronted with diametrically opposite views upon the same issue of fact in different parts of the judgment, because the judge has not thought out his conclusions before starting, but has written himself into them, and having forgotten what he has already said, and having had no time to revise it, has contradicted himself.

The system of writing reasons at length is a great protection to the accused, and gives him every chance on an appeal. It is also of great assistance to the administration of justice, because it enables a judge in India, who is satisfied that both the prosecution and defence witnesses have been lying, to arrive at a correct decision of guilt by adopting an independent view, laying his reasons, so to speak, upon the table for everyone's inspection. But this valuable safeguard leads some of them to adopt a compromise. In criminal cases there is no half-way house between 'Guilty' on the one hand, and 'Not Guilty', or 'Not Proven', on the other. That is one of the great advantages of a trial by jury—the verdict. The story of 'A Study in Compromise', in Chapter IV., illustrates some of the defects of

which I complain. And I have known long judgments, from which it has been apparent that the judge, not liking wholly to acquit, and feeling no confidence in his conclusion of guilt, has given an inadequate sentence for a bad offence, because he is not sure that the man did it.

Indians do not trust Indian tribunals. The provisions of the law for applying to the High Court for the transfer of criminal cases are absurdly wide, and such applications are constantly made, on the flimsiest and most childish grounds, with the consequence of prolonging, delaying, or altogether holding up the disposal of criminal cases. But I never heard of an application to transfer a case from an Englishman.

Without entering into all the technicalities of the subject, a few words on 'Trial by Jury' in India will not be out of place. Like many Western institutions, transplanted into uncongenial soil mainly with a view to placating Indian demands—that is, by the way, a very curious manifestation of Indian psychology, because, although they sometimes criticise the English way, they seem to think that unless it is applied to them they are not being fairly treated—it is hedged round with restrictions. Europeans, and certain others of European descent, are entitled to a jury as of right, and to a trial in the High Court. Few people, by the way, realise that Nuncomar, whom Sir Elijah Impey was charged with treating unfairly, was tried and convicted by a jury in the Calcutta High Court. Only a few classes of crimes are tried by juries at Sessions, and even this right is limited to a few big centres. No capital cases, and few really important ones, can come before juries.

An appeal lies from an acquittal, but the High Court can only order a new trial. It cannot convict on appeal where a jury has acquitted. But it is quite otherwise if the Sessions Judge refers the whole case to the High Court, with a sort of written opinion of what the true result ought to have been. This is the fundamental difference between English and Indian practice. On such a reference the High Court has unlimited powers. The story of 'The Third Degree', in Chapter XII., is a case in point. This procedure of supersession is absolutely necessary. It is difficult, therefore, to speak highly of trial by jury, and to recommend its extension, where such a cumbrous corrective is required. It would be like the Scot who recommended Glasgow as a residence, because it was such a fine place to get away from! Trial by jury in the West, with all its defects, has a great educative value. This argument does not apply to India as a whole as yet. This is largely because so much depends on the presiding judge, and I do not think that Indian Sessions Judges understand the management of juries, while the Bar certainly do not do their work, in criminal cases, with any sense of their responsibility to the public, and most Indian Judges are afraid of them, and cannot control them. There is, unfortunately, much dishonest advocacy and little or no control. I have watched the decisions of Assessors with deep interest, and in some difficult cases have derived much help from them. But I am satisfied that their opinions are only to be trusted when the Judge has taken great pains to assist them, and that in cases of caste feeling, and in cases against dacoits whom they hate, they are not to be trusted at all. On the face of

it, it seems astonishing that, as in the story of 'The Third Degree', a jury should acquit police officers when the Sessions Judge and the High Court were compelled to convict. But an old friend and colleague with great experience tells me that he had like experience with Assessors in cases against the police, presumably because so much of the evidence for the prosecution was obviously perjured and untrustworthy. This only confirms my view that, in a country where much of the evidence is so hopelessly dishonest and the conduct of the cases so unsatisfactory, a jury is out of place. If any extension were proposed, I would counsel leaving it to the Sessions Judge to decide, on application, whether a jury should try the case.

The subject of confessions, false and true, inadmissible and admissible, extracted from the faint-hearted Indian criminals by astute Sub-Inspectors is so full of variety, and is such a fascinating feature of police investigation, that I have no compunction about returning to it. I do not repeat all I said in *Indian Village Crimes*. I assume that those of my readers who have patience to follow this part of the discussion are already acquainted with the subject in its broad outlines. A confession made to a police officer is inadmissible. But that does not hinder him in procuring them and in making great use of them. He gets them systematically in large numbers. In a dacoity case (robbery with violence by gangs at night) he generally has two or three. Each man who confesses hopes that he will be adopted as an approver and be given his liberty. But as his evidence will require corroboration, he is easily persuaded, as part of the bargain, to provide the police with it in

the shape of information as to the places visited, and the sweet or grain sellers patronised, by the gang on their way; where the weapons or loot are concealed; and so forth. But in giving this information he may be walking into a trap. If the police find that his corroboration affords sufficient affirmative evidence to secure the man's conviction, the latter finds to his disgust that he is not wanted as an approver, but as an accused. But if the investigation officer cannot get all the independent evidence he wants, he falls back on the accused and puts him up before a magistrate to make a formal confession with a view to his becoming an approver. This is done under section 164 of the Criminal Procedure Code, which runs:

> Every magistrate, not being a police officer, may record any statement or confession made to him in the course of an investigation under this Chapter, or at any time afterwards, before the commencement of the inquiry, or trial, etc.

The reader will have noticed that both statements and confessions are provided for. The procedure for each differs slightly. In a case in which there are a number of confessing offenders, two or three are put up in this way, and the selection of the approver is postponed until the police officer decides, after making inquiries based upon the information contained in the confessions, which man will make the most effective approver. It is only another instance of 'the survival of the fittest'. The most effective is chosen, and the rest are left to take their trial, their confessions, which they repudiate on the first opportunity, being often the main evidence against them.

There is a certain charm in living amongst people who

do things upside-down or the other way round! The Indian takes off his shoes instead of his headgear when he enters your bungalow; he begins writing from the right; he calculates prices by the number of *seers* (measure of weight) to the rupee, instead of the number of annas to the *seer*; and he passes in front of his lady and makes her carry his parcels. Paradoxical though it seems, it is in many cases the fact that, whereas the English detective begins with his available witnesses, and so works his way up to the discovery of the accused, the Indian Sub-Inspector begins with the accused, and from him works his way up to the witnesses, who are sometimes surprised to find how much they are supposed to know. This system has produced that pleasing fiction, *ijazat haziri*, or 'permission to be present', which I have already explained in *Indian Village Crimes*, but which will bear further commentary. It is the half-way house between detention in jail and complete liberty. If a man is arrested he has to be sent off to jail. He is not supposed to be kept in police custody more than twenty-four hours if he can be handed over to the jail authorities within a reasonable time thereafter. He must be removed from police influence as soon as possible, especially if he is to make a statement under the section. So he is not arrested. But he is not allowed to go. He joins the little knot of villagers and prospective witnesses, who sit round the Sub-Inspector under a shady tree in the village while he takes notes of their statements or asks questions about the crime, and at this gathering, where, if he is suspected, the villagers cannot keep their eyes off him, and at other places where the police officer pursues his inquiries, he has

always the same 'permission to be present'. Amongst other results, he gets very tired of this, and begins to talk.

Section 164, quoted above, is peculiar to India, and is a great advance upon any machinery we have in England for the investigation of crime. It is a formidable weapon in the hands of the magistrate and the police. Take the case of a confessing accused, who is subsequently put on his trial and not utilised as an approver. There is nothing to prevent the statement implicating himself, which he has made, being used against him. In fact, he was warned that it might be, and the Evidence Act makes such a statement admissible. In the Introduction to *Indian Village Crimes* I committed myself to the view that the use of such statements against an accused at his trial, when they did not amount to confessions, was illegitimate. On reflection, I have come to the conclusion that I went a little too far. They are certainly, as I said, not affirmative evidence of the facts mentioned in them, but they are evidence against him, for what they are worth, that he did, said, or knew what he has deposed to. Thus we do in India approach the French system of *interrogation* before the trial, because the magistrate may, and does, put questions to the deponent in the course of recording the statement, and there is nothing to prevent him from indulging in a little subtle cross-examination.

But there is another important use of the section which deserves fuller treatment than I have yet given to it. In my Introduction to *Indian Village Crimes* I wrote: 'The section may be lawfully used for recording a statement by a man who is subsequently called as a

witness, and in this way it is a valuable check upon him'. It appears that opinions in India differ very much about this dictum. It is always dangerous to generalise about the practice in India. An enormous amount of 'Judge-made law' and dicta have been superimposed upon the Codes. There are six High Courts and several Chief Courts, and in the multitude of reports there are bewildering inconsistencies of interpretation. The Calcutta High Court has held that it is not a legitimate use of this section to put a witness up in order to 'fix him' with his evidence before the trial. But for some reason Calcutta has generally been regarded as 'agin' the government', and rather apt to fetter the action of the executive. It certainly has produced some strange decisions, and I doubt if the practice generally in British India, and even in Bengal, conforms to this ruling. It certainly does not in the United Provinces, where I sat. And obviously there must be elasticity. No one in India connected with the law knows what an Indian is going to say next, whatever he may have already said, or sworn, and when a man is put up it is not known whether he is going to confess, and even if he does, whether he will be an approver, and, therefore, whether he will be a witness or an accused. But undoubtedly many men who could not be other than witnesses are put up in this way to make their statements, in order to 'fix' them with them.

But now comes into play a remarkable feature of the law of evidence in India, which has no parallel in England. I am inclined to doubt whether those responsible for it contemplated its use in criminal law, but there it is. Section 157 of the Evidence Act provides that a

previous statement of a witness may be used to corroborate his testimony. That is to say, it may be proved as part of their case by those who rely on the witness; in other words, by the Crown. In England it may be proved in order to contradict his testimony, or to shake his credit, if the party attacking him chooses to use it. Such party has to take the risk of the parts where the witness has been consistent, because the whole of the statement then becomes evidence. But in England it cannot be used as part of the affirmative case to support the witness. In India it can. The theory of the legislature was that a man who is consistent ought to be believed! It seems hardly possible that the guileless gentlemen who inserted this provision had never heard of a consistent liar. The essence of a successful liar is consistency. Perhaps it was thought that in India there was, like the mysterious Mrs. Harris, 'no sich person'. The framers of the Indian Penal Code did their best to materialise him by making it perjury, punishable in the usual way, to swear to two contradictory statements without independent proof of the falsehood of either, a provision unknown, and almost repellent, to English ideas. But the Indian has not grasped the point, and he is no less bewildering when he is trifling with his own falsehoods than when he is trifling, quite innocently, with the truth. There is much to be said for the theory that a man's testimony is corroborated by what he has formerly said with solemnity. But it leads to the apparent fallacy, upon which I have dwelt in the story of 'A Sacrifice, or a *Crime Passionnel?*' in Chapter III., that a worthless accomplice, who ought to be corroborated, is corroborated on Tuesday by what he said on

Monday. Perhaps the true solution is that in India you have got to get at the truth in the best way you can within the law, for which a profound knowledge of the people and of their ways is essential, and that you had better not trouble too much about technical corroboration if you are convinced that the uncorroborated testimony is true. The policeman wants technical corroboration, because he has been taught that the judge, whom he secretly regards as a dunder-headed pedant, will require it. The judge looks for it, only because he wants to be satisfied up to the hilt that what he suspects to be the truth is really true.

Another fascinating topic of police investigation not yet touched upon is the discovery of loot or other compromising articles. Section 27 of the Evidence Act provides:

> When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

If a man murders his wife, and the only other evidence against him is his own confession to the police which cannot be proved, it is surely relevant, and rightly made admissible, that he took the police to his house, and showed them the battered corpse in his grain bin and the blood-stained hatchet in his thatch. The police may prove that he said, 'There is my murdered wife', and 'There is the hatchet'. But may they prove that he said, 'That is the hatchet with which I killed her'? They get over the difficulty by summoning search witnesses to be present at the discovery, and to sign the search list.

These persons may prove anything the man said to them. It is easy to see how this provision may be abused by an experienced and clever police officer dealing with a stupid and easily terrified villager. The mysterious story of 'The Hill-Woman's Death', in Chapter I. of this volume, has an important bearing upon the use of this section. Judges on the Bench become acquainted with strange discoveries. But I am impelled to say here that, in all the scores of dacoity cases (robbery with violence by gangs at night) which I have heard in appeal, and in which the loot was considerable, I have known very few in which the booty discovered with the assistance of a confessing accused was anything but trifling in value. One is forced to the conclusion that there is systematic sharing out of the plunder between the criminals and the police, and that this practice, if not actually suspected and ignored by the authorities, is not without its bearing upon the success with which investigation officers secure admissions of guilt and approvers. And after all, it works well for the public—another piece of topsy-turveydom—because without approvers it would be impossible to punish dacoities, and to keep them in check. The poor defenceless villagers are powerless to resist them.

The capacity of the average Indian for detective work is almost phenomenal, and in this respect the Indian Police fill me with admiration. I know few better instances than the subtle intuition of my personal servant. One cold morning I lost a diamond and sapphire ring in my bathroom. My servant and I were satisfied that the *bhisti* (water-carrier) had got it. My wife suspected my servant. She naturally made a fuss, and threatened all

the servants unless it was found. My servant came to me and asked permission to announce that it was an old, cheap souvenir of brass and glass which had come from a Christmas cracker when I was a boy. He added that if the Lady-Sahib said it was a good ring, the *bhisti* would sell it to an Indian, after I had left India, for a good sum. But if he thought it was from a Christmas cracker, he would say to himself: 'This is bad business for me. I cannot get five rupees for the Sahib's ring. If I return it I shall get *baksheesh* of ten rupees, and a *chit* from the Sahib for honesty'. I agreed, and gave the permission. Next day the *bhisti* found the ring in my High Court luncheon-basket, where it could never have been accidentally dropped.

On another occasion there was a charge of adultery which arose in my own compound. I was apprehensive that the trouble might grow into a fight and serious violence. So I decided to investigate it myself, and to send the man away if there was anything in it. With the assistance of an interpreter, I examined the parties, but could get nothing out of them. So one evening I sent for a Sub-Inspector, of whom I had a high opinion, and in my presence he examined the young woman, who was brought to my study by a female relative. I knew enough Urdu to be able to follow the general trend of the conversation, and a delightful experience it was. The Sub-Inspector talked to the woman like a 'Father in God', and completely mesmerised her! He assured her that he was her 'father and mother'; that the Sahib did not know the language; that if she would only tell him what had happened he would put her right with the Sahib, and save her from the punishment which was

hanging over her. Bit by bit she told the whole story quite naturally and straightforwardly. The man then admitted his share in it, and I had to get rid of him.

There is one point about Indian village life which the ordinary reader is not likely to carry in his mind unless he is reminded of it. The average village population is not more than about 400 in the United Provinces, and there are many in which the population is less than 300. The majority of them are mere clusters of huts and cabins, rather than houses, with mud walls. There is no laying out. There are many little ruins which are not worth repairing. The houses seem to be built anyhow, round narrow winding lanes, and the people seem to be living on the top of one another. These small villages, and hamlets often lie in groups, of which the component parts are not more than a mile apart. The larger villages, many of which lie on the trunk roads, are mere long strips of houses built on either side of the road which runs through them. They are more symmetrical than the ordinary cluster of houses huddled together, and one sees, as one passes through, more little shops, and goods exposed for sale. But there are no footpaths or frontages, and the roadsides present a strange jumble of carts, oxen, bullocks, agricultural implements and produce, stacks of wood, string beds, clothes-lines, straw, empty tins, men and women squatting on their haunches, naked babies and scampering children, goats, and yelping dogs. One of the usual tests of a man's means in England is the rent of his house. There is nothing like this in India. You will see a merchant whose transactions must be considerable balancing his books in the corner of the squalid verandah of a poky

little house, and even in towns the young lawyer, who must be quite comfortably off, will be content with the most insignificant dwelling. In the villages the dwellings are mostly of a single storey, and it is difficult to suggest a definition which will include the sweeper's (or *chamar's*) hovel, and the nest of abodes which, clustering together, form the enclosure of the various branches of the joint family. If you pass through after eight o'clock on a hot night you will see scores of villagers soundly sleeping on their string cots, out in the road, like rows of corpses wrapped in winding sheets. In these villages there is no privacy, and everyone claims to know nearly everyone else's business. And it is a claim which usually has to be conceded.

I spoke in *Indian Village Crimes* of the prevalence of false charges, a feature of criminal law with which everyone in India is familiar. A correspondent has told me of a very different form of this sort of thing which came to his notice, and which is, at the same time, characteristic. There was a youth, whose father left a substantial estate. The boy was a minor and a ward. In the ordinary way an Indian arrives at his majority at eighteen, but if a guardian has been appointed he has to wait till he is twenty-one. His estate is tied up under the orders of the District Judge, and applications have to be made in court for any special allowances beyond the ordinary sums for maintenance. The ordinary Indian youth is precocious, and at fourteen much ahead of his Western contemporary. This youth was inclined to enjoy life, and wanted to spend money in visiting towns and in seeking various forms of amusement. But he lacked the necessary cash. He or his lawyer, therefore, conceived the

ingenious plan of getting friends to run false cases against him for all sorts of imaginary offences. This necessitated his attendance at court and a supply of money for his journey, costs, and incidental expenses, and the customary applications were made to the unwitting District Judge. But there was the risk that this ground of application would become exhausted. So they arranged a continual succession of adjournments, a perfectly simple matter with the majority of magistrates, by whom ordinary cases of assault are constantly adjourned, month after month, on some pretext or other, which is often one for the purpose of annoying the defendant and prolonging the agony. The adjournments, over which the District Judge had no control, necessitated fresh applications for money, and the young man was able to keep going with enough money for his escapades for a long time, until, it is said, one magistrate unfortunately made the serious mistake of convicting the youth, who was at great pains and expense to get the conviction set aside.

There have been experienced English officials in India who have thought that much of the perjury is explained by the view that you cannot expect a man to mind swearing falsely when he is administered, by English practice, an oath which he does not regard as binding on his conscience. I doubt whether this has much to do with it. He is generally 'under orders', and anyhow has so much on his mind affecting himself or others that he probably forgets all about the oath he has taken. But there are undoubtedly oaths which some will not break so lightly as the court oath. It is impossible to generalise, but the perjurer must often wonder at his immunity from punishment.

One remarkable feature of the general law in India is afforded by a provision in the Oaths Act which permits a court to decide a case in accordance with the bare oath of one party if the other party consents. This is an illustration of the English policy of giving effect, as far as possible, to tradition and custom in India. It may even be said to go so far as to give effect to superstitious belief. However untruthful the Indian may be, there is a traditional belief that he cannot, with impunity, swear to a lie in the name of one of his Sacred Gods in the presence of his enemy. He will either falter, or die a miserable death. In ordinary social life a Hindu will sometimes try to overpower a neighbour with whom he has a dispute, and to make him give in, by putting him to shame or, as we say, 'staring him out of countenance'. This may take the form of sitting down outside his door and of slowly starving himself, or of some other kind of indirect blackmail involving suffering on the part of the executioner and intolerable prickings of conscience on the part of the victim, until the latter gives way. Let me here repeat, for what it is worth, an instance related to me at first hand by a particularly sane and cultivated I.C.S. magistrate, who has since held much higher office. Once when he was in camp he had to decide a dispute of a quasi-civil nature, involving the possession of certain land, over which a magistrate in India has temporary jurisdiction. The claimant told my friend that if his opponent would stand in the waters of Mother Ganges (the great river, which is one of the most venerated of Hindu Gods) and swear to the truth of the story which he was setting up, he, the claimant, would concede his right and agree to the magistrate dismissing

the claim. The opponent agreed to do this, and the parties adjourned to the Ganges. There, in the presence of the magistrate, the respondent stood in the Sacred River up to his waist, took the oath required of him, and won his case. The claimant merely said: 'All right, Sahib, he has won, but he will not survive it. He is cursed for ever, and he and all his household will die of disease'. My friend was curious to ascertain the sequel for himself. One year later he returned to the village. The perjurer and all his family, except a young daughter, had been stricken with cholera, and had died. This incident made a great impression on my informant, who was satisfied that it was, in some way, cause and effect. The case is not without parallel. I am sceptical about the alleged intervention of supernatural agency. There are more ways than one of killing a cat, and of conveying cholera to your neighbour's household in an Indian village. But one cannot wonder that a superstitious people firmly believe that such wondrous works are divinely wrought.

In conclusion, I repeat what I have already urged, that the crying need for the reform of criminal administration in India is to allow the accused to give evidence. To such lengths has the prohibition been carried that, in my own High Court and, I believe, in others also, the accused is not allowed to make an affidavit in support of an application for bail or transfer. One reviewer said that, in view of the mass of false and bewildering testimony, it was difficult to see how the evidence of the accused would help. The answer to this is that there are so many *lacunae* in a large number of cases, and such slovenliness in probing deeper into open questions during criminal

trials, that no effort of patient investigation, and no straw, should be neglected. An experienced correspondent, who has been both Sessions judge and advocate, sent me a strong adverse protest, based upon the idea of the injury which an accused may do himself if he is a bad witness, and upon the danger which some people feel to arise in England from the comment by the judge on the absence of the accused from the box. These are ancient bogies, familiar to those who passed through the controversy which preceded the English Act of 1898. Is there anyone who wants to see that Act repealed after thirty years' experience of it? But the answer to these two objections is much stronger in the case of India. Most of the witnesses there are so bad that the average prisoner cannot often be worse, and it is only with the innocent man falsely accused that we are really concerned. And the much exaggerated danger of the judge's comment hardly exists, because in almost all serious cases the judge himself is the jury, and has to write his reasons for convicting.

While this book was in the Press, my attention was drawn to an able and well-informed article on the question of allowing accused persons to give evidence, describing it as a 'Much-needed Reform', which appeared from the pen of 'Index' in the *Times of India*, of the 4th December 1929. I make no apology for perpetuating the writer's views by quoting substantial passages from his aricle:

The difficulty of unravelling the tangled skeins of evidence in criminal cases in India is notorious, and has been lucidly brought to public notice by Sir Cecil Walsh in his recent work, *Indian Village Crimes*. In his Introduction the author expresses the

opinion that a good deal of such difficulties, and occasional unfairness towards accused persons, would be removed if the latter were allowed, as they are in England, to give evidence on their own behalf, and he says he is satisfied that it is the most pressing reform needed to-day in Criminal Law in India. He further claims that, though the legal profession seems to be against it, there is a strong body of judicial and expert opinion in favour of the proposal.

The question is one that was raised some ten years ago when the opinions of the Local Governments, High Courts, Bar Associations, etc., on the desirability of amending the Criminal Procedure Code, accordingly were obtained by the Government of India, but the proposal was ultimately dropped. The reasons for this have never been published, but it is believed that it was mainly due to the great division of opinion on the subject and the uncertainty as to how the proposal would work in practice.

Has not the time now arrived when, in the light of the experience obtained in England and elsewhere during more than thirty years, the proposal should be revived and given further consideration?

Logically and historically there is clear basis for bringing the law in India into harmony with that in England. In India the Criminal Procedure Code of 1861 made an advance on the then English Law by allowing an accused person to be questioned by the Court in order to enable him to explain the evidence against him, and such interrogation has since been made compulsory. But, as Sir Cecil Walsh points out, this provision has very narrow limits, and no opportunity is afforded to Counsel on either side to develop the explanation or to test it by cross-examination.

The half-way stage arrived at in India has resulted in technical difficulties, which often lead to unnecessary delay and expense in the decision of criminal cases, and sometimes to a miscarriage of justice. The various Law Reports in India teem with cases on this subject, and it would certainly tend to simplicity if an Indian trial were rid of these special complications. Again the Court's questioning is frequently done in a perfunctory way, and the

accused's statement is often, as Sir Cecil Walsh terms it, 'a pure farce'.

Sir Cecil Walsh urges that an innocent accused is at a disadvantage in not being able to give evidence in the usual way. He is certainly not in such a favourable position as he would be if he had been examined on oath and had successfully faced cross-examination. His explanation of some circumstance against him may be rejected on an hypothesis which further questioning would have shown to be unfounded. On the other hand, a guilty accused may reveal his guilt; or at any rate prejudice his defence, by his answers in cross-examination; and it is probably this belief that is at the bottom of most of the opposition of the legal profession in India to the proposal.

The last edition of *Best on Evidence* states that the Act has proved itself to be a highly successful piece of legislation. A circumstance that strongly supports this view is the existence of similar legislation in most of the Colonies and other Dominions of the British Empire. Some of them, in fact, anticipated the English Act of 1898. Among the British Dominions that have passed similar legislation are Australia, Tasmania, New Zealand, Canada, British Guiana, the Straits Settlements, the Union of South Africa, Palestine, Nigeria, Uganda, the Gold Coast, Bermuda, Jamaica, Grenada, Mauritius, Barbados, Trinidad and Tobago, the Windward Isles, British New Guinea, the Fiji Islands, Gibraltar, Northern Ireland and the Irish Free State. In fact, it may be safely asserted that the competency of an accused to be a witness on his own behalf has now become a general rule in the British Empire, instead of the former rule of common law that he was incompetent. In some cases, as in the Gold Coast, provisions for a Court interrogation of an accused have been superseded by legislation based on the Act of 1898.

Do not the above considerations in favour of the Act apply to India, or even more so, in view of the disadvantages that have been mentioned as attending the present law in regard to the examination of an accused by the Court? The main objection that has been suggested is that the right of cross-examination

would be abused by Counsel for the Crown. Sir Cecil Walsh meets this by saying: 'It is a strange notion that a Sessions Judge would not be equal to checking the danger, if it is a real one'. This, however, ignores the fact that the danger is more likely to exist in magisterial courts, especially in cases where the accused is unrepresented and the Crown is represented by a Police Prosecutor, with perhaps a weak or inexperienced magistrate on the Bench. Nor is it likely that the control of appellate or revisional courts would effectually prevent it in a majority of cases. But is this a sufficient reason for refusing to make a change, which in principle is desirable? Could not this objection be largely met by confining the alteration of the law to Sessions Courts and perhaps the courts of First Class magistrates? This would provide a means of testing the working of the new provisions in practice.

At any rate it appears that there is good ground for further consideration of the proposal by the Government of India, especially if their previous decision was as indefinite as it is believed to have been. It is suggested that, besides calling for the usual opinions in India, the Government might inquire as to the working of the similar legislation in countries where the conditions may be said to approximate to those in India, such as Palestine, the Fiji Islands, Nigeria, Uganda, the Gold Coast, the Straits Settlements and the West Indies, with special reference to the objection that the right of cross-examination would be liable to be abused by Counsel for the Crown.

I used almost to despair of the Law Department of the Government of India. They seem to suffer from two extremes. They pitchfork English Legislation on to the Indian Statute Book without adequately adapting it to local conditions. The Bankruptcy and Usurious Loans legislation were samples of that. And they neglect, if they do not wholly ignore, the task of amending their own enactments and draftsmanship, which the practical experience of their working from time to time demands. Since the Reforms, so much legislation has become

political, or been subjected to political considerations, that the humbler tasks, dealing with the necessities of the life of the people, are lost in the crowd. A measure, allowing the accused to give evidence, has little chance unless it is embraced by the legal profession, of which I see no chance. But I will set out the arguments which seem to me convincing, in a summary of a Canonical Seven:

(1) The value of the evidence of the accused may be inestimable to his co-accused. This was a strong argument of the late Sir Harry Poland in the old days. I never heard it mentioned in India, where it is tenfold stronger, because nearly every case involves several accused, and combining false accusations against some with true ones against others is a common practice.

(2) The absence of a jury in capital and other serious cases at Sessions in India, so that the dangers of unfair cross-examination, and of the decision of his counsel not to call the accused, are reduced to a minimum.

(3) The necessity of the Sessions Judge, the sole tribunal, writing a reasoned judgment on every point. He already knows about previous convictions. Even if he doesn't, and if he is subject to prejudices, which I admit he is on occasions, he is equally subject whether the prisoner is called or not; and if they lead to illogical conclusions, the Court of Appeal may in every case, and *must* in capital cases, review them.

(4) The futility of the present system of examining the prisoner by the judge at the trial. I have given three actual examples of these in 'The Hill-Woman's Death' (Chap. I.), 'A Study in Compromise' (Chap. IV.), and 'Proof, or Probability?' (Chap. VII.).

(5) The enormous, but much underrated, value of examination-in-chief. This exceeds the value of cross-examination, to which the public mind attaches so much importance. Cross-examination now and then proves vital and even sensational, but these successes are rare, like specimens of gold in a reef. Cross-examination glitters in the limelight, but the real work is done in the subdued calm of examination-in-chief. There is not a judge, or advocate of experience, who will not confirm this.

(6) The hopelessly inadequate 'Instructions' which a lawyer in India gets from his client in a criminal case. They are, in such Sessions cases as we are considering, invariably verbal.

(7) The futility of much of the cross-examination by the defence of the prosecution witnesses, partly due to (6), which fails to develop the real defence, when there is one, and the gaps in which the prisoner in the box, properly examined by his own counsel, could fill.

In this second collection I have departed a little from the scheme of *Indian Village Crimes*. In Part I. will be found seven cases similar to those contained in the original collection, in the sense that they help to illustrate the mentality of the cultivator, the difficulties of police investigation, and of the judicial task. Part II. contains two glaring instances of 'False Charges', which, so far as I know, were not subsequently investigated in a criminal court, and which did not occur in British India. But that makes no difference. 'The Biter Bit', in Chapter VIII., is an amazing case of a police conspiracy, of which the victims were also police officers, whose cruel fate sounds a note of real pathos.

The third case may be regarded as an unsolved mystery, in which the defence of a false charge, and also the suggestion of an extorted confession, were raised. The Third Part contains isolated cases, one of which was tried by a jury. The story of the 'Professing Christian' is so exceptional—it could hardly have occurred anywhere but in India—and so interesting for the light it throws on Christian Mission work, that it seemed worthy of preservation.

CRIME IN INDIA

PART I

I

THE HILL-WOMAN'S DEATH

THE judicial puzzle of the murder of Musammat Haruli is a romance of the Hills. Some appreciation by the reader of the distinctive features of the country, and of the special characteristics of the people as compared with life in the Plains, is necessary for a complete understanding of the points which arose. There are infinite varieties, both ethical and scenic, in the Hills. Tempting though the subject is, this is no place for a serious attempt to present a detailed description, even if my pen were equal to the performance of a task which has already been so admirably done by many picturesque writers. A summary generalisation is all that is possible here, and a warning is desirable against the supposition that such a treatment has any pretensions to being a really accurate picture.

The scenery is everywhere beautiful in the extreme. No one who has visited them can forget the varied charm and glorious vistas of the Hills in India, or the views of the snows at sunrise and sunset as they glow with all the tints of opal and pearl against the northern sky. There are few things more dramatic in Nature than the changing hues on the snow-bound mountains as the sun sinks down, when the delicate glow of a rosy transparency slowly gives way to a glassy green, which in its turn fades into an ashy gray, and ends in an ice-cold, deathly pallor. From the top of Cheena, which

rises from the lake at Naini Tal, the hill-station of the Government of the United Provinces, one gazes over lovely wooded mountains, thick with oak and pine, and blazing with gorgeous coloured flowers, to the forest which lies below, over the Tarai, the sort of belt between hill and plain, to the green plain of Rohilkhand in the dim distance. From the heights of Gulmarg, in Kashmir, and from the Mall at Mussoorie, the other principal hill-station of the United Provinces, one can gaze upon equally glorious panoramas.

The case with which we are concerned occurred in the hill district of Almora, not far from Naini Tal. Those who do not know it must try to picture the busy but modest little railway terminus of Kathgodam, a scattered township in the sub-Himalayan country. Here you leave the Plains and the train, and exchange the hot and dusty compartment for the motor-car, or *tonga* (pony cart), which takes you up the ten miles, more or less, of the great white road to Naini Tal, amidst some of the most glorious woodland and water scenery which the imagination can conceive. Rising above you to the north are scenes of which you get only an occasional glimpse—which only a poet or a painter could depict; a chaotic mass of mountains; thickly wooded hillsides seamed with deep ravines; dark blue ranges piled one upon another, with a background of immense snowy peaks which tower majestically over the landscape in solitary grandeur. 'The sub-Himalaya', writes one authority, ' is built up of soft sandstone, but all broken and disturbed by the action of cosmic forces. There is little continuity of structure. It is broken into sharp, rugged peaks, with precipitous ravines, and is clothed with dense jungle. Beneath the lower hills the tract of waterless jungle has been overlaid by a mass of gravel and boulders, the detritus of overhanging hills, washed down by the streams which drain them.' In the rainy

season numerous torrents cut into the upper soil, creating magnificent cascades. Everywhere on the great roads constructed and maintained by the British, there are the sharpest of sharp curves and the narrowest of hairpin bends, with sheer descents, or *khuds*, falling to enormous depths. Besides the solidly constructed roads, there are many rough ways, or *kachcha* roads, and winding paths, made as often as not by the constant passing of the villagers' feet, leading into all sorts of retreats, bowers, and leafy nooks, and even caves, made by Nature in the side of the rocky steep, where men and animals may hide, or rest, or shelter from the torrential rains. On the great roads the edge of the *khud* is carefully protected by boulders, great barriers of stones, or posts and rails. But on the by-paths and country tracks there is no such protection, and nothing is easier to a man who wants to get rid of his wife, or temporary companion, than to send them suddenly, with a gentle push over the edge, to certain destruction.

Naturally the population in these enormous tracts of mountain land is scanty, and many of the villages and little collections of scattered huts hardly deserve the name even of a hamlet, diminutive though the latter often are in the Plains in India. And the provision of police stations is much smaller in proportion to the number of aggregates of residences than it is in the Plains; and the Patwari, or subordinate Revenue official, with whose misdeeds, and customary rascality, and occasional treatment by 'lynch law', those who read the story of 'The Patwari's Nose', in *Indian Village Crimes*, are already familiar, is often entrusted with the powers and duties of the ordinary local police; while the office of the *tahsil*, or Revenue sub-division, does duty as a sort of police station. Those who have gathered from *Indian Village Crimes* the opportunities of corruption amongst the police in India, and the advantage

which is taken of them, and also the reputation for maladministration enjoyed by the average Patwari, can form some faint idea of the sort of thing to be expected of a half-educated, but cunning and experienced gentleman, who happens to combine the functions of both offices, under a supervision which has rather less than the usual limited opportunities for effective operation. These observations have a direct bearing on our story, in which the reader will have an opportunity of studying the official action of no less than three Patwaris endeavouring to discharge police functions. But, though I had very little opportunity of learning anything on the subject, I was always given to understand that this particular breed of Patwari, or 'Pooh-Bah', perhaps because he is satisfied with his normal material gains, and is restrained by the undoubtedly important responsibility which he has to shoulder, gives more satisfaction both to his employers and to the population which he serves than is usually conceded to the credit of the average Patwari in the Plains.

Hill-women, particularly of the lower classes, are much freer in their manners, and less hampered by modesty and shyness, than their sisters in the Plains. If you asked an Indian, he would tell you that they are 'bolder'. They are fairer skinned, presumably because their ancestors have, for generations, been less exposed to the sun. They are often described as 'wheat-coloured'. They are supposed to be more comely, but, like most generalisations, this supposition is open to question. Their complexions are apt to be muddy, and, owing to the altitude at which they live, and probably also to the greater amount of work which they get through in the same time, they seem to age quicker than other Indian women. They are smaller in stature, but seem to be sturdier and stronger than the women in the Plains. A similar sort of contrast is made about tiger, on the

ground that they have to travel further, and work harder for their food, and so acquire a greater muscular development. Everyone who has been in the United Provinces has heard of the coolie woman who would carry a grand piano on her back right up the Hill road to the top. I heard it both of the ascent to Naini Tal and of that to Mussoorie. In either case it would not be less than seven miles up an ascent of over five thousand feet. The Hill people are simpler and more cheery folk. The women spend more on dress, and pay more attention to their personal appearance than they do in the Plains. Many of them wear tight-fitting little buttoned jackets, or bodices, or a sort of waistcoat, of bright red or black, which outlines their firm rounded breasts in a way which no woman in the Plains, of however lowly a class, would permit herself to do. They are not averse to being stared at by a pair of curious masculine eyes, and will return the compliment, while the bolder spirits among them will occasionally give the 'glad eye', or even address some salutation to a European without waiting to be spoken to, a thing quite unknown among women in the Plains. I never heard that they were considered less virtuous. They are all married, of course, however young, but being more extravagant in their tastes, and more spendthrift, they are probably on the look out for *baksheesh*. They smoke cigarettes quite openly as they walk along the hill roads, just like any young English lady typewriter. I was once out for a walk on a broad highway, leading down from Naini Tal, and noticed a tall young Indian woman, who might have been a coolie, though her white *sari*, or flowing robe draped over the head, slashed with some blue coloured cloth, looked a good deal better than that usually worn by the coolie class, walking about a hundred yards in front of me, with a long stride and swinging gait, smoking a cigarette which she had just

lighted at a sort of turnpike, or octroi barrier, where she had been freely engaged in talking and laughing with some men. She looked round more than once, probably as a sort of farewell signal to the friends she had just left, or possibly to see if she was being followed. She showed no sign of being a woman of the town, or 'a public woman', as the Bar always describe them in court. I believe no prostitute in India walks abroad in this free-and-easy fashion. I left the road in order to show that I was not following her. It was a sight I never saw in the Plains, and I attributed it to the 'bolder' manners of Hill-women.

The caste system does not prevail to anything like the same extent in the Hills. Whether or not the wives are looser than the women in the Plains, Hill-men seem to share with all Indians the general aversion to alleging, either that their wives have been guilty of actual impropriety, or that they have been the victims of defilement. This cannot be due to mere dread of caste interference and punishment by fine, because it is notorious that women are constantly raped by dacoits, a matter for which the unfortunate husband would never be held liable by his caste, and yet every effort is made to conceal the fact, even though it greatly aggravates both the offence and the punishment. Adultery is a crime under the Penal Code in India. But the charge is rarely made, though the offence is probably not uncommon. I do not remember a simple charge of adultery during the twelve years that I sat on the Bench in India. When a man catches an adulterer in his house, if he does not kill him, he almost invariably charges him with housebreaking.

Musammat Haruli was the wife of Prem Ballabh, a *chaprasi*, or messenger and process server, in the employment of the Revenue administration. The accused's home was at Mantoli, in the Athigaon sub-division.

The word *gaon* is merely a suffix, meaning village. Prem Ballabh lived at Naglagaon, in the sub-division of Pungran. The *tahsil*, or larger sub-division, in which he was employed was that of Haldwáni. He had recently been home on leave with his wife. While he was at work in the fields, about the end of the month of May, she disappeared quite suddenly, taking with her all her clothes and a substantial amount of jewelry and cash. He naïvely said that he had no quarrel with her. This, of course, was absurd. There is no doubt that her disappearance was the result of a love affair. He made his first report at the police station of Haldwáni on the 12th of June. It ran as follows:

> About eighteen days ago my wedded wife, Musammat Haruli, aged 25 or 26 years, having become displeased, left my house in the hills. I have got slight information of her presence at Kathgodam. I will give a reward of Rs.20 to the person who will find out the whereabouts of that woman. Her descriptive roll may be circulated. Fair complexion; a mark on the left cheek from childhood; thin built, mark of bangles on the right or left wrist.

The 'slight information' is quaint. He was never asked what it was exactly, and it did not come out at the trial. But there is no question what it meant. One Debi Datt was a police constable at Kathgodam, and the unfortunate Prem Ballabh knew quite well that his wife Haruli and Debi Datt were carrying on an intrigue. Debi Datt, whose home was in a neighbouring village to that of Prem Ballabh in the Hills, had recently been on leave, and had been at the house of Prem Ballabh while the wife was there and the husband was out.

Prem Ballabh's account of his movements when he first heard of his wife's disappearance was bewildering. His father and mother lived at his house in Naglagaon. They could tell him nothing. He went straight off down to the police station at Haldwáni, which was also the police station for Kathgodam, and the station to which

Debi Datt was attached. This was why he went there. As we have seen, it was down at the foot of the hills. For all practical purposes there was no difference between Haldwáni and Kathgodam. He went there the very next day, having first called at Debi Datt's village and found that he had left. But he made no report then at Haldwáni. We know from the report itself that when he made it his wife had been gone eighteen days. What was he doing during this long interval? The matter was not probed at the trial, and apparently received little consideration. But it was proved that he went to Mantoli, the village of the accused, which was no less than twenty miles distant from Naglagaon. He also went to Kumargaon, his wife's village, which was ten miles farther on, to see if her father could give him any information. So far as one could follow his vague and inadequately elucidated story of his wanderings, it was after his visits to these places, and after the enquiries which he made there, that he made his report at Haldwáni, on the 12th of June, referring to his 'slight information'. It is quite uncertain when, and from whom, he first received information implicating the accused.

Though it was not material to the investigation of the case, a word should be said about one feature of the very economical report of the 12th of June. It will amuse those who are acquainted with the methods and reputations of subordinate Revenue officials, and it certainly tickled the experienced judge who tried the case at Sessions. Although in his subsequent reports, as we shall see, and in his evidence, Prem Ballabh gave detailed accounts of the jewelry, and of the 425 rupees in cash, which his wife had carried off with her, he said not a word in the report of the 12th of June about these losses. His explanation of this was that he did not discover the loss of the cash until afterwards. His pay was Rs.12 per month. These menial servants get very small

pay, though they have privileges, such as leave and pension, in the Government service. Though a *chaprasi*, or *peon*, as he is often called (the word being a Portuguese survival of a military term, meaning foot-messenger or orderly), has not the same chance of gathering perquisites as a Patwari, he is constantly picking up small crumbs of *baksheesh*. 'This may explain', ran a note made by the judge, 'his omission to report at first that he had lost savings amounting to Rs. 425.'

The next step taken by Prem Ballabh was to make a further report, this time to the Patwari of Athigaon, the sub-division in which lay Mantoli, the village of the accused. This report contained nothing worth noting. It was made on the 25th of June, or after an interval of thirteen days. What he had been doing in the meantime did not clearly appear. He seems to have been wandering about, groping for news of his wife. He said at the trial that he heard from someone that she had been seen at Mantoli. This village, it will be remembered, is about twenty miles from his own village, and lies on the way from his village to Kumargaon, the home of his wife's father. He seems to have got this hint from his father-in-law's village, though he did not say so, and it is mysterious, if true, that anyone in that village knew where the wife had been, because there was no evidence that she ever reached her father's home, or intended to go there. On getting this information he went to Mantoli again. It must have been his second visit, though he did not say so. There he was told by one Gobind Ballabh, who was a distant connection of his wife, that she had stayed with him for one night, about two days after her disappearance. This was all the information he got, if he was to be believed, but, in the light of subsequent events, it seems incredible that he was not told more. Either the villagers of Mantoli were keeping things back from him, or he

had some reason for not telling the court all that he then learned. In either case, he contented himself with reporting to the Patwari of Mantoli the bare fact that his wife had disappeared.

Having made this second report, Prem Ballabh went home and made his third report, this time to the Patwari of Pungran, in which sub-division his own village lay. In this report, which was dated the 27th of June, he went into more detail, and disclosed the loss of the jewelry and money. What he said was: 'My report is that my wedded wife, Musammat Haruli, left my house on the 26th of May. Since then I have been searching for her in many places, but have not yet been able to find any clue.' (This statement, of course, was inaccurate, if not a deliberate falsehood, because he had heard of her in Mantoli. It is possible that he preferred not to mention this, fearing that the Patwari would take no action and make the excuse that the matter was one for the Patwari of Mantoli. These subordinate officials are so predisposed to shirk responsibility that the average villager, well aware of the fact, will often conceal, or withhold, information in his possession which he thinks will be used as an excuse for choking him off.) 'She took with her', he went on, 'the following ornaments and cash. I shall lay claim if I find her out anywhere.'

	Rs.
Cash	425
Gold nose-ring	150
Gold earrings	45
Silver necklace	35
Silver bangles	42
Silver chain	17
Silver ring	45
Gold, silver, and copper earrings	35
Silver ring	1
Case, with lock and key	3
Shawl	10
Glass and cup	1

This list indicates that the woman had no intention of returning to her husband.

Finally, on the 5th of August, Prem Ballabh made a further report, or rather filed a petition with the Sub-divisional Magistrate. It ran as follows:

> My wedded wife, Musammat Haruli, who had ornaments worth about Rs.364 and cash with her, left my house on the 26th of May. Since then I have been searching at many places, but have found no clue of her. Now it is said about her that she stayed for three or four days in the house of Gobind Ballabh and Keshab Datt, of Sangran. [This was the village of Debi Datt.] I came to know about it from Har Ballabh. Since then I have been searching for her at many places, but have up to this time found no trace of her. Now it is not known as to what these people did with that woman in order to take the above-mentioned ornaments and cash which she had in her possession. I pray that proper orders may be passed directing an enquiry to be made, in order to find out whether she is living or dead.

Now, this report is a remarkable document in many ways, as the reader has doubtless already observed. In the first place, there is a reference to his wife having stayed three or four days with Gobind Ballabh, of Sangran, whereas he had been told that she had stayed one night with her connection, Gobind Ballabh, in Mantoli. They are not the same people. It is impossible not to sympathise with any reader who feels some bewilderment over the names of villagers in India. He will readily appreciate the difficulties of a judge who has practised in England, and who is just beginning to learn the language in India, when these strange names are repeated in court with a pronunciation which is quite foreign to him, and which is even more difficult to pick up than the spelling. But the strangest feature of this nomenclature is that, whereas several men may, and often do, have the same names precisely, in the same case, and even in the same village, without being in the

slightest degree connected with one another, a man and his son usually have totally different names, and the common source of a man's identification is the name of his father.

The next point to notice is that, for the first time, Prem Ballabh gives the source of his information, namely, that he had been told by Har Ballabh, a villager of Sangran. He repeated this statement at the trial. The next point is that he omits all reference to the information he had received that his wife had spent one night at the house of Gobind Ballabh, at Mantoli. It is a remarkable coincidence that he should have received information, according to his own account, of her having stayed at the houses of two individuals, both of the name of Gobind Ballabh, and living in two different villages, some twenty miles apart. He said at the trial that the two men, Gobind Ballabh and Keshab Datt, mentioned in this last report, were relations of Debi Datt, the constable, the former of the two being his brother. The last point to be noted, and it was certainly very curious, is that, although he mentions her having stayed with Debi Datt's relations, he appears to have dropped the idea that his wife was with Debi Datt, and, for the first time, introduces the notion that she has been robbed and murdered. In this he was probably right, but he had no information to that effect. It appears to have been the only inference left to him after his fruitless search. But it is impossible not to be struck with the cautious reserve which characterises all his reports, and inasmuch as he was not pressed on these gaps in his narrative when he gave evidence at the trial, the case for the prosecution was much weakened and clouded by doubt.

There was, in fact, in this case no real investigation, the importance of which, in the hands of an independent, honest police officer, was demonstrated in *Indian Village Crimes*. The petition of the 5th of August was the first

thing which galvanised the authorities into something like activity. The Sub-divisional Officer, or Magistrate, is an important person in the hierarchy of the I.C.S., and if a complainant, who is aggrieved by the absence of proper attention to his grievance, manages to get his ear, something generally happens. The petition of Prem Ballabh is a case in point. An order was made by the Sub-divisional Officer for the Patwari of Pangran to submit a report in detail. Now, if that gentleman can be justly accused of supineness and neglect between the 27th of June, when he got Prem Ballabh's report, and the 11th of August, when he got the Sub-divisional Magistrate's order, no complaint about his lack of activity can be lodged against him from the date when he received the order. On the 20th of August he produced a report of which, for the range of its purview, the detail of its information, and the confidence of its conclusions, any experienced officer at Scotland Yard might well have been proud. The contrast between the blanks which he drew during the first forty-five days, and the detective triumphs which he produced in the following nine days, is truly remarkable, and his report must be read in full. The pity was that, so far as the writer has been able to discover, it was never submitted to a judicial examination. It ran as follows:

SIR—It is found that the petitioner has under your order gone at present to the Patwari of Athigaon in order to get information about the said case at the spot. Har Ballabh admits that Musammat Haruli stayed in his cow-shed in Sangran on the night of the 26th of May, and says that she left on the very night. Gobind Ballabh and Keshab Datt also say that it seems that the woman came to the village, but that they did not see her. Other persons were also examined. They too say that the woman came to the village, but that they did not see her. On making secret enquiries it is found that Debi Datt was a constable at Kathgodam. [It is a quaint suggestion that secret enquiries were necessary to establish a fact which must have been known, apart from official

record, to every villager in Sangran and to nearly everyone within miles of the police station at Haldwáni, and the statement was evidently inserted as an earnest of good faith.] At that time Prem Ballabh was a *peon* at Haldwáni. Musammat Haruli was also there. Debi Datt had illicit connection with that woman. In the month of May he came home on leave. On the 26th of May he had a conversation with that woman at Naglagaon. The same day she disappeared from Naglagaon. For the two following nights this woman remained at Sangran. On the night of the 27th, *i.e.* in the morning of the 28th, Debi Datt, brother of Gobind Ballabh, took this woman to a place towards Athigaon, and himself came back. On the 29th of May Debi Datt went from his house to Kathgodam. This man went through villages accompanied by some other man. Being a policeman, he asked the woman to come to Kathgodam, via Athigaon. If this man Debi Datt would not have done such an act, the woman would not have gone out of her house. It seems that she was killed on reaching Athigaon, and it is found that an enquiry is being made regarding it. The petitioner has prayed that it may be found out whether she is living or dead. It is reported that she has been killed in Athigaon. I do not think it proper to make further enquiries into the matter. It seems that all this was done by Debi Datt, constable.

(Signed) BHAWANI SINGH,
Patwari, Pangran.

As an official report, summarising a case against a third person on a capital charge, this document must be almost unique. It is difficult to say how and when the author of it supposed that the constable had committed the murder. He gives the impression that he thinks the murder took place in the early hours of the morning of the 28th of May, and that, after perpetrating it, Debi Datt returned to his village before going down to duty at Kathgodam. But the air of finality with which the last finding was recorded probably meant no more than a polite intimation to the Sub-divisional Officer that, as the Patwari of Athigaon was also enquiring into the case on the spot, the proper course was to leave him alone, and that the writer did not wish to be saddled with any

further responsibility in the matter. In fact, a parallel enquiry by the Patwari of Athigaon was going on, and had, by this date, already reached a crisis. It was on the result of this enquiry that the accused Sadanand, of Mantoli, was put on his trial for murder, and we must now examine the result of this enquiry, and the evidence on which he was charged.

On the 4th of August, just when Prem Ballabh was preparing his petition to the Sub-divisional Officer, a new Patwari, named Gopal Datt, took over charge at Athigaon. On the 6th he was told by someone that a woman had been murdered in Mantoli, and that someone had stirred up the Magistrate about it. Gopal Datt was a new broom, and he began to sweep vigorously. Somehow he got hold of Musammat Debuli, a widowed sister of Gobind Ballabh, of Mantoli. She did not make her statement to him until the 15th. This statement, which was in substance the same as her evidence at the trial, must be perused in detail in a moment. But there is reason to think, although it is impossible to find any definite evidence of it, owing to the lamentable failure of counsel to cross-examine any of the witnesses at the trial on any point which shook their evidence, or helped the defence, that the Patwari must already have been on the track of the missing woman's bones, and her clothes, and other personal belongings, because he wrote to Prem Ballabh on the 11th of August, telling him that a woman had been murdered in Mantoli, and asking him to come to Mantoli and make a report. Now if there was one thing more than another which Prem Ballabh had done during the past ten weeks, it was to make reports. At least one was in the possession of the Patwari. The one thing common to all his reports was that the poor man had nothing to report, except the disappearance of his wife, because he knew nothing and could know nothing. It is, therefore, a fair assumption

that the Patwari wanted him to identify the things which had been found. It follows also that on the 11th the Patwari must have known that things either had been, or would be, found, and therefore wanted the complainant. Prem Ballabh arrived on the 13th, and handed over to the Patwari his reply in writing, in which he stated that he had had news of his wife having been to Mantoli, and repeated the details of his losses. On the following day, the 14th, the Patwari went over with the complainant to Mantoli. He at once arrested Sadanand, the accused. To quote his own quaint phrase, he 'kept Musammat Debuli under supervision'. This was probably the same kind of restraint which was carefully explained in *Indian Village Crimes*, and which is always called by the Police Sub-Inspector, when he does not want to admit that his man is in custody, 'permission to be present'. She made her statement on the 15th, while still 'under supervision', but in the presence of Sadanand. And a remarkable statement it was.

I am a widow, 24 years of age [she said]. I live with my brother, Gobind Ballabh in Mantoli. My father was Musammat Haruli's maternal uncle. On the 26th of May, before dusk, Haruli came alone to our house. She carried a bundle on her head, and was wearing old clothes.

Gobind Ballabh gave a more dramatic touch to this incident. He said, in his evidence, that her clothes were dirty, and that she was wearing no ornaments. 'I said to her, "When you pass on your way home, you are usually very smart. Why are you dressed like this?"' This confirms what has already been said about the habits of Hill-women.

She stayed the night [continued Debuli] in my room. We slept on the ground. At first she told me she was on her way from her father-in-law's [by this she would mean her husband's home] to her own home. She said she was afraid to travel wearing her ornaments, and that she had them in her bundle. When we were

going to bed she said I must come along with her to Haldwáni, and we should both turn *jogin*. She said she had quarrelled with her husband and had left.

So far all this sounds absolutely natural and true. *Jogin* is the feminine for *jogi*, which generally means a sort of religious mendicant. It has much the same signification as *faqir*, which is the Mohammedan term. Musammat Haruli may, or may not, have seriously contemplated some such attempt to eke out a livelihood, though she probably knew very little about it. Probably no one could give a very instructive account of this occupation, the success of which must depend largely upon the personality and brains of the mendicant, and upon luck in striking the charitably disposed. The reference to Haldwáni makes it quite clear that she was in touch with Debi Datt, and that she had discussed the matter with him. She probably thought that his position as a constable would give him opportunities of helping her, though she evidently did not mention his name to Debuli. But whether Haruli meant it seriously or not, the proposition would certainly act as a powerful bait to Debuli to induce her to join her, because there are no creatures so forlorn and weary of life as the ordinary Hindu widow, and she, or any Hindu widow, would probably be only too glad to embrace the opportunity of a little diversion, and there was no risk to Haruli in extending the invitation, as she had what would be to two Hill-women comparative wealth in cash, on which they could both subsist for some time.

She opened her bundle at night [proceeded Debuli], and I looked into it. I saw no money, but she said she had 18 or 19 rupees.

This, of course, was absolutely inconsistent with the amount of the *chaprasi* savings which Prem Ballabh declared she had carried off, but which he was so shy

about disclosing. But it would be quite natural, indeed almost certain, that the woman would not disclose to anyone at that stage, her possession of substantial cash. Debuli went on to describe the ornaments, of which the husband had given an accurate description, which the woman was carrying, and also the clothes in her bundle.

> On the next day [went on Debuli] she left the house. I went and showed her a place to hide in—Kamlapatti's old house on the other side of the ridge. There was no one living there, and there was no house near. She went there with her bundle. It was not settled how long she was to stay there. We made no arrangements for her food, and after dark she came to my house to get water, and I went back with her. It was agreed that we must look for someone to take us to Haldwáni. I was to look while she remained hidden. I told Sadanand, and asked him if he would take us. He wanted ten or fifteen rupees for taking us, and I said I would consult Haruli. I told him to go and see Haruli in the evening, and I found him there when I went after taking my food. Haruli told me that Sadanand was willing to take us, but wanted three or four days' time to make his arrangements. When I went home that night I left Haruli and Sadanand at Kamlapatti's old house, but when I went early next day they had both gone, and I thought they had started for Haldwáni.

On the 28th of May, according to her story, she went out with some other women to cut grass. Most of these women do this at some time or other, getting in stocks of grass for the use of their own animals. In the Plains, the 'grass-cut' is a regular caste and occupation, and a large number of women do it, either for themselves or as coolies for some contractor. It is a common sight to see them coming in from the jungle on their way to the bazaar, moving over the ground at a great pace, with something between a fast walk and a trot, which you never see anywhere else. But the sight of them cutting the grass is even more singular. They neither sit nor stand, but appear to be sitting on their haunches. In fact their legs are doubled up, so that each half is practically

vertical, and they bring their seats right up against their heels, almost as though they were sitting on their heels. In this position they get support for the weight of their body, as they lean forward to cut off the grass down to the level of the soil, and they move forward one foot at a time, swinging their corresponding haunch forward with the foot in a sort of semicircular motion, and throwing the grass round with the arm on the opposite side of the body, to the heap behind them. In the distance they look like wounded monkeys. Debuli said that Haruli had a sickle stuck in her waist; an interesting sidelight on the meticulous forethought of this class of woman. Haruli evidently thought that if *joging* and Debi Datt failed her, she might do a little grass-cutting, as it was the rainy season, and might perhaps be able to defend herself against a chance attack by a marauder.

I was cutting grass [continued Debuli] when a small stone fell near me. I looked up and saw Haruli in a cave in the cliff above me. She called me to her, and I asked her how she had got there. She said that Sadanand had told her to hide there. I climbed up, and we sat and talked. She told me that they were going to start that very evening, and that I was to come too. I cut some more grass, and then went home. I took my evening meal and went back to the cave. Haruli and Sadanand were there. We sat there till midnight, when Sadanand suggested that we should start. Haruli and I asked, 'Where shall we go at this time of night?' Sadanand said that we should be able to travel six or seven miles before daybreak, as it was not quite safe to travel during the day. Haruli was afraid that someone would come from her father-in-law's house and catch her. We started by the road through the forest, and then we went by a grass-cut's track till we came to the Salmani ravine. At this place there are many boulders, and a sheer precipice down from the top. I was leading, and Haruli was four or five paces behind me. Sadanand followed, carrying the bundle. Sadanand said to Haruli, 'I will take you to your father-in-law's house, and not to Haldwáni'. [This incident is a quite likely one, and possesses verisimilitude, as any villager would know that it is an offence under the Penal Code to take

a married woman from the custody of her husband, and, even if Haruli was the moving spirit, he would be certain to get into trouble if the facts became known.] Haruli replied [went on Debuli] that she would not go back to her father-in-law's, but was going to Haldwáni. She said, 'You have deceived me. Give me my bundle.' Sadanand then put the bundle on a ledge overhanging the path. The two began to quarrel. Haruli said again, 'You have deceived me. Give me my bundle, and we two cousins will go back.' Sadanand replied, 'You are making a noise. I will cut your mouth off.' Haruli was holding Sadanand by the hem of his clothes, and they started to struggle. Sadanand kicked out his leg and kicked Haruli. She fell over the edge and disappeared. The height at that place was two or three pine-trees. When he made her fall I fled in fear.

Apart from the weak points in this story, which, on the other hand, contains many features which would appear to be very unlikely to be invented by a young, simple-minded Hill-woman, and which it will be interesting to examine in greater detail hereafter, there is a serious question worth considering, whether the facts of this bare statement, taken at their full, amount to a description of a murder. Debuli's statement, extraordinary though the fact may seem to anyone not acquainted with the methods of conducting criminal trials in India, was not further probed or amplified in any way, as the result of questions, either from the Bench or from the prosecuting counsel. It is consistent with the statement that the unfortunate woman, Haruli, was the aggressor, so far as personal violence was concerned, and that the man at the time had not the bundle in his possession. Every man is entitled to take reasonable means to defend himself, and if a frenzied, or excited woman, seizes hold of your garment near the edge of a cliff and tries to pull you towards it, it is no laughing matter. It never appeared how far from the edge the struggling couple were; but as her bundle was resting on a ledge, it is quite possible that the man thought that Haruli meant

some mischief to him personally. To kick a woman is, of course, an act to be despised as cowardly and brutal, but it does not so appear to the ordinary Indian villager. Personal violence is frequently employed against women as a natural thing, and a kick is not thought so much of by those who go about with bare feet. If the thing happened as Debuli imperfectly described it, and the man was doing his best to throw the woman off, and he found the easiest and most effective way to be to give her a push with his foot, without noticing the danger to her, or even without caring about the consequence, it is, at any rate, an arguable point whether his act would amount to murder. Suffice it to say here that the point was not referred to in the Sessions judge's judgment, and was therefore, presumably, not even mentioned by the lawyer who defended the accused.

Musammat Debuli continued:

When I fled, Sadanand ran after me, and caught hold of me and said, 'Where are you going? Don't tell anybody. If you do I will treat you in the same way.' I went home. Sadanand forcibly put ten rupees in my pocket. I did not spend it, but gave it up to the Patwari. I met Sadanand three or four days later at the spring. He said 'Beware!'

Five or six days after Haruli was kicked down the cliff I went to cut grass with Musammat Parbati, and Ishar Datt's wife, and Chet Ram's wife. We all live in Mantoli. We went into the Salmani ravine, and while we were cutting, Parbati suddenly said, 'Look! A woman has died here!' We all four went and saw a skeleton. There was a very bad smell. I could not recognise the face, but the clothes were lying about on different sides, and they were the clothes of Haruli. It was just under the spot where the struggle took place. I told the women to say nothing about it, remembering what Sadanand had said to me. The next day I met Sadanand, and told him what had happened. I told him that I would not tell, but that now three other women knew, and he must not visit it on me if they told.

Whether Debuli was a truthful witness or not, she must have been mistaken about the date of this incident,

an unusual thing with Hill people, who are generally much more to be depended upon for dates than villagers in the Plains. She put it on about the 4th or 5th of June, but Parbati gave the vernacular date for the 14th of June, and she was more likely to be right. It does not matter. But Parbati's account of how Debuli persuaded them not to say what they had found is worth recording, because it is both typical of the intuition of these simple women in appreciating one another's mentality, and it illustrates very forcibly a point which I dwelt upon in *Indian Village Crimes*, that the ordinary villager will do anything rather than be known as the first person to find a corpse, out of fear that, if no satisfactory explanation of its presence is forthcoming, he will be suspected of being concerned in the death, and that the other villagers will try to implicate him, especially if they have any private grudge against him. Parbati said that Debuli told them not to say anything because they did not know whose body it was; it might be the body of someone who had fallen down, but they might be run in for it. But it follows from this that Debuli's anxiety about keeping it quiet did not necessarily corroborate her story.

There are two points about Debuli's evidence which do not appear in the extracts given above, but which are important to bear in mind. She admitted that she showed the Patwari the places where the struggle took place, and where the bones were found, before Sadanand was taken to the spot. Further, she contradicted herself about what Sadanand had promised to give her. In her evidence before the Magistrate she said that when Haruli fell over the cliff Sadanand promised to give her some of the jewelry. At the trial she said that he had only promised her money, and she professed to have forgotten that she had ever said that she had been promised jewelry. In fact she said she only received the Rs.10, which he forced upon her, and which she said she handed over

to the Patwari. This again creates a serious difficulty about a detail in her story. The Patwari was not examined on this point at all. It seems incredible, but it is true. The probability is that Debuli lied when she said that she handed the money over to the Patwari. It is inconceivable that the Patwari could have forgotten such an incident, or that counsel for the prosecution overlooked it, slovenly though the conduct of these cases often is. Unfortunately, prosecuting counsel, from lack of experience and proper training, do not always realise the duty of bringing out everything favourable or unfavourable to the case for the prosecution, and the gravity of withholding facts which may affect the credibility of their own witnesses. They seem to regard a prosecution too much as a mere 'struggle for victory'. The probability is that the Patwari, either because he had appropriated the cash to himself, and did not want to be asked for it, or because the incident had never happened, would have denied it, and was therefore not asked. Unfortunately, too, many Sessions judges, who have not practised at the Bar, do not think it their duty to try and clear up apparent inconsistencies, and to link up the evidence of two or more witnesses where gaps are apparent, while the witnesses are in the box. The practice of recalling a witness to clear up a doubtful point is hardly ever adopted, and the failure to do so constantly causes a great deal of trouble to the Court of Appeal. In this case the judge, in his judgment, actually observed upon the fact that the Patwari had not been asked about this Rs.10, and found as a fact that Debuli had handed it over. He does not appear to have been struck by the fact that Debuli received the money, if at all, about the 29th of May, and that she could not have handed it over to the Patwari before the 15th of August, which means that a poor Hill-woman, to whom the sum of Rs.10, coming to her as a god-

send, would seem almost like wealth, had kept it without breaking bulk for nearly three months, during a greater part of which time the matter in which she was concerned had gone to sleep. I can only say that I am unable to believe it.

The next witness of importance at the trial was certainly an awkward witness against Sadanand. His name was Har Datt. They were distant cousins, on quite good terms, and grazed cattle together. He said that it was on the 15th of June that he heard in the village that a body had been found, and that a woman appeared to have fallen over the *khud*. So it is clear that Parbati and her fellow grass-cuts had already begun to talk, if Har Datt was telling the truth. It is just permissible to doubt it, because the reader will remember that on the 25th of June Prem Ballabh had reported his wife's disappearance to the Patwari of Athigaon, in which Mantoli was situated, and had heard from someone that his wife had been in Mantoli for one night. If the discovery of the body was known in the village on the 15th of June, it just shows what these villagers are capable of in hushing up what they do not want to be investigated.

Har Datt said in his evidence:

> I told Sadanand I had heard that a woman had fallen over the *khud*, and asked if he had heard it. Sadanand said, 'Shut up! What concern is it of ours?' Our cattle got separated. Some four or five hours later I saw him near the Salmani ravine picking up stones. He picked up stones from one place and put them down three feet away. I did not go near to him. Afterwards I met him on the road and asked him what he had been doing. He said he had been hiding bones, lest children should see them and be frightened, and lest we might be arrested if there was an enquiry, as it was our grazing-ground.

This suggestion, of course, was quite enough to close Har Datt's mouth till the Patwari questioned him in

August. If the evidence was true, it showed that Sadanand was rather concerned about the bones, although this would be consistent with his having been present at an awkward accident which he wished to conceal. But it also showed that he, as well as others, might have come quite innocently by the knowledge of the spot where the corpse was.

Bhan Dab was another witness, belonging to the accused's caste or brotherhood, who had also held his tongue, but who gave awkward evidence against him. He said that on the 28th of May, about sunrise, while he was easing himself—a very common occupation with witnesses who give circumstantial evidence—he saw Haruli, Prem Ballabh's wife, walking with Sadanand in the direction of the jungle. He knew them both. He was about fifty yards from them. The weak point about his evidence was that he said that they were coming away from the house of Gobind Ballabh, which was where Debuli lived, whereas it will be remembered that Debuli said that Haruli and Sadanand had spent that night together at Kamlapatti's old house, which was right away from the other houses, and that they did not want to be seen. But the evidence, if true, in substance corroborated Debuli. This witness and Har Datt, the preceding one, were late witnesses; that is to say, the Patwari got hold of them after Sadanand had been charged on Debuli's statement and remanded.

Let us now consider the evidence of the Patwari and of the searches or discoveries made by Sadanand. Note must be made at once of the fact that Sadanand vigorously disputed this part of the evidence, as well as he could without giving evidence himself, and made against the Patwari what is a very common allegation, but what is also not infrequently true in the case of the police investigating officers, that he had been taken to the places and coerced into finding the things.

Note must also be made of the fact that Sadanand escaped from custody on the evening of the third day after he was arrested, so that up to that moment at any rate he was not in a compliant mood, or one in which he was disposed to confess. He never did confess, though the Patwari and the prosecution tried to run the case on that footing. I pointed out in *Indian Village Crimes* that the act of a suspected villager in absconding had by no means the same significance that it has in England. It depends. Sadanand's conduct was not really absconding at all. One is even tempted to sympathise with him. There was no lock-up, or police station, or any place of confinement in Mantoli. So they tied him to a post and watched him. Seven of them watched him for three days; at least they said so, and then they asked the Patwari for more men. Now the nights are often very cold in the Hills, and in August very wet. Being tied to a post must be very uncomfortable, and the sight of his seven watchmen peacefully sleeping must have been too much for Sadanand, and he managed to untie himself. So one fine morning, when they woke up just before dawn, they found that he had fled. That was their account of it. The Patwari said that he escaped the same evening that he was arrested, and he was probably right. It takes a lot to induce the Indian villager to forgo his sleep, and the request for more men was probably what they call *peshbandi*, or preparation and 'intelligent anticipation', and was a warning to the Patwari that the prisoner might escape, which was probably what they had already permitted him to do. He did not go far, and was caught again on the 20th. On the 21st the Patwari went off to a cave with the accused and several villagers, and there the accused removed some stones, and brought out an old iron *ghara* which contained some of Haruli's clothes, and a small box in which were a

necklet and a broken ring. Lying by the *ghara* were a piece of glass and Haruli's sickle. On the 23rd the party went again, and then the accused took out the bones and the remains of the torn clothing which Haruli had been wearing, and which were hidden in another sort of cave, covered with stones. They also found there the cord which Haruli had been wearing round her waist, with some rings and keys attached to it.

There are several points about these discoveries. First of all, the Patwari in his evidence said, somewhat dramatically, that the accused *took* him there. This was absurd. In the first place, everyone in the village knew by this time that the woman had been found dead in the Salmani ravine, and it is unlikely that her belongings collected in the other spot close by, in a place frequented by everybody, where many grass-cuts worked, could have remained unobserved for so long. Curiosity is one of the ordinary villagers' strongest traits. The suggestion that these places were discovered as the result of these visits was a mere pretence. Moreover, the accused was in custody, and had no option about going there, if the Patwari wished to take him. Most of the villagers had made up their minds about him by this time, and in such cases they will always exert pressure upon an accused, because they want to rid the village of the nuisance of an investigation as quickly as possible.

Secondly, the reader has no doubt already noticed that the rags and articles of torn clothing, and the necklet, rings, and keys, were all articles which Haruli would be carrying about her person, and which would therefore have fallen with her, and have been wrapped up and put away by whomsoever removed the skeleton or bones. He will also remember that Debuli looked inside the bundle the evening when she and Haruli slept together. But she did not say that these articles were in

the bundle, and she did not see inside the bundle on the night of their departure. The only new feature about the things found, which could be at all suggestive, was the *ghara*. This certainly did not belong to Haruli, and if it contained anything of value which had been in the bundle which she was carrying, it must have been put where it was found by the people who robbed her. An effort was made to prove that the *ghara* was the accused's. These iron *gharas*, or round pots, or buckets, are used for drawing water from wells, and are all made to the same pattern. It is not impossible, however, for the owner, or a man who has used it, to recognise one. The witness Bhan Deb, to whom we have already referred, said that it was the accused's. But he had not seen it for a year before the trial, which took place in November, and no one said that they had seen the accused with a *ghara* which had a hole in its bottom. This one had such a hole, because the clothes were taken out through it.

A third point about these discoveries is that the Patwari, and those who were with him and gave evidence, laid great stress upon the fact that the accused pointed out the spot from which the woman fell, and the place to which she fell. Debuli said that she had already done this to the Patwari, and, in fact, anyone could have done it who knew where the dead body had been found. The obvious object, of course, was to get an admission from the accused. A confession to the Patwari would not have been admissible, because he was clothed with the power and authority of a police officer. But the police frequently try to obtain evidence which amounts to an admission, and is often tantamount to a confession, by working Section 27 of the Evidence Act, which runs as follows:

Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any

offence, in the custody of a police officer, so much of that information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

If the accused pointed out the *ghara* when in custody, and it was thereby discovered, that fact would be admissible. But as the spot where the corpse of Haruli was found, and therefore that from which she had fallen, were already known, these were not discovered, and that part of the Patwari's evidence was inadmissible.

It only remains to notice that none of the valuable property which Haruli had with her was ever traced, either to the accused or to anyone else, though the accused's house was thoroughly searched. Nor was it shown that he had had at any time more money than usual. An unsuccessful search generally means that there is more than one person involved in the crime. The difficulty of one person getting away with substantial loot in a small village is considerable. It is a familiar feature about dacoities, and other crimes which result in loot, in India that only the smaller and more insignificant portions of the booty are recovered, even when the hiding-places are disclosed by accused men who confess and surrender the articles to the police. As an investigating officer is unlikely to be satisfied with a disclosure which comprises none of the really valuable property, it is generally supposed that the police occasionally produce only so much as is necessary to secure a conviction, and that the remainder is shared between them and the families of the confessing accused. But in this case, as so many weeks had elapsed before the Patwari had arrived upon the scene, that explanation is not possible, and the probability is that the murderer had confederates with whom he shared the booty.

The case provides a favourable opportunity for illustrating what is, in my judgment, the useless procedure provided by law for the examination of the accused, and

the desirability of allowing him to give evidence in the witness-box, and be examined and cross-examined. The existing procedure requires the trial court to give the prisoner an opportunity of explaining the circumstances given in evidence against him. In practice this examination, which has to be taken down in the vernacular with the answers of the accused and signed by him, consists in the judge putting to him, not all the details of the evidence, of which he may have an explanation to give, nor the sort of points which the accused's counsel would like to elaborate, but the broad issues of fact. The accused seldom volunteers anything but a mere summary statement. He naturally confines himself to dealing with only those points put to him from the Bench. The judge is 'in possession of the house', so to speak, and the accused merely awaits and answers the matters put to him. He is not expected to volunteer statements, and he seldom or never does so. He is naturally timid and cowed, and cannot be expected to think out points which may be relevant, but which have not come out in evidence. The examination, thus conducted, is usually a most perfunctory business. In this case there were several points which Sadanand might have dealt with if he was an innocent man. How, and when, he knew that the body had been found, and where it had been found; why he removed the bones, if Har Datt was telling the truth; whether it was true that he was asked to accompany the women; whether, if that was true, there had been a quarrel and a struggle, as described by Debuli, and whether the woman had fallen in the course of it; or whether the whole story was an invention by Debuli; how he managed to escape from custody; and how he came to be taken to the places where the bones and the property were said to have been *discovered*.

The following is a *verbatim* report of his examination.

The reader must judge for himself whether my criticisms are well founded. It must be acknowledged that he contented himself with some rather unsatisfactory general denials.

My name is Sadanand; my father's name is Shri Kishun; I am by caste a *Joshi*, 34 years of age; by occupation a cultivator; my home is at Mantoli; police station Palla Athigaon, district Almora; I reside at Mantoli.

Question. You have been charged of the offence of killing Musammat Haruli, wife of Prem Ballabh, at Mantoli in order to take her ornaments and clothes. What have you to say?

Answer. I did not kill Musammat Haruli, nor did I kick her down.

Q. Did you point out the cave and *gadhera* (ravine), and did you take out and produce the articles and the bones of Musammat Haruli?

A. I did not take (the people) there, nor did I point out the articles and the bones.

Q. Why have you been implicated?

A. In order to save themselves all the villagers have brought this charge against me. They have no grudge against me. I also heard on the 15th or 16th of *Asarh* (mid-June) that the dead body of a woman was found lying in the jungle in a ravine.

Q. Did you know Musammat Haruli?

A. No, I never saw her. She was not a relation of mine. I did not know her husband Prem Ballabh also. I only saw him in my village in the month of *Asarh*.

Q. Where were you on the day on which Musammat Haruli is said to have been murdered?

A. I was at my house on that day.

It is true that the accused denied specifically having had anything to do with Musammat Haruli, and that, if he was lying about this he was almost certainly guilty. It is important, therefore, to hear what he had to say in his petition of appeal to the High Court, when he amplified to some extent his previous statement:

I do not know Musammat Haruli the deceased. I have not killed her. I have been charged for nothing at all. Keshab Datt

a *malguzar*, has got me *chalaned* (charged) by giving Rs.200 as bribe to the Patwari, and has caused his daughter to give evidence. The deceased had illicit connection with Debi Datt, a constable who has been posted at Kathgodam. Prem Ballabh came to my village and stayed in the house of Bhan Dheb and Gul Ram. When Prem Ballabh came here, why did not Bhan Dheb inform then, and he has given evidence after that? This is altogether wrong. Musammat Debuli states that Sadanand has killed her (Haruli). When Musammat Debuli was witness in the murder, why did she not mention it immediately on arriving at her house, nor has she made any report? The said Musammat has been produced as a prosecution witness after four months. Why did she conceal the offence for so long? The place from where this dead body has been found is a public thoroughfare lying between four jungles (woods). The Patwari brought me to the spot and forcibly made me dig up the earth. When I refused to dig up the earth, he beat me. Hence through fear I dug up the earth, and the bones were recovered.

Few things in this connection impressed me more, during my judicial experience in India, than the way in which, from time to time, the petition of appeal to the High Court, in cases in which one felt doubt about the justice of the conviction appealed against, brought out points of fact for the first time, which seemed to fit in with the rest of the case, and which a properly instructed and experienced counsel would most certainly have dealt with at the trial. Of course, in the great majority of cases, where the facts were simple and the guilt of the appellant was clear, the petition was a mere general denial, linked with absurd charges against the witnesses and the police. Many of such petitions were in 'common form', and appeared to have been composed by one of the professional petition-writers who hang about every court and jail. But it was not always so, and I never failed to peruse the petition in search of additional matter, or what I regarded as original and independent statements. This cannot be considered satisfactory, and would seldom be necessary,

I believe, if the accused gave his own evidence at the trial. In this petition there are two important statements to be noticed which are new. Keshab Datt, who the accused alleges had bribed the Patwari, was the father of Debuli, and of Gobind Ballabh, and was undoubtedly interested in getting the accused convicted and his own daughter exculpated. Secondly, Bhan Dheb, the man whose evidence at the trial has already been summarised, ought to have been asked about the complainant's visit to him, and why he did not at once give him the important information to which he testified at the trial. These are important matters which would have required further probing if the accused had raised them at the trial. Probably his lawyer had not even been instructed that the complainant had in fact stayed with Bhan Dheb, so that the question never arose. It was always rather a mystery what the complainant did on his first two visits to Mantoli, and no one at the trial troubled to ask him.

The Sessions judge convicted the accused, and sentenced him to death. Both the Assessors, who were Brahmans, were of opinion that he was guilty. This was one of the strongest points against him, as they saw the witnesses, and Assessors are not wanting in bias in favour of an accused. They no doubt believed Debuli. On the other hand, this woman was not adequately cross-examined, and many points in favour of the accused were overlooked. In the Court of Appeal the accused received the benefit of the doubt, and was acquitted. To the best of my belief my colleague, who presided, was doubtful about the honesty of the late investigation, and if an experienced judge in the Appellate Court entertains reasonable doubts in a capital case, that is enough for me. Judging from my old notes, which I happen to have preserved, I might, if left to myself, have come to the conclusion that there was sufficient

ground for upholding the conviction. But we were agreed that there were many points in the case which had not been adequately explained.

What are the main arguments in favour of an acquittal? It was a serious blot on the case for the prosecution that Debi Datt, the constable, was not called as a witness. Did he know of Haruli's departure from her husband's house? Did he know of her intention to come to Haldwáni? Had he a rendezvous with her?

What reason had Debuli for asking Sadanand to go with them to Haldwáni? Was it likely that Haruli, laden as she was with jewelry of value and money, would allow a strange man to accompany them? Why did Debuli select Sadanand? What did she know about him, and what sort of friendship existed between them to justify her confiding in him? Why was no one called who could corroborate Debuli about her employment of Sadanand, and the strange story that he asked for three or four days to make his arrangements? Was there no one who knew of his making arrangements to go on this journey? Why should Sadanand, if he wished to murder and rob Haruli, have left her alone while she was hiding in the cave, when he could easily have got rid of her without the presence of a witness?

Why did Debuli go grass-cutting with Parbati and the other women to the very place where they were likely to come upon the corpse? If she was afraid of Sadanand, and for that reason had agreed with him to hush it up, as she said, it was a most unlikely thing for her to do. But if she had the murder on her mind, and, suffering from a guilty conscience, wanted the corpse discovered as soon as possible, and a theory of accidental death to be adopted, it was a natural proceeding. Was there ground for thinking that Debuli saw a chance of profiting by Haruli's misplaced confidence in her, and that she and her brother arranged the murder, and that she

executed the plan by pushing Haruli over the cliff when they were resting?

There seem to be no conclusive answers to these questions. And here we must leave the story of the Hill-woman's death, with the final observation that, on the evidence as it stood at the trial, the probabilities were only slightly, if at all, in favour of the case for the prosecution being the true one.

II

A PROBLEM OF PROVOCATION

THE violent deaths of Mahabir Singh, and of Balwant Singh, his brother-in-law, in broad daylight and in the middle of the village, at the hands of Maharaj Singh, the brother of Mahabir Singh, resulted in a trial which raised some nice points and several difficult problems, and which still presents an interesting judicial puzzle. No piece of fiction could be constructed which could illustrate better the way in which the clear traces of an Indian village crime may be covered up, so as to confuse the issues and confound the judgment, or which could demonstrate to the mind of the average reader more convincingly the conflicting nature of the evidence which has ultimately to be weighed in such cases, and the bewildering task often set before criminal tribunals in India.

Here there was no question about the culprit. The acts of homicide could not be, and were not, denied. Though the manner of the killing in the case of each of the two victims was doubtful, the fact was certain. Nor was there any doubt about the presence of provocation, and of the existence of one of only two possible motives. But the real question was whether it was due to what the law recognises as 'grave and sudden provocation', reducing the act of homicide from the degree of murder to that of manslaughter, or whether it was one of those cases of ordinary irritation amounting to provocation, adequate

to lead the average Indian villager to kill his nearest relative or his best friend, but not recognised by the law as any palliation at all. To put it in another way, was it a woman or a waggon? It was certainly one or the other. Which was it? The reader must decide for himself, after weighing all the pros and cons, and hearing what the judge said.

It will be seen that, after the commission of the crime, so far as the 'spade work' was concerned in preparing the ground for the arrival of the police and for the subsequent investigation, the accused had it all his own way. He was well armed and was supported by friends on the spot, and was thus able to make it dangerous, if not impossible, for anyone to interfere with his proceedings. And, after all, as it was a family brawl, no one was likely to attempt to do so. But the consequence was that many of the traces of the crime which would have enabled one to draw perfectly safe inferences were removed, or were so blurred as to have become ambiguous and to render it very difficult to resort to them for the purpose of checking the verbal testimony of the witnesses.

Maharaj Singh, the accused, originally had four brothers, of whom two had died before the events with which we are concerned. Mahabir Singh and Sundar Singh were the two survivors. The former occupied a prominent house in the centre of the residential part of the village. In general appearance, it resembled the majority of such houses in Indian villages. That is to say, although it appeared to be substantial so far as bricks and mortar were concerned, and was evidently the residence of a substantial man, the outer premises, or compound, were in a perennial condition of untidiness, dirt, and disorder, more like a public market-place than a gentleman's compound. It looked as though everybody might walk in when and how they liked, and also as though everybody did. Situated not far from, and

opposite, the *zenana*, or women's quarters, was a large *chabutra*, or low circular platform, made of mud and cement, such as forms a common adjunct to the majority of *zemindari* houses and gardens, and a familiar sight to those who have passed through Indian villages or visited them. These platforms are used as sitting-out places for the owners and their friends when they want to smoke and talk, and to enjoy the cool morning and evening breezes. This *chabutra* was a prominent object in the scene of the crime, and formed an important feature in the subsequent events. Maharaj Singh, the accused, and his brother, Mahabir Singh, whom he shot, lived separately. The accused occupied another fairly substantial house in the same village, situated at some distance from the brother's residence. He was married to a young and particularly comely wife, who, according to the case set up by the defence, and also according to one view of her own story, was a person of rather loose morals, with whom Mahabir Singh was said to have fallen in love, and who reciprocated his passion. An intrigue of this kind, if one exists, between the wife and her husband's brother, can only have one end, and but one aim and object, particularly if the woman and her lover are not living in the same house. The woman hardly ever goes out, except just through or in and about the village, in the daytime, accompanied and in view of everybody; and even though she may not 'keep *purdah*', or veil herself, from her husband's brother, the two have, to all intents and purposes, no means of meeting, except hurriedly and in a clandestine manner. There is none of the ordinary social intercourse as Europeans understand it, so that anything like a flirtation, or constant meetings for other purposes and with other ideas than that of sexual intercourse, as we understand 'flirtation', are altogether out of the question. It is either the 'whole hog' or nothing.

Maharaj Singh and Mahabir Singh had, at one time, been on very bad terms. On that point, at the trial, both the prosecution and the defence were agreed. Their disputes had eventuated, as disputes about family property amongst Indian villagers generally do, in acrimonious litigation. Each of them had gathered the usual number of followers round him, and had become the head of a faction, the members of which had been at general enmity with the other. According to the case for the prosecution, this quarrel had been patched up, and for some time past the two brothers had been quite friendly. The fact, it will be seen, formed an important feature in the controversy at the trial. There was plenty of evidence of the customary kind in support of it, but it was impossible to say that it was conclusively established. The attitude of the defence towards this allegation was dubious and vacillating. They approached it faint-heartedly. They did not admit it; but they certainly did not disprove it; and their failure to destroy it must be conceded to create a certain difficulty in accepting the story which they set up. The reason for this will appear in due course. This much was acknowledged on all hands, that for about a month or two before the commission of the crime, which occurred in the month of March, the two men had been on speaking terms.

During the month of February, Maharaj Singh had purchased a new farm wagon. About this there was no dispute. Not having sufficient room to house it at his own residence, he was said to have obtained his brother's permission to keep it at Mahabir Singh's house. Some two or three days before the crime, Mahabir Singh had been away from the village, and one Sambhar Singh, who was an important—in fact, the most important—witness for the prosecution, occupied Mahabir Singh's house. Balwant Singh, the brother-in-law, also had always lived with Mahabir, and it was to him that

Maharaj Singh sent a messenger, during Mahabir Singh's absence, saying that he required the wagon for his own use, and asking that it should be handed over. Balwant Singh, however, not knowing (or affecting not to know) anything about the circumstances under which the wagon came to be in the possession of Mahabir Singh, declined to hand it over until Mahabir returned home. According to the evidence, Maharaj Singh then applied to Sambhar Singh, saying that he had a particular reason for desiring to use the wagon immediately. But Sambhar Singh also declined to take the responsibility of handing it over, giving as his excuse the very natural explanation that he had no authority from Mahabir Singh to do anything of the kind, and that it would not be long before Mahabir, who was expected back in a day or two, would be able to deal with the matter himself.

On Mahabir's return to the village, Maharaj Singh sent his servant, Sher Singh, to fetch the wagon away. This happened rather late one afternoon, somewhile before sunset. Mahabir Singh was then sitting with Balwant Singh and Sambhar Singh on his *chabutra*, not far from the *zenana*. Whether there was any substance in it or not, the real reason for the hesitation which had occurred over the re-delivery of the wagon was at last disclosed. Mahabir Singh declined to give it up, and told Sher Singh to inform his master that he would not return the wagon until Maharaj Singh had paid him the two hundred rupees which he owed him. Sher Singh then went away. Shortly afterwards Maharaj Singh, who had a gun licence, appeared upon the scene alone, carrying his gun.

If the case for the prosecution was true, the gun must then have been loaded. Maharaj Singh said in his defence that it was not, and that he loaded it on the spot, before using it, under the circumstances which will

appear hereafter, when the case for the defence comes to be examined. The question whether it was or was not loaded, if it could have been settled definitely one way or the other, would have thrown some light upon the credibility to be attached to the two conflicting stories. But, in any circumstances, Maharaj Singh's possession of the gun, and of ammunition, if the gun was unloaded, certainly raises a strong presumption against him of deliberation and preparation. No explanation why he was carrying his gun, except for the purpose of using it on his arrival at his destination, was suggested by anyone. And if he had made up his mind to use it, it would certainly be very strange that he should not first have loaded it. Loaded, it could be used at need. Unloaded, he might never have been permitted to use it at all. Probably it did not occur to anyone at the time, if this part of the story is true, to wonder whether the gun were loaded or not. When Maharaj Singh arrived, Mahabir Singh, Balwant Singh, and Sambhar Singh were all three still sitting on a *charpoy*, or low bed of string, on the *chabutra*. If they thought about it at all, they would naturally have assumed that the gun was loaded, and that Maharaj Singh's arrival with it was, under the circumstances, a serious threat and sufficiently disquieting. From this point of view, it is singular that, according to the case presented by the prosecution, none of the three men got up, or made any sort of protest or enquiry as to the meaning of this strange menace. It is one of the curious features of trials in India, judged by the standard of Western courts, that the witnesses will repeat, and the trial judge will record, bare facts just as they are alleged to have happened, without any attempt to explain the apparent motives, or the impressions created in their minds, of the chief actors in the scenes described. Where action, which is being described, seems, from the form of the narrative, to be ambiguous

and to give rise to doubtful inferences, it often happens that a question or two, put to the witness, based upon a doubt or difficulty existing in the mind of the listener, will produce a reply which elicits further details, or affords enlightenment, making things which seemed, at first sight, obscure, quite intelligible. It is not easy for anyone, not particularly gifted with the power of telling a clear narrative, to convey a just impression to his audience of all that passed through his mind at the time, and it is especially difficult to everybody who finds himself for the first time giving evidence in the witness-box. It is part of the business of the judge to clear up, as the case goes along, from the mouths of the witnesses, anything which seems to him obscure or difficult to follow. A great many even of the best of the Sessions judges seem to be muzzled by their surroundings, and a large proportion of them have had very little practice in conducting cases at the Bar, or experience of criminal work. I have seen some of them taking down the evidence as it is given in a court in which, surrounded as it is by an open verandah filled with witnesses and crowds of other persons, either professional or belonging to the general public, all talking as hard as their tongues can wag, in loud and excited accents, a man can hardly hear the sound of his own voice. When one realises that, added to this, the judge is probably taking down the evidence as fast as he can on a noisy typewriter, it is hardly wonderful that he pays very little attention to the actual individual giving the evidence in the box, or to the lawyer who is examining him, and his mind can hardly be expected to be following the details of the evidence. At the time of the trial, Mahabir Singh and Balwant Singh were dead, and probably no one knew what their impressions had been; while Sambhar Singh, who related the incident, and who could alone have offered some explanation, was not, by one of those

oversights of obvious points which occur so frequently at the hearing of criminal trials in India, examined upon the matter by anyone. He stated that Maharaj Singh proceeded, on arrival, to ask his brother Mahabir, in a threatening manner, where the farm wagon was; and that Mahabir, without showing any signs of emotion, replied curtly that he must first have his money. Thereupon Maharaj Singh raised his gun to his shoulder, and aiming it point-blank at his brother, shot him dead on the spot.

Under ordinary circumstances, one would have expected everyone within range to have made off as fast as their legs could carry them. It is possible that most of the usual hangers-on and loafers, to be found in and about a *zemindar's* courtyard any afternoon, had already done so, when they saw Maharaj Singh approaching his brother's *chabutra* with a gun—always assuming that the case for the prosecution with regard to this part of the proceedings was correct. In that event, the reasonable inference that all the idlers who happened to be there had already decamped, would explain why there were so few independent villagers to support, by eye-witness, the evidence of Sambhar Singh. But it was common ground in the case that neither Balwant Singh nor Sambhar Singh attempted to get away. On the contrary, Balwant Singh, who was a strong young man of about twenty years of age, showed great courage, and rushed up to Maharaj Singh and seized hold of the gun. What his object was no one could say, except Maharaj Singh, who, in his defence, said that Balwant Singh took this course to prevent his returning to the house to run his wife to earth, and that Balwant Singh met his death entirely by accident. If events happened in the way now described, as the prosecution alleged, not only was there no grievance, or quarrel, between Balwant Singh and Maharaj Singh, but to tackle a man who has a loaded

gun in his hand, and who has just shot his brother in cold blood, sounds like an act of courage amounting to foolhardiness. It may further be observed that it is quite exceptional in these Indian village crimes, when dangerous weapons are being used, for anyone not concerned in the quarrel to run any personal risk with a view to saving the lives of others. It is done most often by old Hindu mothers, generally widows, who set no store by their wasted lives, and who will throw themselves on the recumbent body of a son, during a fight, in the hope of receiving the blows intended for him, and of possibly saving his life.

Balwant Singh may have thought that he was regarded as a sort of partner of the deceased man, and that it would be his turn next. Or he may have thought that, as a hostile eye-witness of the murder, his silence had to be purchased at the cost of his life. Whatever his motive, and whatever the actual circumstances, both the prosecution and the defence were agreed about the fact that he seized Maharaj Singh's gun, and that a desperate struggle ensued between the two men. According to the evidence of Sambhar Singh at the trial, the struggle resulted in the gun falling to the ground without going off, and thereupon Maharaj Singh snatched up a *gandasa*, or axe, which was lying near the *chabutra*, and drove it into the neck of Balwant Singh, nearly severing the head from the body, and, of course, causing his speedy death. Traces of a blood-stained *gandasa* were afterwards discovered among the remains of the bonfire which was subsequently made of the corpses. On the other hand, Maharaj Singh, in his statement in his own defence, while agreeing that the struggle for the possession of the still loaded gun took place between himself and Balwant Singh, asserted that the gun went off accidentally in the course of it, and hit Balwant Singh, causing his death, which was thus the result of his own

recklessness. If this statement were true, there must have been two shots from the gun. Friends of Maharaj Singh said that there were. The police attempted to show that only one barrel had been fired, but as the gun was not recovered until a long time afterwards, no reliable inference could be drawn from the state of the weapon. At any rate, it was a point requiring a good deal of elucidation from experts qualified to speak with some knowledge of such matters, and the evidence upon the point whether two barrels had been discharged, or not, was not convincing one way or the other. So far as the witnesses were concerned who said that they were in the neighbourhood, the evidence was, as might be expected, hopelessly conflicting—some saying that they heard two shots, and others asserting that there was only one. After all, the gun might have gone off during the struggle without having hit Balwant Singh at all, or without having inflicted serious injury upon him: so that it was quite possible for two gun-shots to have been heard, and, at the same time, for the story told by Sambhar Singh, of the murder of Balwant Singh with the axe, to have been true.

Almost immediately after the death of the two victims, Maharaj Singh set to work, with the assistance of some of his relations and servants, to burn the bodies on the spot. This took place on the *chabutra* where Mahabir Singh and Balwant Singh were said to have been sitting when Maharaj Singh had arrived with his gun. Neither side suggested that the bodies had been moved there, so that it is quite certain that that was the spot where they fell. The immediate destruction of the bodies, and in this case, possibly, of some of the weapons also, before the arrival of the police, is an unusual occurrence in this class of crime. Maharaj Singh must have had a strong motive for taking this course. One Chowdharia, a tenant of Maharaj Singh's cousin, was summoned to

the spot by Sundar Singh, the brother. He and another man, named Jwala, were told to fetch wood for burning, and to collect it in a pile on the open ground surrounding the *chabutra*. Sundar Singh then went away with another man, of the name of Jori, and both of them returned shortly afterwards, each carrying an ordinary tin of kerosene oil, which is used by villagers for their lamps. The oil was poured over the two corpses, which were then set on fire. The flames were fed with the wood fuel and other articles lying near, until the bodies were entirely consumed. During this operation, Maharaj Singh, together with the *mukhia*, or headman of the village, who happened to be his nephew, walked up and down with the apparent object of preventing any of the bystanders from interfering.

There was considerable delay in sending to the police station to make the usual report of the crime. This is a common feature of cases in which it is desired either to cover up the circumstances leading to the commission of the crime, or to put the police on a false scent, and to prepare the ground for setting up a false defence. The report was made by the *chaukidar*, on the instructions of the *mukhia*, who, as we have seen, was a nephew of the culprit, and who was in his company when the *chaukidar* was despatched on his errand. The report itself was just of that vague, equivocal character invariably associated with a case in which the culprit and his friends have assumed command, and are taking steps not merely to withhold information, but to frame the story in such a way as to leave the door open for any explanation which they may subsequently decide to put forward. It is true that it stated that Maharaj Singh had shot his brother and his brother-in-law. As regards the latter, the statement was untrue, according to the case for the prosecution. But the bonfire had done its work, and all traces which the body of Balwant Singh

might have borne, showing that he had been hacked to death with an axe, had been destroyed. It made no reference to any eye-witnesses of the crime, and purported to be merely the account of the matter which the *chaukidar* had received from the *mukhia*, who himself had only been able to relate what he had gathered from hearsay. But it contained one picturesque and significant phrase, of which a great deal was made at the trial by the defence. It introduced the statement that Maharaj Singh had despatched his two relatives, with the comment that the *mukhia* had said to the *chaukidar* that 'the day of judgment had come'. This expression certainly conveyed the idea of retribution of some kind. But it stopped there. No indication was given as to why the judgment had come that day, or as to what it was that called it forth. A strict interpretation of the language would suggest that the judgment had been visited upon both the men who had been shot. But this was not the case for the defence, and was, indeed, inconsistent with it.

Nor was anything more definite, by way of explanation of the shooting, said to the police by Maharaj Singh, or his friends, when the police first reached the village. This, in the light of the story afterwards set up, was a surprising fact, which must necessarily be put to the debit side of Maharaj Singh's account. There may have been a good reason for it, and the police investigation was bitterly attacked by the defence, as having been itself not above suspicion. There was, undoubtedly, considerable delay on the part of the police in obtaining the statements which they eventually took. In a case of this kind, most of the admitted facts appear to cut both ways. The investigating officer arrived at one o'clock in the morning, and he did not take the statement of Sambhar Singh, the chief eye-witness relied upon by the prosecution, until five o'clock in the afternoon.

Moreover, the police were received and entertained at the house of two *zemindars* in the village, who assisted them in their investigation. These two *zemindars* were said to be at enmity with Maharaj Singh and his family. Such allegations are easily and constantly made. There is often only too much truth in them. But in this case, the allegation and the suspicion which it was said to have cast upon the honesty and fairness of the police investigation were based upon very slender material. The fact was that the police were only too ready to accept any assistance which was offered to them. The first report had given them no facts to go upon. It had been inspired by the *mukhia*, and on their arrival in the village the police found that this important personage was a junior member of Maharaj Singh's family, and was unwilling, if not unable, to give them any information of value, and unlikely to contribute anything to the elucidation of the case. After all, the statement of Sambhar Singh was almost the only story throwing any light upon the occurrence which they got that day.

The two corpses were still smouldering in the bonfire when the police arrived, and the investigating officer was unable to make a complete examination before daylight. He found a lot of blood on the *chabutra*, two or three paces from the *charpoy*. This indicated clearly enough that one man, at least, must have been killed while he was either on or close to the *charpoy*, a fact of considerable importance. Although there were a few scattered blood-stains not far away, this was the only large patch, and it was of sufficient extent to support the allegation that both men had fallen at about the same spot, and that an axe had been used upon one of them. Some of the stains made by the pools of blood had been merged in the blackened surface spread by the charred wood and other burning material. The in-

vestigating officer found at the spot seven shoes, which was odd, but unexplained. He also found the remains of two hookahs, which showed that the men on the *charpoy* had been smoking. This was one of the most deadly pieces of circumstantial evidence supporting the case for the prosecution, if it could be safely assumed that the pipes had been dropped, where they lay, by the men who had been shot. It is impossible to suggest any reason why anyone should have wanted to throw the pipes down there after the event. The only effect of doing so would be to create evidence inconsistent with the defence, if the pipes were found—because the whole story of the prosecution was that the victims of Maharaj Singh's vengeance had been attacked by him while they were sitting smoking on the *chabutra*. The police also found a small piece of burnt wood, which appeared to be the remains of the handle of the *gandasa*, or axe. The blade of the *gandasa* was found about a foot away from the bonfire. It was also found to be stained with human blood. A great point was made by the defence of the spot where the blade was found, and it was contended that it supported the statement of Maharaj Singh that he had not used it. It was said that it could not have got where it was found if it had been stuck in the neck of the deceased Balwant Singh. But this was a far-fetched argument. If it was desired to cover up the fact that the *gandasa* had been used, nothing was easier than to have removed it from the body, and to have left it lying in the fire, in the hope that the heat would destroy the evidence of blood-stains. Its weight would easily account for its having fallen away from the heap of burning wood, when the sticks by which it had originally been supported were burned to ashes. No theory could be satisfactorily built upon the fact that it was found lying outside the fire. In the same way, no safe theory could be built upon the fact

that it was blood-stained, because this might easily be the result of the gunshot wounds, if the *gandasa* had been lying near when Mahabir Singh was shot down. The fact that the *gandasa* had been burnt seemed indisputable. The blade had fallen away from the handle. And the latter had been consumed by the fire, if the charred pieces of wood, which the investigating officer identified, were not really the remains of the handle. The significant points about the *gandasa* were that it had been there at the commission of the crime, and that it had been burnt in the fire. Both points supported the case for the prosecution that it had been used. Why was it there at all? If it had not been used, why was it put on the fire? If there was nothing to conceal, why was it not removed altogether when the bonfire was made? No one would want to indulge in such wanton waste as to destroy a useful *gandasa* without reason. If it had been used to commit murder, it would have been unwise to remove it, and run the risk of its being found in a blood-stained condition. At any rate, it would be safer, as there was a fire, to burn it.

Certain witnesses came forward and related what they saw on their arrival at the scene, though few were present at the actual shooting. They had been attracted to the scene by the running and shouting of other villagers. Deo Lal, the brother of Balwant Singh, deceased, stated that on his arrival he saw the dead body of Mahabir Singh, lying half on the *charpoy* and half on the *chabutra*. This was an important fact, if true. He also said that he saw that Balwant Singh's neck had been cut. The blade of the *gandasa*, he said, was lying a short distance from Balwant Singh's body, and its handle had been removed. Relying on the statements made to him by the eye-witness Sambhar Singh, and upon the various items of corroboration which he had laboriously gathered, the Inspector came to the con-

clusion that his proper course was to charge Maharaj Singh with the deliberate murder of the two men.

The time arrived when it became necessary for Maharaj Singh to develop his defence, namely, that he had acted under 'grave and sudden provocation'. As he had admittedly shot his brother, the onus was upon him to establish this defence to the satisfaction of the court. His own account of his movements on the day of the crime was curious, and difficult to follow. It was inconsistent with the stories told by his servants, and with the evidence of the prosecution witnesses. The most mysterious feature about his story was that although it appeared to be designed to suggest that he was harbouring suspicions about his wife's relations with Mahabir Singh, it was studiously silent on the subject. He said that he had been absent from the village on business, just at the time when it was said that Mahabir Singh had also been away. If this was true, it knocked the bottom, of course, out of the elaborate story set up by the prosecution, relating to the formal demand which Maharaj Singh was alleged to have made for the immediate return of his wagon; and he denied that anything of the kind had occurred. He said that he had told his wife that he would be absent for some days, but that he had, in fact, returned the next day—that is to say, the day of the occurrence. In this he was confirmed by his wife in the statement which she made on oath at the trial, when she was examined by the court. The suggestion obviously was that his return home was intended to take his wife by surprise. Yet neither of them said so. Upon his return to the village, he had gone off, at the request of his servant, to inspect some of his crops which were reported to have been damaged by trespassers. He did not say whether, when he got to his house, he had searched for his wife and failed to find her. He might have been told by his servant that

she was not there, but he did not say so. Nor did anyone come forward to say that she was absent when her husband returned, or to explain when she had left her house, if she had really done so. All this was left to the imagination, in that curious way which Orientals are apt to follow when they are relating stories about themselves containing half-truths which they do not expect to be believed. No attempt was made at the trial to fill up this gap in the story.

Maharaj Singh strongly suggested that he had not been to his house at all, though he did not actually make the assertion. The omission was probably a shrewd attempt to convey the idea of an absence of deliberation about his subsequent conduct. But he must have gone to his house. He could not otherwise have procured his gun and cartridges, and he gave no explanation of how he had obtained these things. All that he said was, that on returning from his visit to his crops, he went to the house of his brother, Mahabir Singh. He went unaccompanied, which was, in itself, curious. He explained that he had a special reason for going. He dwelt upon this with much elaboration, saying that he had been asked by an acquaintance who owed Mahabir Singh money, for which the latter had obtained judgment, to go and see Mahabir Singh and to request him not to execute the decree, and further, to assure him that if he held his hand, arrangements would be made to satisfy the debt. The question at once arises why a matter which was not in the least urgent, and which might be dealt with at any time when the brothers happened to meet, as they were certain to do if they were now on friendly terms, required such a formal and immediate visit. If, on the other hand, they were not on friendly terms, the request was one which Maharaj Singh was unlikely to make in person, and still more unlikely to go out of his way to make, by calling upon

his brother. None the less, this being, according to him, the object of his visit, Maharaj Singh went on horseback and carried his gun and cartridges with him.

When he got to the entrance gate, he said, he dismounted and tied up his horse, and proceeded on foot to the house. It will be remembered that the *chabutra*, where the shooting took place, was almost opposite the door of the women's apartments of Mahabir Singh's house, and Maharaj Singh passed by that way. He could hardly have contemplated springing a surprise upon the female apartments and making a violent entrance, in the expectation of making a discovery, because that was never part of his case. It would have been inconsistent with his story about the negotiations with regard to the debt. But he said that as he was passing the door he heard someone talking. He did not elaborate this incident, and he left it to be supposed that all he heard were voices engaged in friendly conversation. The door of the female apartments was actually unchained, and, in breach of all rules of decent conduct and the recognised sanctity of such apartments, he opened the door to see who was there, and went in. As he entered, an amazing spectacle met his horrified gaze. There were his wife and his brother, Mahabir Singh, lying together on a *charpoy*, close to the entrance, with the door ajar, engaged in the act of sexual intercourse. It must have been their voices which he had heard, though he did not say so. Mad with rage, he completely lost control of himself, and proceeded to load his gun with two cartridges, while the two lovers made off. His intention was, he said, to shoot his wife, but he had no time to do so. She had got up with remarkable agility, although at the moment being held down in a passive and helpless position, and had made off with great speed, succeeding in reaching an inner room, the door of which she was able to close and chain from the inside. Why

Mahabir Singh did not also make off in the same direction, into a place of safety, is difficult to see. It was his own house, and there was nothing to stop him. He was at least as agile as the young woman, and naturally quicker in his movements, while at the same time being more favourably placed for escaping. It is important to remember, while considering this question, which was never cleared up, that the inner room had another door at the far end of it, which led to the courtyard outside, through which the wife, if she were there, must have got away, and by which Mahabir Singh could undoubtedly have done the same. He did not. No one appears to have spoken, and Mahabir Singh left the *zenana* by the door through which his brother had entered. He did not even run. Without a word from either of the two men, he walked straight out to the *chabutra* in front of the open door, and waited while his brother loaded and fired his gun. At least, this is how Maharaj Singh described the scene. It seems incredible. In modern language, it was 'asking for trouble'. Maharaj Singh had only to abandon the attempt to catch his wife, which already appeared hopeless, to turn on his heel, face his brother, and shoot him on the spot. Oddly enough again, for the story of Maharaj Singh was full of coincidences, Balwant Singh was at this time sitting on the *chabutra*, and must have been doing so during the whole time that the amorous proceeding described by Maharaj Singh was taking place, within a few feet of him, and within earshot. When Maharaj Singh, according to his own account, having shot down his brother, expressed his intention of going back to the house in search of his wife, resuming the pursuit which he had only just abandoned, Balwant Singh protested, and telling him he had done a very bad act, went up to him and took hold of the gun in his hand. This led to his death. A struggle ensued,

in the course of which the gun went off and accidentally shot Balwant Singh through the head, killing him instantaneously. Thereupon, according to Maharaj Singh's story, Chowdaria and Jwala took upon themselves to burn the two dead bodies.

Many of the difficulties of the case arose from the contradictory statements of the prosecution witnesses at the trial, some of whom departed very substantially from the details which they had given to the police, and from the statements which they had already made on oath before the magistrate at the preliminary enquiry. They also added statements which, to some extent, fitted into and confirmed the details of the story told by Maharaj Singh. This departure from their previous evidence on the part of Crown witnesses is a common feature of criminal trials in India, and is an indication, as a rule, that they have been tampered with by the friends and advisers of the accused, before the final hearing at Sessions. It is occasionally due, of course, to defective memory or natural inaccuracy, but it is more often the result of their having become sympathetic with the accused, through local pressure, and of their having been persuaded to assist the defence as far as they can, without serious risk to themselves.

From the witnesses' statements, it appeared that the deceased man, Mahabir Singh, had the reputation of being something of a Don Juan. He had had two wives, both of whom were dead, and he had married a third, who was only ten years old. Whatever may be said about the evils and brutality of child marriages, this one evidently did not appeal much to the husband, for his child wife did not live with him. But there was a woman living with him, a widow of some thirty years of age, who was euphemistically called an 'aunt-in-law', and who did his cooking. When she went away, the wife of Maharaj Singh used to be called to do the cooking. Being the

wife of an elder brother, she did not preserve *purdah*, or veil her face, from Mahabir Singh. This would be quite in accordance with family custom, but the visits to cook for him were going rather far, and one of the questions was how far such visits were known to her husband. Of course, the pretext about the cooking depended entirely upon the casual absences of the 'aunt-in-law', and no one could say whether the story about these was true or false. It would certainly be unusual for a widow, living with a male member of her father's family as his 'aunt-in-law', or cook, to leave periodically on visits. One would like to have known where she went, if she ever went away at all. But if she was dependent upon Mahabir Singh for her food and welfare, she would be easily persuaded to wink at, and to abet, the visits of Maharaj Singh's wife, and to act as chaperon; and it is quite likely that this was her true rôle. Anyhow, it was the oddest of coincidences that just when Maharaj Singh went away from his village and announced his intention of not returning for three or four days, and while Mahabir Singh himself was away, the aunt-in-law should also leave the village, and that Balwant Singh should be sent to fetch Maharaj Singh's wife to come and do the cooking. It so happened that a Brahman visitor arrived that very day to stay with Mahabir Singh, and required a Brahman woman to be procured to come and cook his food for him.

If one quarter of this story was true, and it must be recognised that there was a good deal to support it, then there is no question that there had been some intrigue between Mahabir Singh and Maharaj Singh's wife. But if there was such an intrigue, it must have been known to Maharaj Singh, and it is possible either that he was a party to it or had become aware of it, and owing to taunts and threats from his friends, had found it necessary to put an end to it. But he kept discreet

silence on the subject, after he committed the crime, and in making his statement in his own defence. This may have been done, as is often the case, partly with a desire to shield his wife, and also, in part, with the object of concealing his own dishonour and shame, whether he had been a party to the intrigue or not. We shall see, however, that he had other reasons for his reticence.

The wife herself was not called for the defence. She was called by the court and examined by the judge himself, in accordance with a provision in the Criminal Procedure Code intended to meet such cases. What she said was that, during her husband's absence, she had been sent for by Mahabir Singh, to do the cooking for him and for the Brahman visitor who had happened to arrive at his house. She went, and performed the duties required of her; and according to her, the food which she had prepared was taken by Mahabir Singh and his friend before she left—that is to say, before sunset. This story was confirmed by the Brahman visitor, who was called as a witness for the defence. No one seems to have remarked on the singular circumstance that these men should have taken their meal so early in the evening. The wife went on to say that, having finished his meal, Mahabir Singh came into the female quarters and proceeded to have forcible connection with her. Nobody believed this part of her story. Apart from the fact that it would be extremely unlikely conduct on the part of a host who had just been hospitably entertaining a guest, the suggestion of a rape seems wholly incredible. The woman did not assert that she made any real resistance. She was in the women's quarters, with a door, left ajar, leading out to the *chabutra*, where other members of the household were sitting, in broad daylight. She was said to have been lying on a *charpoy* at the time, and the voices which Maharaj Singh said he heard in conversation bore no resemblance to the cries of a terrified or

indignant woman whose virtue was being outraged. Moreover, according to her husband's account of it, her conduct, in getting up and running away when he arrived upon the scene, was inconsistent with that of an outraged woman when the one man to whom she would naturally look for protection, and whose honour was itself being violated, happened to arrive in the nick of time.

She told this feeble and palpably hollow story in an effort to save her own face. It was welcomed and magnified by the advocates for the accused, who, when they have to conduct a defence which on the face of it appears to be untrue, are glad to be able to make the most of a palpable falsehood, which everyone is ready to recognise as perfectly natural, and even creditable, on the part of the person who utters it. It is a great point to be able to admit a lie which may be regarded as a pardonable one, and to magnify it so as to throw into the background, if not altogether into oblivion, the other mendacious stories upon which the defence is built up. Moreover, the frank admission of a lie, as a sort of gift to the prosecution, may disarm the criticism which is directed at other equally dubious statements which are, on the other hand, persisted in. But if it was a lie, and she really was the mistress of Mahabir Singh, it became logically difficult to bring the conduct of Maharaj Singh into line with the legal defence which he set up. And it is probable, therefore, that he was carefully warned by his advisers that if he admitted knowledge of his wife's habitual misconduct with his brother, and a suspicion that he would find her *in flagrante delicto* when he went to call on Mahabir Singh, it would go hardly with him.

The weak point of the defence was obvious. The theory of a rape may be dismissed as incredible. No one suggested it except the wife, and all the circumstances were inconsistent with it. The accused did not put it forward,

and if it had happened, he certainly would not have said that it was his desire to kill his wife. But what about the theory of the intrigue, and the story of the discovery in the *zenana*? The time of day makes it seem improbable, though not impossible. The unfastened door was a much greater improbability. The presence of an unexpected guest, who was being entertained, is another improbability; and the alleged conduct of Mahabir Singh when the husband was said to have entered the house, was incredible. There was no evidence in support of the intrigue, except the statement of the accused himself and the evidence of the wife, which consisted largely of falsehood, which a woman might easily be persuaded to affirm in order to save her husband's life, without, as she thought, jeopardising her own character.

The other point in support of it was the subtle suggestion in the report originally made to the police, that 'the day of judgment had come'. The intended significance of this was practically destroyed by the fact that no statement of the existence of the intrigue, and of the reason why Maharaj Singh used the gun, was made to the police when they arrived in the village. But if there had been any truth in it, the act of Maharaj Singh in going to the house with his gun—which must have been loaded, and which he clearly contemplated using, if it was not actually ready for immediate use—removed the indignation from which he must, in that event, have been suffering, from the category of 'sudden' provocation, though it would have been grave enough.

On the other hand, there were certain difficulties in the case for the prosecution, quite apart from the unsatisfactory nature of the evidence given by some of the witnesses at the trial, who, as already pointed out, might quite easily have been persuaded to trim it. Though the story of the dispute about the wagon had been told to the police almost immediately after their arrival in the

village to open the investigation, it certainly was a remarkable fact that no one said anything about having seen a wagon at all in the possession of Mahabir Singh, on the day of the crime, and no attempt was made to prove its presence upon the premises. This may have been due to the casual and imperfect way in which a case is often prepared for presentation in court, particularly when there are special difficulties and peculiarities about its solution. Of course, there may never have been a wagon at all. It may have been impossible to produce anyone who had ever seen it. Such incidents occur not infrequently, like the case related in the first collection published of *Indian Village Crimes*, when an industrious and ardent young magistrate, to whom a serious report was made of cattle trespass, went to the village for a 'view', and found that one party had no land and the other had no cattle! A further matter which required explanation was the remarkable fact that Sher Singh was not called as a witness at the trial. No reason was given for his absence, and no questions were asked. A defence witness was called who told a strange tale. He said that Maharaj Singh's wife was in the habit of visiting Mahabir Singh, and yet that the two brothers were on excellent terms. He went on to say that he went to the jungle 'to ease himself'—a very favourite pretext used by Indian witnesses in criminal cases to explain their otherwise inexplicable presence in most unexpected places at equally unexpected but convenient moments, and to account for their chance meetings with important witnesses and for their fortuitous opportunities for seeing things about which they would otherwise know nothing. It was in this way that this witness asserted that he had chanced to meet the very important witness Sambhar Singh, who was running somewhere or other, though it did not appear where, for no apparent reason, and that he had asked

Sambhar Singh what he was doing. Sambhar Singh had replied, somewhat inconsequently, that Maharaj Singh had shot down Mahabir Singh and Balwant Singh with his gun, on account of a dispute about his wife. This was never anybody's case. It was emphatically denied by Sambhar Singh. If it was all over, there was no occasion to run, nor yet to give a reason for the shooting. The story was inconsistent with the rest of the evidence, and must be taken to have been a piece of absolute invention, so characteristic of much of the evidence in this class of case.

In the result, the judge, without finding definitely that the story about the wagon was untrue, came to the conclusion that the refusal to hand it over was not an adequate cause for murder. But he was also of opinion that the *zemindars*, who were alleged to be enemies of the accused, had influenced the police in the conduct of the investigation. The assessors, whose opinions have no legal effect but are often a useful guide to a judge in deciding the facts of a much controverted case, could hardly be expected, in a case of this kind, to do otherwise than take a sympathetic view of the defence, which was presented to them with great energy and eloquence. They were definitely of opinion that the story about the wagon was invented. In this respect, they went beyond any express finding by the judge. They also thought that the story about the *gandasa* was untrue, and in this the judge agreed with them, although he seems to have formed no clear theory about its presence in the bonfire, or even any opinion at all about the burning of the bodies. Curiously enough, he did not seem to have adopted the defence theory of the accidental shooting of Balwant Singh, although he did take the view that it resulted from a struggle which ensued when Balwant Singh attempted to get possession of the gun. He finally came to the conclusion 'that it was clear' that Maharaj

Singh had loaded both the barrels of his gun and wanted to shoot both his wife and Mahabir Singh, but 'appeared' to have shot Balwant Singh, who interfered with him and caught hold of the gun barrel, after Mahabir Singh was shot. The accused 'appeared' to be 'sorry' for the death of Balwant Singh, simply because, in reality, he never intended to shoot him. But, 'having lost the power of self-control under the grave and sudden provocation which he had received at that time, and having been interfered with by Balwant Singh in the carrying out of his purpose of shooting his wife, he shot Balwant Singh also at that very moment.' Maharaj Singh was, therefore, convicted of homicide, not amounting to murder, and was sentenced to five years' rigorous imprisonment for the death of Balwant Singh and two years for that of Mahabir Singh, the two sentences running concurrently and therefore amounting to five years in all—a result which he probably regarded as fairly satisfactory.

III

A SACRIFICE, OR A *CRIME PASSIONNEL?*

THE story now to be related is like an old tale retold, so constant in every age and in every clime has been the desperate resolve of the selfish libertine to free himself by murder from the entanglements of a mistress who has become a burden. Many men in England, and in other European countries, have been hanged for murders precisely similar to this committed by Madan Guru. But the similarity begins and ends with the motive and the fatal deed. It is safe to say that, in the setting, the religious halo sought to be thrown round it, the last walk on earth of the victim, the presence of the witnesses and the final sexual act which preceded the execution, it is without parallel in the annals of crime.

The opportunities for presenting a complete picture, with all the details filled in, have been restricted. I had no personal knowledge of the case, which occurred in another Province, though it might just as well have occurred in mine, so familiar seem the surroundings. But it is an authenticated story, and from the point of view of criminal administration it has an importance of its own, because of the use—improper, I think—made of certain witnesses' statements taken before the trial.

To tell the story as it could be told would require the genius of a Balzac. The comfortable home and circumstances of the murderer; the squalid hut and the cheap ornaments of the woman; her sordid life, wandering

round the scattered hamlets with her basket of dried fish; the clandestine visits at night; the priest and priestess of the morbid Temple of Kali; the solemn trudge over the yellow sandy tract, with its scattered scrub and bushes, on the cold December evening, to the solitary stream where the vultures hovered as though waiting for their prey: all this, faithfully to set down in its true perspective, requires the pen of a master.

The deceased was a young woman of the village of Lapanga, named Anuchaya. Some three years before her death she had been divorced by her husband, who continued to live in the same village. She herself resided at the house of her father, Babuna, together with her brother, Sita Ram, and his wife, Sita Kultani. She was supposed to be supporting herself by the sale of dried fish, but she was really supported by Madan Guru, the principal accused charged with her murder, whose mistress she was. Madan Guru lived in a village three miles off, named Gurupali. The evidence was quite clear, and it was not disputed, that Madan was in the habit of visiting the deceased, and of spending the whole night with her; while she was accustomed to go over to his house, from time to time, accompanied by one of Madan's servants, named Basudeo. The sister-in-law said, in her evidence, that Madan used to make the deceased presents of jewelry. She stated that the servant Basudeo came over on the 8th of December and asked Anuchaya to come with him, and that she saw them start together. This statement was corroborated by Babuna, the father, and also by a postman who saw the two together on the road to Gurupali. Anuchaya did not return to her village, and was never seen again alive by her own relatives.

Naturally, owing to her habit of absenting herself to visit Madan, her father did not feel any anxiety for a day or two—a departure from the ordinary conduct of an

Indian villager, who begins to make enquiries and to call in the police if any member of his household is absent, without explanation, for a single night. But on the 10th he became anxi[illegible]; and then occurred two of those remarkable co[illegible]es which seem to happen so frequently just in [illegible] cases which come into court. He suddenly d[illegible]d a number of bones, and some clothing and [illegible]aments belonging to his daughter, by a stream. It was a remarkable coincidence that he should have happened to go there, and one wonders whether, in that subtle way so characteristic of the Indian villager, someone who knew the facts, and who sympathised with him in his bereavement, gave him a gentle hint. There were three innocent people who might have done so. If it was so, he did not disclose it in his evidence. He at once went off to the Sub-Inspector, who happened to be staying in the village of Gurupali, making his round of inspection. By another curious coincidence, the Sub-Inspector was staying at the house of Madan Guru. The father reported that he had spoken to the servant, Basudeo, who had referred him to his master, Madan; and that, when he had questioned Madan, the latter replied that the deceased had probably gone home by a roundabout way. While making no charge against Madan and his servant, he hinted that he thought they had had a hand in the woman's disappearance.

The Sub-Inspector opened his investigation, and went to the spot where the remains had been found. He did nothing more for two days, and he was charged with having unduly favoured Madan, and with not having been as active as he might. On the 12th, however, he received some important communications from Basudeo and Ganda, the two servants of Madan, the purport of which was not disclosed, but it resulted in the arrest, in the evening, of a man named Sankri and his wife. These

two persons made statements which, while not amounting to actual confessions, caused them to be put up before a magistrate to make their formal statements under the same section (Sec. 164) of the Criminal Procedure Code as that under which confessions are formally recorded by a magistrate. Someone appears to have complained to the Deputy-Superintendent of Police that the investigation was not proceeding satisfactorily, and on the night of the 14th he arrived on the scene with two other Sub-Inspectors. Meanwhile, Madan and his two servants were arrested. On the 15th, Sankri and his wife were confronted with them. Sankri stated that he had received eight rupees hush money from Madan. The wife of Sankri stated that she had spent thirteen annas, and that the balance was in a purse in the possession of her son. On the same day, a purse containing seven rupees, three annas, was given up by the young son of Sankri. A day or two afterwards the two servants, Basudeo and Ganda, were put up before the magistrate, and made statements. Eventually, all five were charged with the murder of the deceased. We now come to one of the features of the case which makes it interesting as a study in the procedure of investigation and prosecution of crime. As the evidence stood before the magistrate, it only showed that the woman had been murdered, and that she had last been seen in the company of Madan's servant, going in the direction of Madan's village; that she was in the habit of visiting him and staying the night there, and that neither the servant nor the master could throw any light upon her violent death. When he gave evidence, the father did not say that his daughter had taken with her her basket of dried fish. The witness who saw her on the road with Basudeo had not noticed it. The defence made a point of this, and it was shown that the father had stated in his original information that she

had taken it with her when she left home. It is quite likely that she did, either in the hope of selling some, or as a blind to mask the real object of her departure. But when the case was before the magistrate there was no evidence upon the point. The reason for this complete change of front on the part of the father is easy to understand. He had thought the thing out, as these villagers invariably do when they have an idea that there is an awkward point in their evidence. It may be that they sometimes get a hint from the investigating officer. But the father evidently feared that if his daughter was carrying her basket, the fact would favour the theory that she had been robbed and murdered by some person unknown.

But, in any case, it is clear that the magistrate had very little to go upon, and he decided, while committing Madan and his two servants to Sessions to take their trial for murder, to discharge the other two, Sankri and his wife. This was just what the prosecution wanted. They immediately adopted Sankri and his wife as witnesses. If the original investigation had been smartly carried out, the police would have done this, as so many of these stories show they generally do, the day after they had made their statements to the magistrate. Of course, they required corroboration, and the way in which this was worked out makes the case another interesting illustration of the use made of this section for extracting admissions and multiplying evidence, which is discussed in the Introduction to this book.

Before going to the evidence given by these two accomplices at the trial, it is interesting to examine that by which the identity of the deceased was established. The case cannot be cited as one in which a conviction for murder has been recorded when the body of the murdered person has been neither seen nor subsequently

discovered, because there were enough remains to make the existence of a corpse and its identity unquestionable. But although it is the case that in England no conviction for murder on land has been known without the recovery of the body, the same cannot be said of India, where the presence of animals, both on land and in the water, and other natural causes, make the complete disappearance of the corpse quite natural and probable, when the other evidence satisfactorily establishes that the person alleged to have been murdered has, in fact, met with a violent death, and that the total disappearance of the corpse has taken place under ascertained circumstances. Such a case does not differ from a murder at sea where the dead man has been thrown overboard, or, as has occurred in cases tried in England, been killed and eaten by starving castaways.

It was not possible to decide the sex of the body of which the bones had been found. The ornaments were of the kind commonly worn, but the deceased's sister-in-law was familiar with them and recognised them as those which she was wearing when she left the house. A silk *sari*, or cloak, was identified, and also a head-wrapper, which a tailor was able to say that he had mended for the deceased. The *dhobi*, or washerman of the household, also identified the articles of clothing. It was shown that the district was such that a corpse left there would be destroyed and consumed in a day or two. But there was also evidence that the corpse had been seen by persons who knew the deceased at a time when it was still possible to identify it. A boy had seen it on the 9th, and had told his father, who went to look at it. There was a third witness who passed that way on the same day, and who saw the body being eaten by vultures. The conduct of all these three in making no report of their discovery is typical of the average uncultivated villager, and may be explained by a charac-

teristic which I have already remarked upon several times, namely, that the great majority, on seeing a fresh corpse, and probably in the case of any discovery of human remains, are so timid that they fear that, if the actual culprit should not be known, they, as the first persons to know anything about it, are likely to be suspected and implicated. This common characteristic is a frequent source of delay and embarrassment in the investigation of a secret crime. In addition to all this evidence, there was the further consideration that the population of these Indian villages is small, and the disappearance of a woman like the deceased becomes instantly known, not only in the village but in all the neighbouring hamlets, and if a corpse is found about the same time, which is clearly a recent corpse, the number of such disappearances is not so great that there can be any serious doubt about its identity.

The evidence of the two accomplices disclosed a cold-blooded murder, committed in an unusual way. They said that they were sent for by Madan, on the 8th, for the purpose of discussing the best manner of procuring an abortion on the deceased. They said that the woman was three months gone in the family way. If so, there could not be the slightest doubt that the man responsible was Madan. A woman named Tara, from the village of the deceased, was called, who said she used to accompany the deceased to Madan's house, and also stay there in order to return with her the next day. She swore that she overheard, one night, the deceased threatening Madan with exposure as to her condition on the day of his daughter's wedding. There is nothing improbable about this story. Such threats are the natural resource of the weaker sex, which women in India still are, and although the birth of illegitimate children to widows is common enough, women dread the exposure which invariably follows, and there is a

good deal of infanticide in consequence. Procuring an abortion is much more difficult, and is probably infrequent in Indian villages. The witness was sleeping in the next room; sound passes easily through mud-walls, and the sense of hearing among Indians is remarkably keen. But there was something about this woman's demeanour which led the judge to reject her story. But the judge accepted the evidence of the deceased's sister-in-law that the deceased was pregnant.

Sankri and his wife stated in their evidence that it was Madan's mother who asked them to procure the abortion, and that Sankri asked her to wait for three or four days because it was necessary for him first to perform *puja*, or worship, and that he was not then in a condition to do it. But the probability is that he did not know how to procure an abortion. It is a well-known fact, which I have explained in *Indian Village Crimes*, that Indian villagers who do risky and difficult tasks for others, on being properly paid for them, such as catching snakes or destroying swarms of wild bees, invariably profess to be endowed by their gods with exceptional powers, and generally begin their operations with some form of prayer or other religious ceremonial which increases their importance and helps to preserve their monopoly. Sankri and his wife were the priest and priestess of the Temple of Kali, the goddess of violence, vengeance, and death, which was close to the scene of the occurrence, and it was, no doubt, on this account that their services were sought. Their story of the murder may be shortly told. They said that, on the day in question, which was the 8th, without having attempted any operation on the woman, they accompanied Madan, his two servants, and the deceased to the stream where the remains were afterwards found. Madan and the deceased went on ahead and engaged in what appeared to be animated conver-

sation. Madan then called to his two servants, and Basudeo handed him a heavy stick, with which Madan proceeded to belabour the deceased, Basudeo joining in with another stick. In answer to Anuchaya's appeals for mercy, Madan replied that she would not escape death. The wife of Sankri made a slight addition to the story which certainly contributed verisimilitude. She said that, when Anuchaya was being hammered, she cried out that she would not stay in Madan's house. If this was true, it removes all doubt as to the motive for this cruel and barbarous murder. Madan was a man of position. The Sub-Inspector of Police had been staying with him. His father had been in Government service. He was well-to-do, and, it was contended by the defence, well able to afford to keep a concubine, especially one of whom he had become fond. But, after all, this is only an indication of the selfishness and self-indulgence which, in coarse, uneducated brutes are not unlikely to lead to such crimes, and in the face of the direct evidence of Sankri and his wife, if it was believed, the question of motive became quite unimportant. Another point raised for the defence, while possibly causing little surprise to those who appreciate the mentality of these people, so far as it emanated from the minds of the accused and their friends, can but provoke a smile when one learns that it was seriously put forward by the vakil who represented the accused. It was solemnly contended that the outrageous and ghastly murder, in cold blood, of a helpless woman whose only offence was that she was expecting to bear a child and wanted to be protected from public shame and degradation, was a form of sacrifice to the Goddess Kali! And one piece of evidence given by Sankri and his wife was apparently dragged in to give colour to this curious contention. Certainly no more extraordinary incident can ever have been introduced into the story of a cold-blooded murder.

The witnesses affirmed that, while Madan and Anuchaya were still leading the way as they approached the stream, they turned off into some bushes and there had sexual intercourse in the presence of the others. It is impossible to suppose that this could have been invented even by the most lively and prurient village imagination. The act may have been intended to lull the deceased woman into a feeling of security, or to produce a similar effect upon the other members of the party. Or it may have been intended, in some strange way, to suggest to the onlookers a sort of pseudo-religious frenzy, under the influence of which Madan wished them to believe he was committing this foul murder. For Sankri and his wife declared in evidence that, before they had set out on their journey, Madan had visited the Temple for the purpose of invoking the assistance of the goddess. Kali is the goddess of destruction and death. Her idol is black, with four arms, and red palms to the hands. Her eyes are red, and her face and breasts are besmeared with blood. Her hair is matted, and she has projecting fang-like teeth, between which protrudes a tongue dripping with blood. She wears a necklace of skulls, her ear-rings are dead bodies, and she is girded with serpents. She stands on the body of Siva, to account for which attitude there is an elaborate legend. Formerly, human sacrifice was the essential of her ritual. But the victim was always a male. He was taken to her temple at sunset and imprisoned there. When morning came he was dead, and the priests told the people that Kali had sucked his blood in the night. The Thugs murdered their victims in her honour, and consecrated their weapons to her. It could hardly have been imagined by Madan Guru that the invocation would assist him in the eyes of the law, but he may have endeavoured, in this way, to quiet his own conscience. On the other hand, it is possible that Sankri and his wife invented this part of

the story in order to create an innocent appearance to their share in the transaction.

These two witnesses have been referred to throughout as 'accomplices', because that is how they were treated by the judge who tried the case and by the court of appeal which upheld the decision, while reducing the sentence of death passed upon Madan to one of transportation for life. Basudeo received the same sentence, while the other servant was acquitted. But is it so clear that they were really accomplices? Their presence at the murder, and their subsequent acceptance of hush-money, would make them, by English law, 'accessories after the fact'. But under the Indian Penal Code there is no such offence. And all we know about their conduct is contained in their own evidence, of which a summary has been given above. And it is quite consistent with all that can be said against them that they had no notion of the intention of Madan to murder his mistress, and that they believed the country walk was no more than part of his design to procure an abortion, if he could, for which his visit to the Temple and his invocation of the Goddess Kali were merely a preparation.

Apart from its exceptional circumstances, the case is related as an illustration of the use which is made, as pointed out in the Introduction, of the section under which magistrates are authorised to record 'statements or confessions' during the investigation of a criminal case. The 'statement' mentioned in the section has always been interpreted as meaning the statement of a witness. It has always further been held that it does not authorise the police to send up a witness to make such a statement in order to fix him with it, so that he will be less likely to recede from it when he gives evidence at the trial, though this is constantly done. The intention of the section seems to be twofold; such a statement may be a partial admission though not a confession of guilt,

and may therefore be used against the man if he is put upon his trial; or it may be merely a solemn statement of a witness, when it is not known with certainty whether he is going to make admissions against himself or not, with which he may be challenged at the trial if he says anything inconsistent with it. This latter use of it may often be in the interest of the accused. But it could never have been intended to be evidence of the things stated in it. It is not the best evidence, and it is not given in the presence of the accused. But in this case the court of appeal, finding the case proved by Sankri and his wife, whom it described as accomplices, rightly looked for corroboration of their evidence, and finding that their previous statements corresponded fully with their evidence at the trial, held that such previous statements were sufficient corroboration of their evidence. This is equivalent to holding that what a tainted witness says on Monday is corroboration of what he says on Tuesday, and that two pieces of evidence, neither of which can be accepted alone without corroboration, may be taken to corroborate each other. This is a dangerous theory, though there can be no doubt that the convictions in this case were right.

IV

A STUDY IN COMPROMISE

THOSE who have paid me the compliment of studying the Introduction to this book will remember the discussion (*vide* p. 34) about compromise in the decision of criminal cases. The case now to be related has always remained in my recollection, and it still appears to me as an outstanding example of it. My impression was, and still is, that the conviction was right. But only four men out of the seven accused were convicted, and the reasons supporting the conviction of the four ought to have led to the conviction of all. Or, to put it the other way, if the three fortunate ones were rightly acquitted, the others should have been. It was one of those awkward cases in which it was impossible to say who could have committed the murder if the seven accused did not. This is, of course, a wholly inadmissible argument according to English notions, and according to the prevailing notion in India also. And yet every one of the accused, when examined by the judge at the trial, was asked, 'Who killed the deceased?' It is a question which no one ought to ask a prisoner on his trial, and if it were asked at the Bar of a prisoner in the witness-box it would be the duty of the judge to disallow the question. So that the case is also an illustration of the desirability of allowing accused persons to give evidence. If the question were asked by the prosecuting counsel, the counsel for the defence would certainly object. He could

hardly be expected to object to the question when put from the Bench.

The case is also one, as the reader will see, in which the question of motive loomed very large. The suggestion of a sex intrigue was the main defence. The judge rejected it. The body of the deceased had been brutally mutilated, and his nose, and genitals, alike had been removed. This has but one meaning. The judge held that this had been done by the accused with the intention of throwing suspicion upon other people, presumably the caste of the guilty woman. But he overlooked the fact that this laceration of the body was an idle performance as a false scent, unless there were some sex intrigue, in fact, in which the deceased was involved. There was a great volume of evidence which supported the allegation, and it must be taken to have been established to the satisfaction of most reasonable men. But the motive was actually irrelevant, if the direct evidence was believed. And the judge further overlooked the fact that while he used the topic of motive to differentiate between the two classes of accused, he was really convicting four of them on the strength of the direct evidence which applied, in effect, equally to all.

The murdered man, Bawar Singh, was a prosperous *zemindar* and cultivator of the village of Semari. About a year before his death, the deceased, or one of his tenants, had caused a certain mud house, in which the tenant had lived, to revert to his possession. He utilised the ground floor for storing grain and tethering cattle, and he slept, at any rate during the hot weather, on a *charpoy*, or cot, on the roof. He had two near relatives, his brother, Sripal Singh, and his cousin, Ajga Singh, who lived in the ancestral house, which Bawar Singh had deserted, at nights, for the roof of his new granary. Two further points must be noted, because, in view of the allegations made about his private life, they were

significant. He was the *mukhia*, or headman, of the village. Secondly, the roof of his granary was about twenty paces from the house of Badlu, a man of inferior caste, with whose wife he was alleged to have an intrigue. The deceased was a *thakur*, a caste of high descent and generally taken to be a strong and rather overbearing race of men. It is relevant to quote here some sentences from *Indian Village Crimes*: 'The *mukhia's* word, up to a point, is law in the village, and it is said that there are occasions when, if he wants a young and attractive woman of a squeezable caste brought to his residence at night, she is brought. That can only happen when the husband is complaisant. When he is not, other means are adopted.'

At about eleven o'clock in the morning of the 10th of June, the brother, Sripal Singh, together with the cousin and the village *chaukidar*, or watchman, arrived at the police station, which was eight miles distant from the village, and reported the murder of Bawar Singh. The following extracts from the report are the only passages of importance:

A *chamar* [a low-caste menial] who works at our place, called out this morning early to Bawar Singh, and got no reply. He climbed on to the roof to get the key, and found Bawar Singh lying dead on the floor of the roof, with his throat cut, and several injuries on his person. Bawar Singh used to live at the granary. I live at the dwelling-house. The *chamar* came and called me. I went running to the place and found the throat cut, but partially joined with the skin. There were several injuries on the person, and the belly was cut through with the injuries. I raised an alarm, and several men of the village came up. When Lalli Mian saw this, he said he was going to the village of Khairaha to collect money there, and that he saw Atbal Singh, Munna Singh, Chheda Singh, Dhonda Singh, Prag Singh, Raghubir Singh, and Jag Mohan Singh, coming out hastily from the lane at the back of that house. Other men also who had come out to ease themselves at that time, also saw those men going. There was an old enmity

between those men and my brother, and on account of the same enmity they murdered him.

Two points should be noted here. The seven men whose names are given in the report were all of them *thakurs*, and the same seven as those who were put on their trial. Further, the cause of the old enmity is discreetly left open. The significance of this will not be lost upon those who have read *Indian Village Crimes*, and the explanation given there of this common characteristic of a village report, where some feud has led to a murder. A discreet silence about the reason for the enmity, which is said to be the motive for the murder, means one of two things. Either the persons making the report know the real motive and withhold it, because it reflects upon the deceased and his family, or upon themselves, or they are not sure about it, or even about the real murderers, and they wish to leave a door open for retreat.

The next feature of importance in the case was the medical evidence. The head was almost completely severed from the trunk. This was, of course, sufficient to cause death. The following additional injuries were thus described:

(*a*) The male organ was cut at its root, only one inch remaining.

(*b*) Both testicles were seen [*sic*] from the inside bone on either side of the scrotum.

(*c*) Nose was cut off in the middle, slicing off the upper-lip also.

(*d*) A big gaping wound over the right side of the chest, and cutting it and the sixth rib, tailing off on the right side of the abdomen.

(*e*) Three penetrating wounds on the abdomen close to the navel left side. From this four feet of the small intestine came out.

(*f*) Two cuts on the right shoulder.
(*g*) A cut on the right scapular region.
(*h*) The liver was cut on the inner side.

I have, in *Indian Village Crimes*, and more than once from the Bench, been compelled to animadvert upon the casual nature of some post-mortem reports in cases of violent death. I am bound to add that this has never been necessary, in the course of my judicial experience, where the post-mortem has been conducted by an English Civil Surgeon. The report in this case contained two statements, which, though not as specific as one would wish, were of great importance. It said: 'Death was due to mortal wounds on the neck, face, abdomen, chest, etc., hæmorrhage and shock therefrom'. One can only conclude from this that the injuries to the body were inflicted during lifetime. The Civil Surgeon was not called at the trial, and this was the only piece of medical evidence. Yet the judge found that the body wounds must have been inflicted after death, and that the body must have been lifted off the cot, also after death, for the purpose. There was not a scrap of evidence to support this view, which was inconsistent with the only piece of medical evidence. Secondly, the report said: 'The stomach contained about two ounces of semi-digested food—bread, mango, etc.' [*sic*]. We do not know what the 'etc.' was. It could hardly have been in a less-advanced stage of digestion than the articles specifically mentioned. The articles specifically mentioned are easily digested; certainly in less than four hours. The *a priori* inference which most people would draw from this is, that the murder took place not more than four hours after the evening meal, and therefore before midnight. The importance of this point will become apparent presently. It suffices to say now that the direct evidence on which the men were convicted, and the evidence of Lalli Mian, cited in the report given

above, put the hour of the murder at four o'clock in the morning.

The point of next importance is the geography. It is always difficult for an English reader to visualise the situation when one talks of a house, or a group of houses, in an Indian village. I have endeavoured to explain this in the Introduction to this book. The ancestral house of the deceased was probably substantial, with a verandah, a courtyard, and a *zenana*, or women's quarters. The place where he slept was a mere hut, with mud walls, and beams, and a flat roof plastered with mud, and jumbled up anyhow amidst a quantity of other village mud huts. The lane at the back of it, spoken of in the above report, would not be a real lane, but a mere narrow passage between two curtilages, or huts, wide enough perhaps for two persons to walk abreast with difficulty. Adjoining the house was one in ruins. This is a common sight in India. Probably the roof had given way first, either through dry-rot in the beams, or through the weight of wind and water in the Rains. As the roof gives way, it brings down the upper portions of the mud walls, and the little ruin stays like this for years, because no one will take the trouble, or spend the money, to rebuild it. The ruined wall adjoining the deceased's house, or granary, was only two cubits, or less than three feet high. The Sub-Inspector said that anyone could ascend to the roof of the granary with ease, and that there were marks to show that 'someone' climbed up to the roof from the wall of the ruin. The expression 'someone' might have been important as indicating that there were marks of only one person; but the servant who discovered the corpse certainly climbed up somewhere, and the point was not pressed at the trial, though the Sub-Inspector clearly had one of the possible murderers in his mind when he referred to it. So many men had been up to the roof after the murder, before he arrived, that nothing

could really be made of the footmarks. The only other point of importance in the geography has already been mentioned, namely, that the house of Badlu, with whose wife the deceased was alleged to have an intrigue, was only twenty paces away, and that the roof of the granary could easily be approached from it. The Sub-Inspector had some reason for examining with care the roof, and the parapet, and the walls of Badlu's house, but he found nothing. The house of Badlu was two-storeyed, while the deceased's granary had only one storey, being about seven and a half feet high. There were seven or eight houses belonging to *chamars*, or low-caste village menials, close by, and the brother of the deceased said that in the month of June most of these men slept on their roofs.

The brother of the deceased, Sripal Singh, was the first and principal witness for the prosecution, and gave evidence of the motive relied upon by the Crown and accepted by the judge. What he said was:

> There was once a fight between the deceased and the seven accused. This thing took place seven or eight years ago. There was a fight with *lathis* [the heavy, iron-bound bamboo stick carried by every villager]. A report was made, but the case was not taken to the court. My cousin-brother, Ajgar Singh, got Atbal Singh [the principal accused and uncle of three of the others] fined on account of trespass. This happened five or six years ago.

He denied, in cross-examination, that he knew anything about an intrigue between the deceased and the wife of Badlu, or that he knew that some of Badlu's caste had refused to dine with Badlu. The characteristic feature of his evidence about the enmity, which will be appreciated by any reader acquainted with criminal cases in India, is the careful limitation of the fight, seven years before, to the deceased on the one side and the seven accused on the other! No one, however credulous, could possibly swallow this story as containing the whole truth. But this was all that the witness ever committed

himself to. The cousin-brother, Ajgar Singh, gave what was an entirely different account of the origin of the same enmity. He did not confirm his cousin about the seven-years-old fight, and his brother was not recalled to confirm the later version. Indeed, he was not called until two days later, after much time had been expended upon other witnesses, much of whose evidence was quite beside the mark. The following is an extract from his evidence at the trial, and the reader must be forbearing if some of it reads a little complicated. It contains the perennial source of trouble arising from the same name for different villagers. The Raghubir who had the quarrel with Dali over the woman was a witness for the Crown, and not Raghubir Singh, one of the accused:

Atbal Singh (an accused) and Binda Singh, father of Prag Singh (an accused), are cousins. Jag Mohan Singh is of their party, and is a relation also. Prag Singh and Raghubir Singh (an accused) are brothers. Atbal Singh is the uncle of Munna Singh, Dhonda Singh, Chheda Singh (accused). There was enmity between them and Bawar Singh. On account of Bawar Singh's influence, Atbal Singh, Chheda Singh, Dhondu Singh, Munna Singh, Raghubir Singh, Prag Singh, and Jag Mohan Singh did not get labourers. He used to stand up against these men whenever a case would crop up in the village. He was a *zemindar* and the *mukhia* of the village. There was a dispute between Dali, *ahir*, and Raghubir, *ahir*, over a woman. She had run away to Raghubir. She was related to Dali. Dali's mother had gone to ease herself. Raghubir beat her by mistake; Dali beat Raghubir then. The village assembled. Atbal Singh arrived and Bawar Singh also arrived. Atbal Singh sided with Raghubir. Bawar Singh sided with Dali. This led to a quarrel between Bawar Singh and Atbal Singh. Atbal Singh said he will take out the bowels of Bawar Singh, and Bawar Singh said that he would take the eyes out of Atbal Singh. In the meantime my brother arrived, and took Bawar Singh away. Reports were made on behalf of both and complaints filed. There was a compromise between Dali and Raghubir after Bawar Singh's death. This quarrel between the *ahirs* took place ten or twelve days before Bawar Singh's death. Ten or fifteen labourers always worked at Bawar Singh's. He had eight plough boys. Others used

to work in our family. So these accused could not get any labourers. I am a member of the District Board.

This witness was submitted to a very long cross-examination, but the following are the only relevant passages:

There is no other enmity besides the enmity I have stated. . . . I never heard of Bawar Singh's immoral character. I never heard about his keeping Badlu's wife, or about his connection with Badlu's daughter. . . . He did not have any confidence in his servant. He therefore used to sleep in the house to look after the grain. His grain was never stolen. . . . I learned from Badlu that he had slept on his own roof. I enquired about the time of the arrival of the Sub-Inspector. . . . The deceased had told me that his life was in danger. Ten or twelve days before the murder, I had told him that Dali had told me that he was going from the village about eleven o'clock in the night, and that he had seen three men standing near the bed of the deceased, and that when he challenged them they ran away. They were three of the accused, Munna Singh, Dhonda Singh, and Chheda Singh. I did not make any report at the police station. . . . I had advised the deceased to have one or two men with him when he slept there. He then used to have men to sleep with him. I cannot say who. I did not see them. He told me so.

It is fairly certain that the witness was wrong about men sleeping with the deceased, though the deceased may have made him believe it. If there had been any, they would almost certainly have been murdered. The fact that there were none, in the face of this evidence from the cousin-brother, is, to say the least of it, suggestive, but it appears to have been ignored in the very long judgment of the Sessions Judge.

The next witnesses in importance were the eye-witnesses who said they saw the accused about the time of the murder, though they were not called in sequence, but were sandwiched here and there, between other witnesses. The principal one was Lalli Mian, mentioned in the first report. He was a Mohammedan, unconnected

with either of the factions of the *thakurs*, and, as far as a villager in such a case is likely to be, independent. But he was a man of humble position, with a few acres of land for which he paid an annual rent of forty rupees. It was probably mortgaged, because he was in employment at a wage of only seven rupees per month. What he said was:

I was in Semari on the night of the murder. At about four o'clock in the morning I started for Khairaha. I had to pass by the front of the house where the deceased slept. I first went to ease myself. I then washed my hands. When I reached the house, I saw the seven accused coming out through the lane. They came from the enclosure at the back of the house. I then went to Khairaha, and returned an hour later. I heard crying on the house of the deceased, and learned that he had been murdered. I then gave the seven names.

In cross-examination he said:

It was light night when I left my house. The sun had not arisen then. There was no daylight, even when I washed my hands, or when I reached the house. . . . The sun had risen when I reached Khairaha. . . . I was once convicted for having eaten up a goat. Sheo Ratan complained against me. . . . Atbal Singh (the accused) was a witness in the case against me. I was acquitted on appeal. . . . I was convicted in a cattle theft case, and sentenced to one year's imprisonment. . . . The accused passed five or six paces from me. They must have seen me. We did not speak, though we are on speaking terms. They held sticks and short clubs in their hands. I saw no stains on their clothing.

The witness Dhuma Khan, another Mohammedan villager, was also up early. He said:

I had gone to Rithwan before dawn. I returned to the village about forty minutes after sunrise, and heard of the murder. On my way to Rithwan, I saw seven men going along the canal bank away from the village. Two were ahead, and I could not see who they were. I recognised the other five: the accused Atbal Singh, Munna Singh, Raghubir Singh, Prag Singh and Jag Mohan Singh.

In cross-examination, he said:

I did not see Lalli Mian. . . . They were going along quietly. I saw *lathis* and short clubs in their hands. I did not see any hatchet, gun, sword, or axe with them. . . . They walked faster when they saw me.

Ansuya Singh said:

On the morning of the murder I saw Atbal Singh going away from the village with a gun on his shoulder. It was just about sunrise. He was about two hundred yards from the village.

And in cross-examination:

I am the brother of Ajgar Singh, and cousin-brother to Sripal Singh. There was no exchange of greetings between us. He was about eighty yards away. . . . I saw him in the moonlight that had appeared.

Mehpal Singh, who was between sixty and seventy years old, said:

There is a pond near my house, which is about half a mile from the village, in another hamlet. On the morning of the murder, immediately after sunrise, I saw Atbal Singh washing his hands, his feet, and his shoes in that pond. He then went away with his gun.

In cross-examination, he said:

I am the uncle of Sripal Singh. My sight is not good, but I could recognise the form.

These last two witnesses, apart from being members of the murdered man's family and imbued with the enmity, were almost certainly what is known as 'police padding'. They were not cross-examined on the point, and we do not, therefore, know how they were obtained. They may have been volunteers, being near relatives of the deceased and anxious to secure the conviction of the common enemy, and the gun was probably introduced to suggest that Atbal Singh, the principal accused, went out to lead the gang, carrying a gun to break down any

resistance they might meet. But the incident is typical of the lack of firm handling and clear thinking in the preparation of a criminal prosecution in India, because two witnesses had already been called who described in detail what the accused were carrying, and who must have seen the gun if there had been one. The explanation of Ansuya Singh that he could see Atbal Singh 'in the moonlight that had appeared' was an absurd excrescence, because the incident occurred, according to him, at sunrise, when it would be daylight.

We must now marshal the evidence called to rebut the defence suggestion of sex intrigue. The investigating officer who searched the houses of the accused took a statement from Badlu's wife, but she was not called, probably because little importance is attached in India to the evidence of women, particularly about their own moral conduct. They are prepared to say anything they are told to say, and under examination in the witness-box they lie at random. He explained his procedure in the following way:

> Someone had said that there was an intimacy between the deceased and Badlu's wife, so I examined her. I learned that the deceased's nose and male organ had been entirely removed. I don't remember how this fact was taken by me at the time. I did not form any opinion at the time that some woman was at the bottom of the case. I examined others besides Badlu's wife and asked the accused if they would give any evidence of it. They said the matter may be enquired of from the Mohammedans.

The officer was himself a Mohammedan, and this was a distinct suggestion that it was the Mohammedans who were interested in getting the deceased out of the way. But the topic was not pursued, doubtless because the defending counsel realised the difficulty of pursuing this line, inasmuch as the chief, and most independent, eye-witnesses against the accused were themselves Mohammedans. This observation, however, cannot be

applied to Badlu himself, because, in any case, he could hardly be regarded as an independent witness, since he indignantly denied the intrigue with his wife. His evidence was conclusive against all the accused, as it was almost certain to be if he came forward at all in the capacity of an eye-witness. It contained one point of criticism which one is frequently compelled to regard as an almost fatal defect in the evidence of an eye-witness in India whose testimony demands close scrutiny. He became an eye-witness because he rose in the night to 'make water'. Eye-witnesses to a brutal murder at night, in India, are almost invariably taken in this way. It has grown into a sort of 'custom of the country'. I have known palpably honest witnesses say that they were aroused by the noise of a disturbance, but this is rare. It is difficult to resist the conclusion that the little touch about the act of nature which appears again and again in every district of the Province comes from the police, who have, no doubt, a settled conviction that murderers, working by stealth at night, will take care not to wake the neighbours. But an eye-witness who is peacfully sleeping must wake somehow, and this demand of nature synchronises with the murderous attack, with the regularity of an aperient. Badlu, who was a *murai* (vegetable grower), said:

On the night on which Bawar Singh died I was sleeping on my roof. My roof is twenty or twenty-two paces from Bawar Singh's roof. On that night I rose to make water. It was early morning. Then I heard the sound of *bhad bhad* [thuds]. I looked on all sides. Then I saw seven persons on the roof of Bawar Singh's house. I recognised them. I called Bawar and asked him who were on his roof. On this Munna Singh, Raghubir Singh, and Chheda Singh came to my roof. Munna Singh had a *kulhari* [axe]. Chheda Singh had a *lathi*. They said they would kill me if I did not keep quiet. Then Prag Singh, Dhondu Singh, and Atbal Singh jumped out from the enclosure. I did not recognise the seventh man. The three persons who came to me fled away when

the other four leaped out. It was an hour before sunrise. I then came down from my roof in fright. I remained in my house on the next day. I did not go out for fear. I met Ajgar Singh and Sripal Singh in the evening. I told them. I am married. There was no intimacy between her, *i.e.* my wife, and Bawar Singh.

Then cross-examined, he said:

I went away to Gaya three years ago. I did not convene a meeting on my return. I dine with the *murais*. I am not under any social ban. . . . I do not know what time Bawar Singh came to bed. . . . The men had surrounded his *charpoy* [cot]. . . . I could not see if he was on it or on the ground. . . . I did not go to my roof in the morning. About half an hour after sunrise I heard of the murder. But I did not come out of my house for fear. I heard that there were many villagers assembled round the corpse. Sripal Singh and Ajgar Singh told me to tell the truth as they knew I had been on the roof.

The only observation to be made about this part of his evidence is that it is difficult to see why he should have felt any fear, unless he had an idea that he would be suspected of having been concerned in the murder, though hiding in his house would hardly serve to remove this suspicion. The remainder of the case for the prosecution consisted of the two witnesses who were parties to the strange incident about Raghubir's wife, which was said by the witness Ajgar Singh, the cousin-brother of the deceased, to have constituted the main source of enmity between the deceased and the accused. Dali was an *ahir*, or cultivator, and tender of cattle in the village, and was eighteen years of age. He said:

I had a threshing-floor this year. Bawar Singh also had his *khalyan* [threshing-floor] half a door from my floor. During the time of threshing we used to sleep in our respective *khalyans*. Twenty-five or twenty-six days before Bawar Singh's death Chheda Singh, Munna Singh, and Dhonda Singh were going towards Bawar Singh's bed at midnight. Bawar Singh was sleeping in his bed. I had gone to the *khalyan* from my house. I challenged who were near Bawar Singh's. I got no reply; the men

fled towards the south. The three men had *lathis* in their hands. Next morning I told Bawar Singh what I had seen. I had once a quarrel with Raghubir. Raghubir's wife's sister used to live with Raghubir. She fled away and came to me. Then she fled away from my house. Raghubir came to me and asked me if his wife's sister was in my house. I replied she was not at my house. She did come, but she fled away. He insisted on my giving her to him. I said how could I. Atbal Singh on behalf of Raghubir told me, 'Why don't you give her to Raghubir?' He abused me. I said I have not got her. Then Atbal Singh abused me and threatened to beat me. Bawar Singh then told Atbal Singh, 'Why are you threatening him?' Atbal Singh said to Bawar Singh, 'If you will interrupt I will tear your entrails'. This talk took place six or seven days before the murder. I made a report of this affair. The police came to enquire. Raghubir then brought a complaint against me in the Deputy Sahib's court. I too made a complaint. Bawar Singh sided with me, and Raghubir was supported by Atbal Singh. The cases were finished after Bawar Singh's death. These cases were compromised.

It will be noticed that he put the incident, when he saw three of the accused apparently threatening the deceased, more than three weeks before the murder, whereas Ajgar Singh stated that it was ten or twelve days. In cross-examination he said:

I did not return the girl to Raghubir. Raghubir had a wife. She is dead. His wife's sister was a widow. She lived with Raghubir. Raghubir kept her as his mistress. Among *ahirs* widows can be remarried. Raghubir had it written in the compromise that he got back his girl. I was married two years ago. . . . Bawar Singh was a man of short temper. I did not go to him that very night. He should have lost his temper if I told him anything in the way of saving his life.

The other party to this quarrel, Raghubir himself, when he was called did the case for the prosecution more harm than good by flatly denying that any dispute took place between the deceased and the accused, Atbal, on the subject. He said:

I had a quarrel with Dali over my wife. She was my former

wife's sister. I then married her. I complained against Dali. I made a report at the police station. He made a report against me.

And in cross-examination he said:

When I caught hold of my wife, Dali rescued her and took her. He brought my wife to my house. My wife lived in Dali's possession. He might have kept her anywhere. All the village was there. There was no quarrel in the village. There was no quarrel between Atbal Singh and Bawar Singh when I caught hold of my wife. They did not threaten one another.

The first witness for the defence was Wahid Ali, a *sheikh*, *i.e.* a Mohammedan, and a *zemindar* of the village, who gave his age as sixty-five. He said :

Bawar Singh was a gambler and a whoremonger. It was rumoured that he carried on with Badlu's wife for a long time. Once a former *chaukidar* reported at the police station that Bawar Singh and Badlu's wife were found together. A summons was sent from the police station. The woman was in hiding for a month. Badlu has two daughters. I know nothing about them. Members of his caste have refused to eat with him. A meeting was held, and they stopped social communication on account of the intrigue.

In cross-examination, he said:

I was head constable in the police force. I retired ten years ago. Badlu's wife is about forty. My informants were my tenants. I advised Bawar Singh many times to give up his evil habits. . . . Three years ago I sued Barkat Ali. Bawar Singh appeared as a witness for him. . . . Sheo Ratan complained against Lalli Mian for having eaten up a goat. . . . I never saw any intimacy between Bawar Singh and Badlu's wife.

The fact, admitted by the witness, that the deceased had appeared as a witness against him in some case, three years before, would be considered quite sufficient, in an Indian village case, to shake his credit in saying anything reflecting upon the dead man's character.

Durga Dial, a *thakur*, and therefore a member of the same caste as the deceased and the accused, went further. He said:

Bawar Singh was a bad character. He had intimacy with Badlu's wife. He kept Badlu's eldest daughter married in Fatehpur. He would not let her go with her husband for a year. Her husband took her away by force. Budhu, the son of Badlu, once told Sripal, brother of the deceased, that the deceased had raped his youngest sister. Badlu has been excommunicated. When he returned from Gaya he gave a dinner, but no member of his caste would eat with him.

In cross-examination he said:

I used to see the deceased always at the house of Badlu during the last seven or eight years. He used to be familiar with her in the presence of the son, Budhu, and also the father, Badlu. Bawar Singh would not leave a woman alone, be she old, or lame, or blind. Badlu tolerated his wife's misconduct. Budhu, her son, did not.

The next three witnesses were important, if the issue was really vital, because they were *murais*, or members of the same caste of vegetable growers and sellers as the man Badlu. Jagua, *murai*, said:

Badlu's wife is a bad lot. She was intimate with the deceased. I don't smoke or eat with Badlu. He has been excommunicated. Badlu's son-in-law once came for the eldest daughter, who was his wife, but the deceased would not let her go. He complained to everyone, but we could be of no help. The eldest daughter was allowed to go last year. I heard some months ago that Budhu, the son, complained to Sripal Singh that the deceased had taken his mother's honour, and now wished to dishonour his sister, and that no one took any notice of it. No member of the caste went to Badlu's dinner when he came back from Gaya.

This man's cross-examination to credit is surely one of the strangest ever heard. It would seem that the judge might have intervened, though the witness did not seem to mind. But it shows the length to which the conduct of these cases will go, when once this fruitful topic is introduced :

Badlu's excommunication took place some years ago. I did not see Bawar Singh having connection with Badlu's wife. I

did have a meeting of the caste, because Budhu, son of Badlu, had raped my daughter. I paid him back in his own coin. I also raped Badlu's eldest daughter. This was two years ago. I have not been excommunicated for this. I am a tenant of Prag Singh, accused. I also pay rent to Sripal Singh, brother of the deceased.

Three other witnesses for the defence gave evidence to similar effect, though not of any further rapes, and alleged that Badlu had been excommunicated on account of his wife's conduct. One of them was the *mukhia* of the caste and, one would think, ought to be trusted to tell the truth. Another of the three said that Badlu's wife had so much influence with Badlu that he could do nothing with her, and that when she was challenged at the meeting of the caste, she became angry and abused them all, so that they, in their turn, 'became angry and went away'. This picture of a virago of an Indian village woman losing her temper, whether from outraged modesty or from a spirit of independence—it is certainly not clear which—and letting herself go and breaking up the meeting is a novelty, though anyone who has heard a woman villager indulging in unbridled abuse, can well understand the *panches*, or members of the meeting, taking refuge in flight.

This is a convenient place for giving a substantially verbatim report of the examination in court, by the judge, of the principal accused, Atbal Singh. It does not add anything substantial to the facts of the case, though it does introduce one or two topics which might have been further developed. All seven accused were examined in much the same way, and the following extract is given, rather as a specimen, and as an illustration of what always appears to me an almost futile system of examination. I do not see how any judge, unless he follows it up, which the law does not require him, or, it may even be said, allow him to do,

can be expected to derive any assistance from such an examination:

Question. Lalli Mian says that he saw you in a lane in front of Bawar Singh's cattle house on Sunday night. What do you say?

Answer. His statement is false.

Q. Badlu says that he saw you on Bawar Singh's roof on Sunday night. What do you say?

A. His statement is false.

Q. Dhuman Khan says that he saw you at Rotie ghat. What do you say?

A. His statement is false.

Q. Dali says that you at one time sided with Raghubir, *ahir*, when he and Dali had a quarrel over Raghubir's wife and that you threatened Bawar Singh.

A. His statement is false.

Q. Ansuya Singh says that he saw you going with a gun to Kalrawapur on Sunday morning?

A. His statement is untrue.

Q. Mehpal Singh says that he saw you washing hands and feet and shoes on Sunday morning in a pond near his house.

A. His statement is false.

Q. Why do Lalli, Badlu, Dhuman Khan, Dali, Ansuya, and Mehpal speak against you?

A. Lalli had eaten up a goat of Sheo Ratan. I appeared as a witness against him. Badlu's wife was intimate with Bawar Singh. I appeared as a witness against Badlu in a *panchayat*. Dhuman had cut a *mohwa* tree from my grove. My son beat him. Dali is under Sripal's influence. Ansuya is brother of Sripal, Mehpal is his uncle.

Q. Where were you between Saturday and Sunday?

A. I was at Pipargawan in Cawnpore district. I returned home on Tuesday ten days after the murder.

Q. Was Bawar Singh killed?

A. Yes.

Q. Who killed him?

A. Bawar Singh had intimacy with Badlu's wife and daughter. Badlu might have killed him or Budhu.

It is idle to pretend that on the two issues as to whether there really was an intrigue between the

deceased and Badlu's wife, and whether the quarrel between Dali and Raghubir caused the enmity, all this evidence does not leave one in a state of some bewilderment. The judge was not convinced about the intrigue, but the reasons he gave for deciding this issue definitely in the negative were not convincing. As a matter of fact, his ultimate decision was equivalent to treating it as irrelevant, which is probably the correct view. But the issue of the deceased's intrigue, relied upon by the defence, undoubtedly had great influence with the Assessors, all of whom said that they thought the case not proved against any of the accused. They must have thought that if they believed the defence story of the intrigue, it was an answer to the charge. The judge himself took this view in his judgment. But is this so? The enmity of the accused towards the deceased may have been the primary cause of their desire to get rid of him, and his evil reputation may well have been the decisive one.

The judgment was one of enormous length, and though the judge, who was an Indian, was an able lawyer, with considerable experience of criminal trials, it was one of those judgments which makes one sometimes despair of getting the general run of Indian Sessions Judges to deal satisfactorily with important criminal cases. It covered twelve closely printed foolscap pages, and was half as long again as this chapter. The judge found that the alleged quarrel and threats between the deceased and Atbal Singh, the accused, over Raghubir's wife were true, and, further, that there had been enmity for some years. He also found that the evidence of the four witnesses Lalli Mian, Badlu, Ansuya Singh, and Mehpal Singh was true. In that case, the evidence of motive became quite unimportant. The evidence of Badlu, if accepted, was in itself decisive, apart from the fact that it was corroborated. But

when the judge came to the question of the guilt or innocence of each separate accused he fell back upon the motive, and he acquitted Prag Singh, Jag Mohan Singh, and Raghubir Singh. But all of them were mentioned by the witness Lalli, against whom little was shown to his discredit, and all of them, except Jag Mohan Singh, were seen by Badlu, who saw seven on the roof, though he failed to recognise the seventh. And although all three of those acquitted were included in the story of the ancient enmity which the judge accepted, he held that neither of them had any motive for committing the murder. It is difficult to follow the logic of this conclusion, or to regard it as having been other than a sort of compromise.

V

THE SCAPEGOAT

IN most European countries, and in some of the States of America, adultery is a criminal offence, punishable with imprisonment or fine. In England it has never been more than a spiritual offence, though formerly at Common Law it was actionable in a suit for damages for 'Criminal Conversation'. But the framers of the Indian Penal Code, passed some years after the Matrimonial Causes Act, 1857, which abolished the action for 'Crim. Con.' in England, apparently seeking conformity with the view generally prevailing in the West, made it a criminal offence. It is possible that they intended the section to be preventive rather than punitive. If they thought that it would be effectual as a punitive measure, they could have had little acquaintance with the view of the ordinary Indian on matters of marital infidelity; while, on the other hand, it is doubtful whether the section has any real value as a preventive measure; so that it is, in effect, a dead letter. Adultery is what is known as a 'non-cognisable offence', which means that the husband must initiate the charge. It must be what we call a 'private prosecution'. But it is very rarely the subject of criminal proceedings. The question is sometimes asked, in England, whether many cases occur under this section, and the answer invariably is, 'Very few'. The fact is that a husband will never admit, if he can possibly avoid it, that his wife has been a con-

senting party to an intrigue, or an act of infidelity, with a lover. As a rule, if he thinks that there is a reasonable chance of success, the husband waits until he can catch the two in the act, and if he can do that, he takes the law into his own hands and murders both the guilty lovers. If he can satisfy the members of his caste as to the true facts, or if the intrigue has become sufficiently notorious for the caste to take notice of it, they will sometimes combine with the husband for the purpose of inflicting some sort of punishment on the lover, if not on the wife as well, without waiting until they are caught in the act. But if he does not choose to adopt either of these methods of private judgment and punishment and seeks redress from the law, he will never charge the lover with adultery, the real offence of which he has been guilty and of which the husband is complaining. He will generally accuse him of house-trespass, an offence which explains the presence of the intruder in a house where he has no business to be, without casting any discredit on the owner of the house. He does not much mind if the charge fails, though he always hopes against hope with the usual optimism of the Indian litigant, who thinks that the perjury of which he is capable will do the needful in securing a term of imprisonment for his enemy, and that he cannot lose. But even if he fails, he has made it very unpleasant for the lover, who will have had to remain in custody for some time awaiting trial, and will have been compelled to spend a large proportion of his scanty savings upon legal assistance, besides losing valuable time from the cultivation of his fields. If statistics are examined, it will be found that the number of charges of adultery are few; much less than the number of murders which can certainly be traced to it; while, on the other hand, the number of charges of house-breaking or trespass—many of them being, of course, quite true—is considerable. It follows from all

this that the adulterer in India, who persistently courts another man's wife, needs to possess a different sort of courage from that of his counterpart in England. He may not dread the disapproval of his fellow-men, and the shame of discovery, but he knows that he may have to pay for it with his life.

There is another feature of village life, upon which I have dwelt in more than one of the cases in *Indian Village Crimes*, and which must be repeated here. *Zemindars*, and all wealthy men, or men of position in the village community, are experts in the art of instigating crime which they want perpetrated, and in getting others to do it for them. They are surrounded by so many menials and poor tenants and hangers-on, all of whom they regard, just as such persons were regarded in feudal times in England, as their 'men', that they can make their own selection, and can count upon a number of them who dare not refuse to carry out their wishes. A large number of outrageous crimes are committed every year, in which the moving spirit remains securely in the background and escapes punishment. The power of the purse, and influence with the local police, who arrive first on the scene, enable this to be done. It is one of the most painful duties of a judge who has to administer the criminal law in India to be compelled from time to time to award or to confirm death sentences when he knows that the real principal is escaping, and who that principal is. But in such cases it is impossible to obtain the necessary evidence. I once ordered the prosecution of a *zemindar*, who, I was satisfied, had organised a sham dacoity, which I had heard in appeal, out of revenge in order to get an enemy falsely implicated, and I directed that he should be tried by one of my colleagues in the High Court. But the evidence was insufficient, or untrustworthy, and he escaped. The following case, which came before me in appeal, appeared to be an example of this.

There were two *zemindars* whom we will call Tej Sing and Gopal Singh, who were brothers, and who lived together in a certain village. The wife of one of them was a woman of loose character, and she had taken a fancy to one of her husband's men-servants. This is not an altogether rare occurrence. There was once a servant who became so pleased with himself, and with his success in the *zenana*, that he foolishly began to curl his hair, and generally to get himself up as a sort of 'fop' —a most unusual thing in an Indian servant—which led to his master discovering his little game. Sometimes a servant adopts the disguise of a woman servitor, or of a medical nurse, or of a hawker, and so obtains access. But if, as in this case, the master is often away on business he occasionally discards disguise and grows bolder and more confident with practice. When this occurs it is not possible to maintain secrecy from the other servants for long, and in course of time the husband is bound to have hints thrown out to him. But he does not interfere 'on information received'. He bides his time. Nor does he ever contemplate proceedings, even under the euphony of a charge of house-trespass. Tej Singh and Gopal Singh laid their plans, and returned home one evening unexpectedly and secretly. The erring servant, Bimal, was caught getting in at one of the windows. His corpse was carried out, feet first, by two of the *zemindars' chamar* servants and laid in his field, where it was found by his widow the next day. There was no mystery about it, though the report made at the police station suggested one. The investigating officer, on his arrival in the village, could have experienced no difficulty at all in obtaining clues. But it was fairly certain that he had been 'got at'. He learned that the corpse had been carried out from the *zemindars'* house and placed in the field. As there are very few, except the lowest-caste servants, who will allow themselves to touch

a dead body, this limited the area of enquiry so far as the disposal of the corpse was concerned. Eventually, he obtained a confession from Sukhdeo, one of the *chamar* servants. Sukhdeo said that he and another servant, named Moti, had carried the corpse at night to the field. He was put up before a magistrate to make a formal confession. He said:

I was called, ten days ago, by my masters, Tej Singh and Gopal Singh, *zemindars*, together with Moti, *chamar*, to watch inside the house. They said they were afraid that some persons were intending to break in. We were given *lathis* [sticks] and a *kulhari* [an agricultural implement like an axe] and were told to wait, and to do as we were ordered. After it became dark, Bimal, one of the other servants, appeared at an opening in the wall, where there was a shutter which was unchained, and climbed inside. When he was getting down, Tej Singh and Gopal Singh seized him and threw him on the ground. They stuffed some cloth into his mouth, and put the two ends of it round his neck, and twisted it so that he could not breathe. One of them sat on his chest, and held his legs. He was kicking but he did not speak. My masters did not speak till Bimal lay still, and I saw that he was dead. Then they got up, and told Moti and me to carry the body outside and lay it in the field of Bimal. I said I could not, and was afraid. Moti also refused. Then they both ran at me, and threatened me with their *lathis*, and abused me, and said that if I did not do what I was told they would beat the life out of me, and that I too should die. They spoke also in the same way to Moti, and we took the body as we were told. I was afraid I too would be beaten and killed.

The appearance of the corpse of the deceased Bimal bore out this story. But Moti did not confess. He denied that he was there at all, or that he had had anything to do with it. It was said that there was other evidence available which could have been used to corroborate the unfortunate Sukhdeo, if he had been made a witness. Indeed, if the story he told was believed, it did not, by the law in India, or according to any reasonable system of jurisprudence, require corroboration at all. The

confession did not make him an accomplice, except as an 'accessory after the fact', which is not an offence in India, and he had certainly nothing to gain, but rather much to lose, by telling the story he did. But instead of putting him up as a witness, with such corroboration as they had, the police charged him before the magistrate. A charge was subsequently made against them for neglect and improper conduct in the performance of their duty, but the sequel is not known except that the two *zemindars* were never put on their trial for murder. Sukhdeo was charged under a section which makes it an offence to cause any evidence of the commission of an offence to disappear with a view to screening the offender. His conduct certainly came within the section. At any rate, the High Court held that to remove the corpse to the deceased's field could only involve an intention to screen the offender, as the onus would clearly be thrown on the occupants of the house where the murdered corpse originally was to explain how it got there. But the effect of putting Sukhdeo upon his trial—an effect which had probably been anticipated—was to cause him to withdraw his so-called confession, and to say that it was untrue and that he had been bullied into making it. This made the position of his masters fairly safe, as he was the only possible witness of substance to the facts, and it was impossible, thenceforth, to rely upon what he said. But he was acquitted, and it would seem rightly, of the offence with which he was charged. The only evidence against him was his own confession, if it was one. And if you are to act solely on the statement of the accused, you must take it as a whole and give effect to every portion of it. A general section of the Penal Code enacts that no act shall be an offence if it is done under compulsion, or under threats which cause the person reasonably to believe that his own life is in danger. Sukhdeo had just seen one of his

I began to do so, when Kanjharia volunteered to do it instead of me. Mangru came up and made no complaint, either then or the following day. But the night after that he beat his wife. Next morning Kanjharia ran away to her parents' house, at a village a mile away. She remained there for three months. My cousin, Mahabir, who lives in my house, then told Mangru that his wife was bewailing her fate, and tried to persuade him to have her back. Mangru told him he might go and fix a date for her return. A date eight days ahead was fixed, and two days before, Mangru, refusing to go himself, sent Bansi and Mahabir to fetch her. She remained at my house for two months. In my presence Mangru complained to Mahabir that his wife had gone to the bad, and that he was not willing to keep her any longer. Mahabir said: 'Do not turn her out. I will get a *Sadhu* [a priest] to say charms over her, which will make her bear a son to you.' One day when Mahabir had been at the house all day, and spent the night there, he got up some time after midnight and called Mangru. The latter was sleeping at the house with his wife. Mahabir said to Mangru that he had the *Sadhu* ready outside to say the charms. Mangru gave his wife a vessel of water to carry, and she went on in front while Mangru and Mahabir followed behind. Mangru was carrying a mattock [something between an axe and a spade with a very heavy blade for excavating trenches]. I followed a few paces behind, as I wondered what my son was going to do. They walked to a well some three hundred yards from the house, and there was a man sitting there, who I thought might be a *Sadhu*. I saw that he was the prisoner, Autar. He is my son-in-law's brother, and he often comes to my house. He is not a *Sadhu* at all. Kanjharia asked Mangru where the *Sadhu* was, and he said, 'What can any *Sadhu* do for you? If you have anything to say, say it, for I am going to cut off your head!' She replied, 'Very well! You have brought me here on a false pretext. I will lie down and you may cut my head off.' I was about twenty yards away, concealed in some tall *munj* grass, and was afraid to call out, lest I also should be killed. Kanjharia lay down, and put her head on the stone-work of the well, and Mangru cut her head off with the mattock. Kanjharia was wearing various ornaments at the time, and I identify the anklets, armlet, and rings, now produced, as hers. Mahabir and Autar stood over her while Mangru cut off her head, and helped Mangru to throw the body into the well. They then threw earth down into the well. Then

all three went to their homes, and I followed and went to my house and lay down.

The foregoing does not complete the woman's evidence, but there are certain observations which at once occur to one upon it. Her description of this ghastly butchery appears, at first sight, to be absolutely incredible. But it must be accepted as true. It is not without relevance that she had told precisely the same story at the trial of her eldest son for the murder, a difficult, almost unprecedented, thing for an Indian village mother to do. Moreover, her story never varied from the first moment that the police extracted it from her. She had no motive for lying. It was suggested that her daughter, who was married to one Ram Sarup, the brother of Autar, the present accused, had been turned out of the house for having stolen two hundred rupees. But this was denied, and it was never proved, nor, even if it was admissible in evidence, could it have any bearing upon the woman's story against her eldest son, who was the chief culprit. Probably her real motive was a genuine womanly sympathy for her daughter-in-law, the victim, who, she affirmed, was free from any suspicion, and who had done nothing to bring down upon herself such a cruel fate.

Another strange feature of the story is the fact of her having left her bed at all, to follow her son and daughter-in-law to the well. According to her own statement, and also to all that one knows of the conduct of these villagers when their blood is once aroused, it was an extremely risky thing for her to have done. She said that she did not cry out, or interfere, out of fear for her own life, and this is quite natural. But her life would have been equally endangered if the men had happened to see her following them. What did she expect to effect by doing so? On this she undoubtedly prevaricated, as will be seen by the rest of her evidence. She said she

went out to see what they were going to do with the woman. She then said that she wanted to know how a *Sadhu* put the charm over her. There can be no doubt that she went to watch because she feared the worst. But she could have run to anyone for assistance, and also have sent Bansi, who was sleeping near by in the house, on the same errand. It is a typical example of the complete hopelessness in India of finding anyone prepared, either to intervene personally, or to take any simple and obvious step to prevent the perpetration of the foulest crimes, which they could easily stop if they chose. I am disposed to think that this characteristic is by no means confined to the humble villager, and to the illiterate classes, but that it permeates every class from the highest to the lowest, and even the most educated and advanced of them, who, as a general rule, though there are exceptions, but very occasional ones, find it impossible to do anything to prevent the deliberate murder of a fellow-creature, and extremely difficult even to condemn it. They will do nothing, unless they are practically forced to it, to expose it.

This is one of the fundamental difficulties of social life in India, and of crime investigation, as I have often observed in the course of these stories as well as upon the Bench. It undoubtedly explains the cool effrontery, and apparently reckless indifference and hardihood, with which so many of these village crimes are committed. When villagers make up their minds to murder, they are quite secure in the knowledge that no one is likely to interfere with them. They may threaten eye-witnesses at the moment, and drive them away in the hope that discovery may be prevented or balked, but they do not hesitate over the completion of their plan. And, inconsistently enough, they brag about its execution afterwards, thus themselves undoing all the work they have done to prevent its being reported and dis-

covered. This conduct can only be attributed to an obstinate determination to carry out their resolve to take the law into their own hands, and a fatalistic pride in its accomplishment, at whatever cost to their own necks. In this case, the reader will see that Mangru's performance in going out to the well at night, and taking confederates with him, was a work of superfluity, because he could quite easily have dispatched his wife with the mattock, while she was in bed, and have alleged that he found her with Bansi, which would have given him a chance. Probably he did not care. It was just a savage, unprovoked murder. Bansi gave evidence, and there was no reason for supposing that an intrigue existed between him and the deceased woman. Musammat Dhirajia's story of the sequel, and also the way in which the crime was eventually discovered, are both interesting. She continued:

The next morning, in order to disarm Mangru's suspicions about myself, I asked him what had become of his wife. He replied, 'What is that to you?' He made as if to beat me. A few days later the brother of Kanjharia came to the house and had a talk with Bansi. Mangru remained at the house eleven days, frequently going out with Mahabir, saying that he was going to look for his wife. Then he left with a *lota* [metal bottle] of water, saying he was going to ease himself, and did not return. Mahabir disappeared altogether. About a month later [namely, in the month of July] the Sub-Inspector came and took my statement.

In cross-examination she said:

Ram Sarup, brother of the accused, is married to my daughter. They live separately from the accused. They are well-to-do people. She was not turned out of my house for theft, but she has not been there for a year. The accused lives in a hamlet near my village. I never saw any intrigue between the deceased and Bansi, who is married. I had no such suspicion. Mangru was suspicious that there was an intrigue, but I cannot say what reason he had. My husband was a *Sadhu* and religious singer. Mahabir had been

living continuously at my house for two years. I did not hear anything said after Mahabir had called Mangru, nor when the three went towards the well. Bansi did not wake up. I had heard Mangru and Mahabir talking about the *Sadhu* the evening before, and that was why I suspected that something was wrong, and followed them. I went because I supposed that there would really be a *Sadhu* there who would pronounce incantations, and I wanted to see how he would do it. I was afraid to tell anyone till the Sub-Inspector came and took my statement. There had been general rumours in the village, but not that I had seen what took place.

Dudhai, the brother of the deceased, said that during July he heard that she was missing, and that he went to Bansi to enquire about her, and was told to report her disappearance at the police station. He afterwards heard rumours that Mangru, Mahabir, and the accused had killed her and thrown her into the well, and he then reported her murder. A Sub-Inspector came to the village about the middle of July, or about a month after the murder. He found a foul smell coming from the well, in which there was no water. On the well being dug, he found two small pieces of human skin, and the next day some more pieces of skin, and a quantity of human hair which was long enough to be almost certainly that of a woman. This man was acting as deputy for the actual Sub-Inspector, who was away on leave, and his incomplete search shows how casual these men often are when in an acting capacity and not officially responsible for the investigation. The station Sub-Inspector, a week later, had further excavations made in the well, and found in the earth taken out some more hair, some human nails, and, what was more important, the eight rings which were identified by Dhirajia as belonging to her daughter-in-law. Upon this he had warrants issued for the arrests of Mangru, Mahabir, and Autar, none of whom could be found. He said that the *munj* grass in which Dhirajia said she had

hidden herself was standing high, and about twenty-five paces from the well, and that there was a very low-growing crop in between. It is clear that, for some extraordinary reason, Mangru removed the corpse from the well and threw it in the river. Perhaps, as no action had been taken against him, he hoped that the matter might blow over, and that it was less likely to do so if he left the corpse to proclaim its presence in one of the village wells. It had been left there long enough to disintegrate, and the removal of it, all mixed up with the earth which had been thrown into the well after it, must have been a task of extreme difficulty. One wonders, seeing that hair and nails were already separated and mingled with the soil, how it was possible to do it without a number of men with spades, and without a bullock cart. There must have been another weird procession from the well to the river, but it is not known how it was done. But it was known in the village, as we shall see, that it had been done. By a remarkable chance, a Brahmin cultivator, while bathing in the river, came upon an anklet which Musammat Dhirajia subsequently identified. By an equally remarkable coincidence, a constable happened to call upon him to ask the names of some watermen, as the police wanted to drag the river for the corpse. He then produced the anklet which he had found, and its subsequent identification made it clear that portions of the remains had got into the river. The evidence pointing to this, and the candid conduct of Mangru before he finally left his mother's house on his travels to ease himself, is almost comical. The witnesses were both cousins of Mangru. Partab said:

About a year ago, Mangru, Mahabir, and the accused, Autar, came to my house at midnight. Mangru said he had killed his wife and thrown her body into the well. They wanted me to help them get it out of the well, so that the police might not be able to

trace it. They all had tools with them for digging. Mahabir had a bamboo ladder. I thought there was no need for me to go, so I refused. It was the first I had heard of the deceased's death. I did not know whether they were speaking the truth or not. Autar was carrying a basket. I was too frightened to tell anyone about this. Mangru did not tell me not to.

Manraj, a cultivator, and another cousin, said:

One night, about a year ago, at midnight, Mangru, Mahabir, and Autar, accused, came and woke me. I at once asked Mangru what had happened to his wife. He said he had killed her and thrown her into a well, and he asked me to come and help him get the body out of the well and throw it into the river. I refused. I told Partab about it next morning, and he said that the three men had been to him the same night. Mangru was a friend of mine. I did not know that his wife had been killed. I thought she had gone away. The Sub-Inspector came two days afterwards.

There are two or three points about these witnesses which are worth consideration by those who are interested in the methods of the police in India, and particularly in the inveterate practice, which has been mentioned so often, of trying to improve a case by false witness, or what is called 'police padding'. It is not clear why Mangru was so anxious to get further assistance, though, as I have already observed, getting the body out would ordinarily demand the work of several men, if it was to be done quickly. But if it was done at night, three men might manage it. The transport would be the chief difficulty, and it is probable that the three did it without more assistance. They must have done it that night, as the body had disappeared when the Sub-Inspector came two days later. But a difficulty also arises from this evidence about the dates. Indian villagers are notoriously vague, and seldom speak of a date by the calendar. They both said that they had not heard of the death of Kanjharia. But her brother, it will be remembered, had heard the village rumours, and it was in consequence of them

that he reported her death, just at this identical moment. Musammat Dhirajia had also spoken of the rumours which were current in the village before the Sub-Inspector came. It is just possible, of course, that these rumours originated from these two men after they had received the visits of which they speak. But, further, if they were telling the truth, how is one to account for the presence of Mangru in the village, because, according to his mother, he had left some days before and had not returned? He may have returned surreptitiously, for the purpose of removing the corpse. Probably the better view, though it is pure speculation, is that by reason of the smell from the well, and the mysterious disappearance of the woman, the rumours of her murder had gained currency much earlier than these visits of Mangru, and that both the witnesses were lying gratuitously when they said that they had not heard of her death, for they must have heard if there were really any rumours in the village. This is one of the greatest difficulties in deciding upon the credibility of witnesses in India. Everything seems to cut both ways. The two men may even have had a silly motive for lying about their ignorance of any rumour. They were bent on saying that Mangru was the first to tell them that she was dead, and one of them was careful to say that he doubted him when he said it. They may have had a foolish fear that if they told the police, being related to Mangru and friendly with him, that they knew she had been murdered when Mangru came to them to ask their assistance in the removal of the corpse, they might themselves, in some way, be implicated. There is nothing about which the ordinary villager is so timid, without reason. The question of their credibility has only this importance, that if their evidence was rejected, the evidence of Musammat Dhirajia was the only thing against the accused Autar, except his own conduct in absconding.

Bansi, Mangru's younger brother, gave the following evidence:

I had a headache one day, and got my mother to rub oil on my head, but Kanjharia, my brother's wife, offered to do it instead. Mangru came and saw her doing it, but said nothing about it. That night he beat her, and the next morning she ran away to her parents' house. I went with Mahabir and brought her back. I do not know why Mangru did not go to get her himself. I had no intrigue with my sister-in-law, and my brother did not accuse me. On the night when she disappeared, I was sleeping in a shed some forty paces from the house. My mother and I were both sleeping inside this shed. I heard nothing.

Autar, the accused, absconded, and though this is not always so significant a point against a villager as it is against an accused person in England, it went against him in the circumstances of this case. Though his property was attached, and the police searched for him with a warrant, he was not run to earth for six months, when he was found at his house hiding in the grain bin. The attachment of his property is generally certain to bring an absconder home, apart from his 'urge' to return to his ancestral village. Unless he is a man of means and independence he cannot stay away for long, and prefers to return and take his chance, even of the gallows. Autar's defence was that he lived five miles away, and had not been in Mangru's village for years. He said that Mangru's mother owed him a grudge because he had turned her married daughter out of the house of Ram Sarup for theft. His chief witness was Mangru, who had confessed, and whose sentence had been reduced, if it is a reduction, to transportation for life, on account of his deceased wife's alleged bad character. Mangru asserted that he committed the crime alone, and the unusual spectacle was seen in an Indian Sessions trial of a convict giving evidence for the defence. But the evidence against the accused was considered too strong for this story to gain credence.

VII

PROOF, OR PROBABILITY?

THOSE who have studied thus far this collection and analysis of Indian village crimes will readily appreciate the enormous difficulty of investigating poisoning cases in India. There is probably no form of murder, except infanticide, which has so often gone unpunished. There is generally a woman in the case, and this does not diminish the difficulties of arriving at the truth. Women, being the cooks and the caterers of Indian village households, have enormous opportunities of wreaking vengeance through the use of poison. As observed in 'The Agra Double Murder', it is always easier for a woman to poison her husband than it is for a man to poison his wife. But so far as India is concerned, there are several special circumstances of general application which make poisoning cases difficult, apart altogether from the ordinary difficulties of crime investigation. Arsenic is the agent usually employed. And, for some reason or other, it was never the practice, at any rate up to the time when I left India, for the official Chemical Examiner to make a quantitative analysis of the poison found in the body of the victim. I protested from the Bench on several occasions against this omission, and made a representation to the Local Government. There was some obstacle, according to the official reply, but, though I have unfortunately forgotten what it was, it did not seem to me at the time to be an insuperable one. Another

difficulty arises from a circumstance which I have already observed upon more than once, namely, the apparently superficial attention which is given to post-mortem examinations and reports by Indian official doctors. I do not mean here to make a racial point, but credit must be given where credit is due, and I never, during my twelve years' experience, had occasion to observe any omission on the part of an English Civil Surgeon. The reputation of the I.M.S. in India is extraordinarily high, and deservedly so. But in India itself, and amongst Indian medical men, very little attention is paid to that highly important branch of medical science, Forensic Medicine. Most of them seem to rely upon *ad hoc* instruction which they glean from the leading text-book on Medical Jurisprudence, which, after all, lawyers and judges can do for themselves. I never heard of any classes or lectures on the subject, and Indian doctors do not seem to be intellectually attracted by the subject, though, of course, to every rule there are notable exceptions.

On the subject of the use of arsenic in India, I make no apology for quoting from the medical chapter in 'The Agra Double Murder':

> Arsenic has always been the prime favourite of the poisoner in India, and the reasons for this preference are not far to seek. It is almost tasteless, and it is easily procurable in any bazaar. . . . There is, or was, no law either compelling the vendor to record the transaction or requiring the purchaser to sign any document recording his purchase, or disclosing his identity. . . . Any legislation of the kind with which we are familiar in England would probably be only a dead letter. Apart altogether from its medicinal value, the legitimate uses of arsenic in India are numerous. It is much employed as a preservative agent, especially for wood, and in preparing hides and skins. It is also constantly used for the destruction of vermin. In a tropical country, moreover, its poisonous effects are so frequently simulated by natural disease, that suspicion is far less likely to be aroused than in healthier

climates. Cholera, diarrhœa, gastro-enteritis, and irregularities of the stomach and bowels generally, are regarded as the common lot of humanity, and the symptoms of these diseases closely resemble those of arsenical poisoning, either acute or chronic. The Hindu custom of burning the dead has saved many a poisoner from the discovery of his crime.

It is probably the fact that there is no case on record in England of an alleged poisoner being hanged when the poison of which the victim died was not, in some way, traced to his possession. Mr. Justice Darling, in the Court of Criminal Appeal, in delivering judgment in the Seddon case, observed that arsenic was not traced to the manual possession of the prisoner. But it had been purchased by his daughter in the form of several fly-papers, any one of which in solution would provide enough arsenic in liquid form to poison an adult. But the same can hardly be said of India. In the case now to be related, no arsenic was ever traced to the possession of the woman who was convicted, except, by inference, that contained in the sweets which she sent to the deceased, and no arsenic was actually found in these. The parties were connected by marriage and were on very intimate terms. The motive of the accused, if she did, in fact, supply the poisoned sweet, was one of the most trumpery ever associated with murder. It is necessary to give some particulars of the parties.

The accused, Musammat Kundanian, was a widow, and a *zemindar*, belonging to the caste of *Vaish*, or *Bania*, or money-lending class, the members of which are usually well-to-do. She had a daughter, Musammat Chanda, who had had a daughter born to her about a year before the incidents to be related. She lived in the same village as Badri Das, who was a member of the same well-to-do caste, a few hundred yards away. It was his wife and daughter whom she was accused of poisoning. Musammat Parbati was the wife of Badri,

and Musammat Bela was his daughter. Like the daughter of the accused, Musammat Bela also had a baby girl, who was about a year old. Like the daughter of the accused also, she had been married in a certain village, known as *Qila* (or fort) and *Qila Parichatgarh*. In fact, they had married brothers. Now it was the custom of these people to hold a ceremony, called *dehl*, to celebrate the birth of a first child to the daughter of the house. As the ceremony, in this case, was not held until the child was nearly, if not quite, a year old, it would seem that they did not hurry themselves about it. Like many of these traditional ceremonies in India, it consisted partly of worship (for which the ground is plastered with cow-dung, on which symbols are drawn), partly of singing, and partly of presents, the latter feature being one which women of every age and nationality have never failed to appreciate. It was, naturally enough, the presents which caused the quarrel. The cost of the *dehl* ceremony is borne by the husband's family, while the ceremony is confined to the women, and when the young mother returns to her husband's house she takes back presents given by the parents. Relatives and connections of the family, and members of the caste, or brotherhood, also attend the ceremony. Some fifteen days before the occurrence there had been a *dehl* ceremony for Chanda's child, at the house of Musammat Kundanian, and Musammat Bela was invited. Her father said that when she returned she said nothing to him about anything particular having occurred.

We will now hear his account of the illness and deaths of his wife and daughter. He gave his evidence succinctly and well, and the report which he made to the police was an accurate summary of his subsequent evidence. He was evidently a man of education. He wrote the report himself and sent it by a constable. He said in evidence:

My house has two doors, one for the *zenana* and one for the *mardana* [men-folk]. On the 18th April I was in the *mardana*. I ate my food at midday. The same food as was eaten by Musammat Parbati and Musammat Bela and the women servants, but I ate it a little later. Nothing else was eaten in the house before that. At about 3 P.M. I went into the *zenana* and I found Musammat Parbati and Musammat Bela as usual in very good health and Musammat Parbati gave me water. From five to six Musammat Parbati and Musammat Bela brought cloth in my presence and their health was the same.

I next went to the *zenana* between 7 and 8 P.M., and I saw Musammat Parbati standing but groaning and I asked Musammat Bela what was the matter. She told me that her mother had had purging and vomiting. I asked Musammat Parbati if she was in pain and she said she had not actually got pain, but she had a great heat in her stomach and she felt as if there was churning in her stomach. As my wife had a bad digestion I asked if she had eaten anything else, and Musammat Bela said that they had eaten nothing but a *laddu* [sweetmeat] which came with other sweetmeats sent by Kundanian and Chanda. I asked what the *laddu* was of and I was told it was of sugar and fried flour and I thought it must have caused indigestion.

Kalyan Dat [the *hakim*, or medical witness] came about half an hour after I had sent for him, and I went into the *zenana* with him. I found Musammat Parbati on a *charpai* groaning and vomiting. Musammat Bela was sitting on the ground at her feet. In Bela's speech I noticed signs of distress and I asked her and she said that she had also vomited and purged and had a liquid motion. She also told me then that she had also taken of the *laddu*. I suspected the *laddu* now and I asked the *hakim* to diagnose the trouble, whether it was cholera or something else. The *hakim* said that all the signs of cholera were not there, but some *jamalgota* must have been given in the *laddu* possibly in mistake for pistachio nuts. The *hakim* sent for some medicines, among others being some pills to stop the motions. I asked him if he thought it was arsenic and he said all the signs were not there. After the medicines Musammat Parbati on my asking her how she felt said she thought some magic potion had been put in the *laddu*. I asked her why she thought this and she said that Musammat Bela had had a dispute with Kundanian and Chanda the day that she had gone to them. I then asked Bela herself about this dispute and

she said it was a very ordinary thing which she had not thought worth mentioning.

At about 4 A.M. I sent for the Sub-Assistant Surgeon, who arrived in about half an hour or so. At his request I asked the women whether they passed urine at the same time as they had their motions and whether there was solid in the vomiting. They said there was food in the vomit and sometimes they passed water separately. I told this to the Sub-Assistant Surgeon. He left without saying what he thought, but he ordered sixteen pills which were given without effect, and as he did not come back two hours later as he promised, I sent for *hakim* Naim Khan. It was about 9 A.M. or later. As the women complained of great thirst the *hakim* gave some draught.

No improvement ensued and Musammat Parbati died at about 1 P.M., and Musammat Bela died about five minutes before her mother.

None of the doctors, or *hakims*, told me that they suspected poison.

The cross-examination of this witness was long, but futile. It elicited no additional relevant fact, and the attempt to suggest some sort of enmity against the accused, and that he had relations with whom he had quarrelled and who might have administered the poison, was unsuccessful. The next witnesses in importance were the medical men. Kalyan Dat, the local *hakim*, who had been first called in, said:

I am a *hakim* in Kiratpur. I was called to attend the wife and daughter of Badri Das about 9.10 P.M. They were vomiting and purging and complained of great heat in the stomach. I thought that some *jamalgota* had got into the food and I asked Mt. Parbati what she had eaten. She said she had eaten rice and cake at midday and in the evening a dish had come from Mt. Kundanian, in which there was a *laddu* of fried flour, and though it was her habit to eat nothing sent from outside she was persuaded by Mt. Bela to take some of the *laddu*, and Bela took the rest and gave some to her baby. The baby, she said, had vomited at once. She said that about an hour and a half after eating the *laddu* she felt trouble in her stomach and after that diarrhœa had begun. I thought then that some *jamalgota* grain had by an accident got

into the composition of the *laddu* and I treated them accordingly. *Jamalgota* gives vomiting and purging, but it is not fatal. I was there for some three hours but there was no improvement. The women were conscious throughout and able to speak. Mt. Bela told me to look at her baby first.

In cross-examination he added:

Badri Das asked me whether there might not be some arsenic and I said I did not think the symptoms showed that. I asked if any of the *laddu* was left and Parbati said there was not as it was good and it had all been eaten. I was shown the place where the *laddu* was eaten and I saw marks of the sugar coating on the ground.

Muhammad Ikram Husain, Sub-Assistant Surgeon, said in evidence:

Badri Das sent for me to examine his wife and daughter at 4 A.M. Both of them were in their senses. They were vomiting and purging. I could not make a correct diagnosis, but I suspected it to be a case of cholera. The females did not tell me anything as to what the cause of vomiting and purging was. Badri Das told me that the females took some sweet in the evening, and when the girl was boiling milk vomiting and purging began. I do not remember if any particular sweets were mentioned.

When cross-examined he said:

I asked the females if they were passing urine. They did not give any definite answer, and said that they did not remember if any urine was passed, but stools were watery. Badri Das told me that the females were complaining of some pain and heat in the stomach. When I asked what food the females had taken, Badri Das said that ordinary food was taken. He did not tell me that no food was taken in the evening.

The Civil Surgeon conducted the post-mortem examination of each of the deceased the day following their deaths. The conditions of the bodies and organs were reported to be normal except in the following particulars. In the case of Musammat Parbati the lungs and liver were congested, and the walls of the abdomen

were distended slightly, owing to fomentation. The stomach contained about twelve ounces of whitish opalescent fluid. There was inflamed surface near the pylorus end, of about three inches in diameter. The stomach also contained two black pills. The conclusion was as follows: 'Cause of death could not be ascertained; may be case of irritant poisoning'. In the case of Musammat Bela, he found the lungs and liver also congested, and though the walls of the abdomen were normal, the contents of the stomach were similar to those of her mother, except that he found four black pills, and some broken ones. He gave the cause of death in the same words. He said at the trial: 'The symptoms of a poisonous dose of arsenic begin to appear in two or three hours. If the quantity be less, then they will appear in eight or ten hours, and if it be more, then in one and a half hours. Two grains is the smallest poisonous dose. Some symptoms are the same in cholera as in arsenic poisoning, but the cause of death was not cholera.' He didn't say what the pills contained, nor whether they were coated. He made no reference to the report of the Chemical Examiner, nor was he asked if he had seen it. The latter stated that in the case of each of the deceased women, the Chemical Examiner had received the stomach and portions of the viscera. Arsenic was detected in quantity in the stomachs, and in small quantity in the remaining portions of the viscera. As usual, there was no indication of the amount, and there was no statement that the amount found indicated a fatal dose. Indeed, from first to last throughout the case, no one said on oath that arsenical poisoning was the cause of death. But there was enough to justify the inference, and there can be no doubt whatever that it was so.

The next link in the chain was the evidence of Musammat Jaharo, a *kaharin*, or member of the caste of

bearers, or water-carriers, who are generally quiet, respectable, and by no means low-caste people. There was not the slightest reason for distrusting her evidence, though it was suggested to her that she gave the dish of sweetmeats to the daughter of one of Badri Das' alleged enemies, which she denied. She said:

I do not work for Musammat Kundanian. It is another woman who draws water for her. I was drawing water from the well in front of her house, when she called me and told me to take a *thali* [dish], which was covered with a handkerchief, and which contained a *laddu* and other sweetmeats, to Musammat Bela. It was well before sunset; perhaps between five and six o'clock. I took the dish with its contents at once. No one touched it on the way. I handed the dish to Musammat Bela in the presence of her mother. She took off the covering herself. Nothing was eaten from the dish in my presence.

Nothing really turned on the evidence of this witness, because the accused had admitted to the police that she had sent the sweets to Musammat Bela. The next class of evidence dealt with the *dehl* and the quarrel. The witness to whose statement the judge at the trial attached most importance was a man, Anandi Prasad, who happened to overhear a threat uttered by the accused to Musammat Bela. He knew the parties, and was a respectable man. The one inroad made upon his independence was the fact, admitted by him in cross-examination, that his half-brother, about two years before, had been fined for theft, and that Badri Das, the present complainant, had been a witness for the defence! He said:

Some three and a half months ago I was in front of my shop, on the road adjoining the house of the accused, when I saw Musammat Bela coming out weeping. It was about an hour before sunset. I heard the voice of the accused calling out, '*Saukan, ab tu Qile jane nah*'.

He said that there was no other man near at the time

He was asked if he knew the voices of other women, and said that he did not, though he knew other women in the village. There was nothing strange in his knowing the voice of so near a neighbour as the accused. According to the judge, the above expression in the vernacular was not only an offensive one, but, if one may use the word, a very 'portmanteau' one. Its literal meaning was, 'Mistress, let us see how you will go to Qila, now.' Qila was, as we know, Bela's husband's home, and also that of the husband of Musammat Chanda, daughter of the accused. The special signification of the vernacular word *saukan* is the mistress of a man who has a wife living, and it was an insinuation that Bela was the mistress of her husband's brother, Chanda's husband. This was said because she had done better than Chanda in the way of presents from the family of the two husbands, and was therefore, so to speak, 'top-dog'. If this belief was seriously entertained, it would quite explain the wrath and indignation of the accused and her daughter. Jealousy is a terrible disease all the world over, but it sometimes burns with almost unquenchable fire amongst Indians. Indeed, the word 'burning' is used of it, as it is of fire. The incident does not seem to be an adequate motive for murder, though no motive is too trivial in an Indian village. There was one weak point about this man's evidence which the judge does not seem to have noticed. Anandi Prasad said that Musammat Bela was weeping. Badri Das testified that his daughter had said nothing about the incident when she got home, and that when she told him about it after she became ill, she had said that she did not think it worth mentioning. There is no necessary inconsistency, but one would certainly have expected her to tell her mother if she had been made to weep at so joyous a ceremony.

The evidence of the three Brahmin women who went

to sing at the ceremony is interesting, because it appears to be perfectly honest and straightforward, and also, if for no other reason, because it lifts the veil a little from a female gathering, which men do not attend, and which has never been seen by a European. They differed somewhat over details here and there, but no one can doubt that they were telling the truth. Musammat Bhaniya, Brahmin, said:

There was a *dehl* ceremony at the house of Mt. Kundanian for her daughter about three months ago. I was called there to sing. Mt. Champiya and Mt. Parmeshri, *Brahmins*, and other women were also there apart from the guests. Mt. Bela was present. Mt. Kundanian said to Bela there had been given *gola* and *barauna* but nothing had been given to her own daughter. Mt. Bela said that she had asked for them and Mt. Chanda could do the same. On this a wordy dispute began and I got my wages and left.

Cross-examined. A dispute did take place between Kundanian and Chanda on one side and Bela on the other. As there was a dispute there was anger. This took place at the end of the ceremony. The Nain Daiya beat the drum at the ceremony. There was no other musical instrument. There was a *durrie* [carpet]. Women sing after our departure as performers. Parmeshri, Champiya and the *nai* left at the same time. We got four annas each.

Musammat Champiya said:

I went to the *dehl* ceremony at the house of Musammat Kundanian to sing. Musammat Bhaniya and Parmeshri, *Brahmins*, also sang. There was a dispute between Bela and Kundanian and Chanda. Kundanian started it by saying to Bela that she had got *gola* and *barauna* and her own daughter had not. Musammat Bela said she had got them by asking for them and Chanda could do so also. Then I left.

Cross-examined. I am *purohitani* [priestess] of Badri Das. I get food every day from him.

This dispute took place just as the ceremony was started. Musammat Kundanian then went inside to get the necessary things for the *puja* [worship]. A *chatai* [mat] was spread. There

was no *durrie* [carpet] or anything of the sort. We got four annas each as wages. Drums were the only instrument.

Musammat Parmeshri said:

The *dehl* ceremony took place at the house of Mt. Kundanian and I went there at 4 P.M. There were various women. We sang. The mother of Mt. Chanda said to Bela that her daughter had not got *gola* and *barauna* like her and Mt. Bela said that she could have asked for them as she herself did. I got four annas for singing and left. Fifteen days later Bela died.

Cross-examined. I was once *purohitani* [priestess] of Mt. Kundanian and she dispensed with my services eight years ago when her daughter married. The ceremony was taking place during this talk. No one went to fetch the necessary things for the ceremony. We sat on *chatais* [mats]. The ceremony was completed before I left. Women there do not sing after the end of the ceremony. The women who were not singing remained behind when we left. Musammat Kundanian and Chanda brought the sugar cake from within the house in my presence.

There was no special feature about the investigation, and the evidence of the Sub-Inspector who conducted it consisted, in the main, of what the accused had said to him when he interviewed her. When he searched her house he found only sweets corresponding to the additional ones which had been sent to Musammat Bela with the *laddu*, but he found no *laddu*. The accused told him that she had got the *laddus* from her sister, who lived some distance away, together with three other kinds, while one kind which she sent to Musammat Bela she had cooked herself. She said she had distributed the *laddus* amongst some boys and her *karinda* (agent), who, the Sub-Inspector added, was believed to be her lover also. She admitted that she had held the *dehl*, and also that she had sent the *laddu* by Musammat Jaharo. The Sub-Inspector added that there was no shop in the village where arsenic could be obtained. He also said that the other sweets found had proved to be

harmless, and that he had questioned the boys, who had eaten the *laddus* given to them without any ill effects. No arsenic was found in the possession of the accused, or anywhere else.

This completed the evidence for the prosecution. The way the case was put was that, whether the accused had received the collection of sweets from her sister, or had prepared all of them herself, she must have mixed arsenic with the *laddu* sent to Musammat Bela, which was the only noxious one, and that the arsenic must have been procured for her by her *karinda* or agent. The question of her guilt was, therefore, entirely a matter of inference from circumstantial evidence. But there was a serious link missing in the chain, by reason of the fact that no arsenic could be traced to the possession either of the accused, or of anyone connected with her. All that could be said against her, besides the dispatch of the *laddu* and her own conduct, was that the theory of accident was almost completely excluded, by the harmlessness of the other sweets, which included *laddus*. The *laddus* contained the largest quantity of sugar, but they were made up, like most Indian sweets, in sizes not much larger than small rock-cake, and if arsenic could, by any conceivable accident, have got innocently mixed with the sugar used, it was practically impossible that enough should be so mixed as to kill two adults. But the examination of the medical witnesses did not touch this point, and the possibility of accidental presence of arsenic in the sugar was not discussed in the evidence.

A special feature of the case was that the accused filed a 'written statement', corresponding to a defence in a civil suit, a very unusual, though not unparalleled, course in a criminal case. The explanation is that she was a woman of means, and that this was the joint work of her *karinda* or agent, and of a lawyer. The document was

put in before the committing magistrate. It was a long one, consisting of ten substantial paragraphs. The better course for her legal adviser would have been to have kept quiet, and say nothing, at that stage, because it was obvious that the prosecution had very little to go upon, and it would have been wiser to wait and see what evidence they relied upon. It may have been thought that a bold counter statement at an early stage would make a good impression. But, in fact, the document, as such premature statements compiled by a legal enthusiast conducting a defence in a criminal case generally do, contained some awkward features. It denied the holding of the *dehl*, which was absurd, and also the sending of the *laddu*, both of which facts the woman herself had already admitted to the police. Thirdly, it put upon the defendant the onus of proving that the noxious *laddu* came from her sister, and the effort made at the trial to establish this was a feeble one, if it did not break down altogether. But it also made the almost incredibly stupid mistake of alleging that there was enmity between the complainant and some of his relatives, and that therefore he was charging the accused in order to remove suspicion against them. It would be difficult to conceive a more remarkable *non sequitur*. It is superfluous to set out this document, or to quote further from it. The judge rejected the story of the sister, and ignored the suggestion against the relatives of the accused. The document is only mentioned here as illustrating another possible danger to an innocent person of not allowing the accused to give evidence. It resulted in another most perfunctory examination at the trial consisting of the following questions and answers:

Question. Do you admit your statement before the magistrate, and have you anything to add?

Answer. I admit it and the written statement—I have nothing to add.

The only relevant questions before the magistrate were as follow:

Q. Did you on the 18th of April send sweets to Musammat Bela?

A. I did not send them.

Q. Did Musammat Bela come to your house?

A. I had invited her to take part in a feast eight days before her death. No ceremony was performed.

The futility of the denials has already been pointed out, but her boats had been burned for her by the 'written statement'. No one can say that such examinations as the foregoing are satisfactory substitutes for the right of an accused to give evidence on oath. So far as can be ascertained from the record, the written statement was totally ignored during the hearing of the evidence, whatever use may have been made of it by the lawyers in argument. The Assessors, consisting of a Hindu and a Mohammedan, gave it as their opinion that the women died of poison, but that they were not satisfied that it was contained in the *laddu*.

The judge disagreed with this view, and, convicting the accused, condemned her to death. It should be added that the daughter, Chanda, had been charged with murder together with her mother, but that the magistrate had discharged her, saying that he did not know on what evidence she had been arrested. The conclusion of the judge at the trial was contained in the following words:

What has happened to the other sweets sent in addition to the *laddu* is a mystery. I am also not certain that Badri Das is correct as to what he says happened. Considering his keenness to avenge the murder of his wife and daughter, it is possible that he has been turning over in his mind so much the reasons for suspecting Musammat Kundanian that he has got muddled up as to what his women-folk said at what time.

That the accused prepared the poisoned *laddu* with her own

hand one cannot know. But if she did not, only her daughter can have prepared it, and if she did, as the accused sent it, Musammat Kundanian must have been in it too. I therefore must come to the conclusion that Musammat Kundanian alone, or with her daughter, is guilty, and there is no evidence against the daughter.

But how if the accused wanted to send a genuine present of sweets, and asked her daughter to make them, and the latter mixed the arsenic secretly? A conviction so arrived at could not be expected to stand, and the accused was acquitted on appeal.

PART II

VIII

THE BITER BIT

ONE morning in the month of July, some years ago, a young bearded Indian gentleman called at a well-known European jeweller's shop, in a big station in northern India, and asked to be shown some jewelry. He was handsomely dressed in a long silk coat, and white, tight-fitting pyjamas, and wore a smart silk turban. He had all the appearance of a Sikh. He gave the name of Kirpal Singh. He described himself as the minister in charge of the household of a certain Raja, whose estate was some distance away. He was referred by the manager to Babu Kahan Chand, the head clerk, whose business it was to attend to the wants of Indian customers. He explained to the clerk that he was commissioned by the Rani to purchase a large quantity of jewelry, which was wanted for wedding presents. He spent most of the morning in the shop, examining the whole of the stock, and made a selection of various articles of value, amounting in all to about thirty thousand rupees, or rather more than £2000. Having made his selection, for which an invoice was made out, Kirpal Singh asked the manager to send Kahan Chand along with him, with the jewelry, to the Raja's residence, so that the Rani might make her own selection, and return what she did not require, in the charge of Kahan Chand. The manager assented to this proposal, and the jewelry was packed in two leather bags, and an appointment made for Kahan Chand to

meet Kirpal Singh at the railway station that afternoon. Kahan Chand went to the station, accompanied by a *jemadar*, and there met Kirpal Singh, who had his servant with him, and together the party travelled that evening to the station for the Raja's residence, where they arrived soon after midnight, after a journey of about seven hours.

On arrival at the station, the minister got out, and was met by a man on the platform, with whom he had some conversation. The interview seemed to cause Kirpal Singh some perturbation, and he returned to Kahan Chand, and with many apologies for the trouble which he had given him, explained that the Rani was making these purchases without the Raja's knowledge, and that someone had reported the matter to the Raja. The consequence would be that, if he went on to the house with the jewelry, he would get into serious trouble with the Raja, and that it would be better if Kahan Chand returned home at once with the jewelry. He assured Kahan Chand that it only meant postponing the business for a little while. He was confident of being able to persuade the Raja to agree to the purchase, and when that happened he would let the firm know and ask them to be good enough to send the jewelry again in charge of Kahan Chand, in order that the deal might be carried through. So Kahan Chand returned to his employer's shop by the next train, together with the *jemadar* and the jewels. Kirpal Singh travelled part of the way back with him, and left the train at an intermediate station. Two days later, the firm received the following letter:

DEAR SIR,—I reached at home with welfare, without any trouble, and I got no trouble there, for which I am too much obliged. I am sorry for your trouble and very ashamed for this. I shall wire to you to call.—Yours faithfully,

KIRPAL SINGH.

The reader has, no doubt, already surmised that the manœuvres of Kirpal Singh were nothing less than a new variety of an old-fashioned confidence trick, carried out with an unusual degree of effrontery, and with a patient optimism rather characteristic of the educated rogue in India. The sequel will probably surprise him. It was worthy of the laborious preparation. Four days later the manager of the firm received a telegram in the following terms: 'Kindly come same train, with scent-pots, and other suitable gifts. Will meet you at B', giving the name of the intermediate station where Kirpal Singh had alighted on the return journey. The goods were still in the two bags in which they had been packed for the first journey, and Kahan Chand wrapped up the bags in a piece of cloth, and set out again with the same *jemadar*. He actually went by a later train, and had to change at a junction, which he reached about midnight. He went off to make enquiries as to the train by which he could continue his journey to B. It is not unlikely that he deliberately altered the original itinerary, with the vague notion in his head that, if any sort of trick was being played upon him, it would be check-mated by taking this course. But his subsequent conduct showed that, if he had really entertained any suspicions about the rendezvous, they were quickly removed. While he was making his enquiries, his *jemadar* ran up against Kirpal Singh just outside the station waiting-room, and went to inform his master. Kahan Chand thereupon went to meet Kirpal Singh, and was greeted by him in the most friendly manner. He told Kahan Chand that he had sent him another telegram, which had not arrived when Kahan Chand left his employer's shop, making an appointment at the junction. All three men got into the next train and travelled to B, Kahan Chand and Kirpal Singh travelling in the same compartment. They reached B at about three in the morning,

and there they left the train. Kirpal Singh proposed that they should at once set out for the Raja's residence; but Kahan Chand demurred, saying that it was too dark. He was evidently afraid of an attack by dacoits. He could have had no fear about Kirpal Singh, for, in the event of the latter intending to rob him, the light of day would be of little assistance to Kahan Chand, who appears to have been unarmed. Kirpal Singh was anxious to get on, and, in reply to Kahan Chand's objection, made the rather feeble suggestion that if they waited long they would have trouble from the sand. Kahan Chand's answer to this was that, whether the sand was troublesome or not, he had no intention of proceeding while it was dark. So they remained for some time waiting at the station. Kahan Chand not unnaturally asked whether any form of conveyance had been provided, and, if not, whether one could be obtained. Kirpal Singh's reply to this was that he had got a horse for him. Kahan Chand said that he did not care to ride with three other men walking with him. This was a rather curious objection. It is not clear what he meant by it. It may have been due to modesty, and to a desire not to be treated on a footing different from the rest of the party. It could hardly have been a measure of precaution, as, although he would have been more conspicuous on horseback, he would have been in a better position, in the event of an attack by highwaymen, if he happened to be a good horseman. The probability is that he was not, and that he had in fact never been on horseback in his life. It is unlikely that a clerk, employed in indoor work in a jeweller's shop in a big town, had ever had the opportunity of learning to ride, or of acquiring any regular practice. He would certainly not risk leaving the collection of jewelry in the hands of his *jemadar* when he himself was perched on horseback, and he would be equally certain to shrink from the task of carrying the bags with him

while he had to manage a strange mount which he had not yet seen. But, whatever the reason, he definitely declined to be the only member of the party who was to ride. Kirpal Singh then announced that he had arranged for a bullock-cart to meet them on the road. So it was decided that they should all start off together on foot.

There were five of them altogether: Kahan Chand and his *jemadar*, Kirpal Singh and his servant, while another man came up, just as they were leaving the station, and asked to be allowed to accompany them, saying that he was a traveller. Kirpal Singh agreed to his doing so. Daylight was just beginning to appear as they started on their journey. They first passed through the residential quarter of B, and through a market which was being held there, and emerged on the other side into a jungle. There appeared to be no formed road, which seemed to cause Kahan Chand some uneasiness, and he asked whether it was the way to the Raja's house. Kirpal Singh replied that it was a short cut. They trudged on for some distance. But Kahan Chand was no more accustomed to walking than he was to riding. He lived a sedentary life, and he began to complain of getting tired. Kirpal Singh reassured him by saying that they had not far to go, and that he would not find it too much for him. Leaving the very *kachcha* road which they had been following, they branched off into some fields, where there was a good deal of low-growing scrub. Then Kirpal Singh's servant began to grumble, and complained that they were going by a roundabout way. This aroused the ire of Kirpal Singh, who abused him, and told him to hold his tongue. Shortly after this, Kirpal Singh himself said that he was getting tired, whereupon Kahan Chand observed, 'Surely, Sardar Sahib, you ought not to feel tired. You are a man who is thoroughly accustomed to walking.' But Kirpal Singh insisted on sitting down in the scrub and resting. By this time the

sun was well up in the sky, so that they must have walked for something like two hours, having traversed about six miles. Kahan Chand spread a cloth on the ground, and he and his *jemadar* sat together upon it, with the parcel of jewelry on the ground between them. Kirpal Singh and the other two men then got up, and, saying that they wanted water, went off to procure it. There is no question that Kahan Chand was by this time becoming more and more uneasy in his mind. He suggested to Kirpal Singh that one of them should stay behind with them, but Kirpal Singh assured him that they were safe from observation where they were in the scrub. He returned with water, of which the three men alone partook. Kahan Chand and his *jemadar* refused to take any, possibly fearing that it might have been doctored. It is, in fact, remarkable how cautious and full of suspicion Kahan Chand had been for some time. At least, that was how he represented his attitude in the story subsequently told by him. And yet it will be noticed how little he did by way of taking active steps to protect himself. He seems to have drifted, in a helpless sort of way, into the ambush which was awaiting him, when, if he had really entertained the suspicions and secret fears which he seemed afterwards to suggest, with a naïve hint of his perspicacity, there were several things which he might have done without meeting with any effective opposition from Kirpal Singh. He could have refused to leave the station without either a conveyance or some accredited escort. He would probably have avoided the fate in store for him if he had secured some identification of Kirpal Singh from the station officials, or if he had returned to the village when the strange traveller joined them, and Kahan Chand found that he and his *jemadar* were in a minority of one, a situation which no Indian relishes. He had the opportunity of doing so again when the party was conducted on to

the cross-country route which he was assured was a short cut, but in which he obviously put no faith.

Having finished his drink of water, Kirpal Singh stood up and began to gaze round, and to search the horizon in every direction. Once more the suspicions of the cautious Kahan Chand were awakened by this conduct, and he asked Kirpal Singh what he was looking for. Kirpal Singh's reply was a strange one. He said he was looking in the direction of a village, which he named, in the hope that they would find camels there, which would enable them to continue their journey, if not in comfort, without much further trouble. This was the first time that any suggestion had been made that camels were to form part of the transport, and the suggestion did not fit well with the plan of the bullock-cart, to which no further reference was made. However, all the party rose to their feet, and started off again; and then, to use a modern popular phrase, 'the fun began'. Kahan Chand suddenly heard a noise behind, which had a familiar sound, like the crack of *lathis*, the heavy iron-bound bamboo stick carried by every villager and traveller in India. He was leading the way in company with Kirpal Singh. Behind him was his *jemadar*, carrying the two bags of jewelry. Behind the *jemadar*, again, walked the man who had joined them at the station, with Kirpal Singh's servant. Kahan Chand looked round and saw that his *jemadar* had been felled to the ground by the other two men. He had been struck on the head, which was bleeding profusely, and it was afterwards discovered that his right arm had been broken by the blows rained upon him. Kahan Chand said to Kirpal Singh, 'Sardar Sahib, what is happening?' All the answer he got was, 'If you don't keep quiet, you will receive the same treatment yourself'. Kirpal Singh then called out to the other two, 'Catch hold of the Babu'. Kahan Chand appealed to Kirpal Singh's finer

instincts, paying him the compliment of assuming that he possessed any. He asked him, as he was a gentleman, to treat him as one. Kirpal Singh replied, returning the compliment, but giving the poor, meek Kahan Chand a 'back-hander' by including his *jemadar* with him, that he recognised the fact that they were both gentlemen. And he then proceeded to treat him as highwaymen are wont to treat defenceless gentlemen, and went through Kahan Chand's pockets, taking everything he could find in them. Kahan Chand tried the effect of further diplomatic negotiations. He said that if Kirpal Singh would leave him the bags which he had brought with him, he could take everything which he had in his pockets. As Kirpal Singh had already done this, it was not a promising offer. Moreover, the unfortunate Kahan Chand was well aware, by this time, that it was mainly the jewelry with which the highwaymen were concerned. In fact, Kirpal Singh returned the contents of the Babu's pockets. They were probably worth little by the side of £2000 pounds' worth of jewelry. Probably Kirpal Singh entertained a vague hope of finding in the Babu's pocket an automatic, or some other weapon of offence, but, if so, he was disappointed.

The next step in the treatment of gentlemen by highwaymen was to tie Kahan Chand's hands and feet. This was a simple matter. Kahan Chand then gave himself up for lost, and made his last dying request, that he should not be left in the jungle, but placed somewhere on the road where, at any rate, someone would find his dead body. There was a spice of Oriental subtlety about this request. It was not only an absolute submission to his tormentor, which might be duly appreciated by that temporarily triumphant personage, but it was an appeal to their common faith, which teaches a Hindu to attach the last importance to the treatment of his dead body, and to the funeral ceremony performed

over his corpse after death. But what Kahan Chand was really contemplating was not the discovery of his corpse on the road, but the rescue of his life. His imagination must have supplied the gaps created by his ignorance of the country through which he had been faithfully tramping since daylight, and he must have seen enough of the deserted jungle to have formed vivid pictures of the certainty of his having to lie for hours under the burning sun, tortured by thirst, and slowly dying of starvation, and of the prospect of being mangled, in his bound and helpless condition, by hungry jackals, or some stray beast, during the night. But though the ears of Kirpal Singh were deaf to supplication, murder was no part of his scheme. He again assured the gentle Babu that he would be treated like a gentleman. He did more. He went on to assure him that he had no enmity against Indians, but only against the English, though how this was to be satisfied he did not explain. Probably he was thinking of the jewelry, which was almost certainly insured with an English firm. But we shall see that he had other ideas besides enmity against the English. As soon, however, as the other two men, having disposed of the *jemadar*, and tied his legs together, got away with the bags of jewelry, Kirpal Singh untied Kahan Chand's hands, and disappeared with his confederates into the jungle.

Kahan Chand then released the *jemadar* from his bonds, and the two wandered about, trying to find some local place of habitation. They did not know where they were, and the whole country was a broad expanse of jungle and sand. Eventually they reached a village, where there was a railway station. Kahan Chand had been left in possession of his gold watch and his cash, so that he was able to pay for any assistance he required. The station-master procured them food and water, and attended to the *jemadar*, who was in a parlous state,

and enduring much suffering. Kahan Chand then discovered, for the first time, that he was not in British India, but in a native state, which may conveniently be described as X. The station-master informed him that there was a head constable, belonging to the police force of X, in the neighbourhood, and at the request of Kahan Chand the constable was sent for, and a *tonga* was procured. Kahan Chand, the *jemadar*, and the head constable then proceeded in the *tonga*, back to B. Here they found an important officer in the X police force, no less a person than Hazura Singh, the Superintendent of Police, who was working in a position of authority directly under the control of the Inspector-General. To him Kahan Chand made a formal report of the robbery, and Hazura Singh at once took the matter up. His first business was to find out where the incident had occurred, and he sent Kahan Chand off with Sub-Inspector Fazul-ul-Rahman, who then happened to be the Station Officer in charge of B, but who was afterwards transferred to the Criminal Investigation Department, to see if they could find the place where the attack had been made. They went on camels, but they were unable to find the exact spot. Next day they rode off again on the same quest, accompanied on this occasion both by the Superintendent and by the *jemadar*, who was able to travel, in spite of his injuries. The Superintendent's presence and assistance secured the success of the enterprise. He enabled them, by helping them to recall various landmarks on the way, to identify the road by which they had travelled to the railway station where they had first obtained assistance. In this way they reached the place in the jungle where they had been attacked, and the Superintendent satisfied himself that the crime had been committed in the state of X, and that it was his duty to take over the official investigation. This he did forthwith, partly in

person and partly by deputing the work to his subordinates, who acted under his direction. His course of procedure showed that he was an exceptionally competent and experienced officer, and it will be seen that he had a very difficult task to perform.

It was important for him to fix the exact locality where Kahan Chand and his *jemadar* had been assaulted and robbed, because it was close to the frontier of the state, which at this point was bordered by another native state, which we will call Y. It so happened that in this locality a portion of British India ran like a wedge thrust between the two native states. Ending in an apex, it formed a sort of triangle, of which each of the bordering native states formed one of the sides. It so happened also that the respective governments of the two states were not on the best of terms, and difficulties of jurisdiction and of extradition, in the case of crime committed in one territory by miscreants who made their escape into the other, were apt to arise, and sometimes became acute. As often happens in India, especially in villages, even in British India, where feuds exist between two leading *zemindars*, or local landowners, as those who have read *Indian Village Crimes* will remember, the subordinate members of society shared, and accentuated, in their daily life, the rivalry and hostility which prevailed between their principals. This enmity was by no means confined to the police; but the occurrence of criminal cases near the frontier, and the questions which arose out of them, were the cause of much friction, and the two police forces, which were kept up in considerable strength in this neighbourhood, were on very bad terms.

Sub-Inspector Fazul-ul Rahman was first deputed to make enquiries. He found the clerk who had despatched the telegram, dated the 31st of July, which had summoned Kahan Chand to make his second and fateful

journey with the jewelry, and he obtained a general description of the man who had handed it in. He was acquainted with more than one bad character who seemed to answer to the description, but it is unnecessary to detain the reader with an account of the various clues which he received and followed without result. Amongst the names mentioned to him was that of one Bir Singh, who was not known to Fazul-ul-Rahman. What he learned about him was not much to his credit. He was said to be instructed in the use of the English language, and to be a man of some intelligence, who was often seen about at various railway stations, and was known to several of the station officials. One of the things said about him was that he would try to travel without a ticket, and used to be caught travelling by a class superior to that for which he had paid. He was believed to have done business at one time as a photographer, and to be at this time in the employment of the government in state Y. It was about the 5th of August that Fazul-ul-Rahman definitely reported to the Superintendent that he had received information which pointed to Bir Singh. He was told to keep in touch with the railway station officials, and to try to gather more information. He managed to find an assistant station-master who had recently been at B, but who had just been transferred to another place. From this official, Fazul-ul-Rahman obtained the important information that Bir Singh, whom he knew well, both by sight and by name, had been at the railway station at B in the early morning when the train arrived which brought Kahan Chand and his *jemadar* there. This day was identified as the 1st of August, or the actual day of the crime. Two or three days after receiving this information, Fazul-ul-Rahman went to Y to visit a friend, and learned that Bir Singh was to be found at the house of one Jai Ram. Fazul-ul-Rahman stayed the

night with his friend at Y, and, by one of those smart pieces of work at which the Indian police are such adepts, managed to arrange that his friend should bring Bir Singh to the house in the morning to have a chat. Fazul-ul-Rahman was, of course, in mufti. His friend talked with Bir Singh on various subjects. As Fazul-ul-Rahman subsequently stated: 'I did not talk to Bir Singh. I observed him.'

The information which the Superintendent, Hazura Singh, received from Fazul-ul-Rahman on the 5th of August, pointing to the possibility of Bir Singh being the principal in the commission of the crime, made a great impression upon him. He had already satisfied himself that such a daring, audacious robbery must have been committed by a man with brains. It now appeared that the suspected person was in the employment of state Y, and it began to dawn upon the Superintendent that there might be some influence at work behind the commission of the crime, and some purpose aimed at beyond the mere robbery of jewelry. He gave certain instructions to another Sub-Inspector, named Tara Singh, and sent him on a mission independently altogether of that entrusted to Fazul-ul-Rahman, and provided him with a head constable named Zafar Husain. It was their business to take Kahan Chand with them to Y. The Superintendent evidently decided that it was no good giving this duty to Fazul-ul-Rahman, who by this time had become known by sight to Bir Singh. It will be noted that, up to this moment, the Superintendent of state X had not sought the assistance of, nor even communicated with, the police at Y. On the 9th of August Hazura Singh had an interview with Tara Singh and Kahan Chand, and was informed that Bir Singh had been at Y, but at a time when Tara Singh could not secure the attendance of Kahan Chand, and that, after he had got hold of Kahan Chand and

taken him to Y, he was unable to find Bir Singh. It was fairly evident that by this time Bir Singh and his friends were on their guard.

The sudden transfer of the assistant station-master from B may have been no more than a coincidence. But the statement which he made to Fazul-ul-Rahman looked as though his account could not be entirely relied upon. It was conceivable that he was not saying all that he knew. He had been in charge of B during the night when Kahan Chand arrived there. Indeed, he said that it was at the request of Kahan Chand that he had unlocked the waiting-room, to enable him to stay there with his bags until daylight, in this respect agreeing with Kahan Chand's story. But he said that he saw Kirpal Singh on the platform before the arrival of the train. This seems hardly possible. Kahan Chand and his *jemadar* were both very clear on the point that they had met Kirpal Singh at the junction waiting-room at midnight, and that they had all travelled together to B. On this point they could not have been mistaken, and they had no motive for altering the true story of the meeting as it had actually happened. On the other hand, it is difficult to see how the assistant station-master could have been mistaken in his recollection of the composition of a small party arriving by train in the small hours of the morning, if he remembered the incident at all, or how he could have been betrayed by his imagination into thinking that Bir Singh was on the platform before the arrival of the train, if the fact was that he had actually travelled by it. The assistant station-master had been employed at the principal station of Y, and it is possible that, while he was not prepared to deny that he had seen Bir Singh, about whom such pressing enquiries were being made, he preferred not to say all that he knew. After the failure of Tara Singh to get into touch with Bir Singh, when Kahan Chand was with

him, for the purpose of identification, the Superintendent came to the conclusion that not much good could be expected from Y, where they were not likely to receive assistance from the police. So he sent Tara Singh and Kahan Chand back to B, with instructions to try and get hold of a photograph of Bir Singh, if such a thing was procurable. The same instructions were given to all the police who were working on the case.

Tara Singh's efforts to obtain information about any photograph of Bir Singh are interesting. As the result of something he learned in the course of his enquiries, he went to Y, about the 14th of August. He had two men with him, whose names do not matter, but who were evidently police spies. They took him to the house of a clerk employed in one of the departments of state Y, who was also one of the official photographers. Tara Singh happened to know a fellow-villager who was also in the employment of state Y. He was known in the village as Tara Singh's nephew, as is so often the case in Indian villages, being in fact no relation at all, but only a caste fellow. On account of the proximity of the two states, X and Y, there were in each state residents and state employees who were either relatives, fellow-villagers, or close friends of men who were residing, or who were employed, in the other. In any affair which became acute between the two states, it was a matter of no difficulty for the police or their spies, to get into touch with private individuals, who were ready to give information which led to tangible results. The consequence was, of course, that investigations carried on by the officials of one state, into matters in which persons belonging to the other state were concerned, were often full of interest and excitement. Thus, for example, Tara Singh's nephew suddenly became a person of great importance, and, being employed by the state, was able to get in touch with Bir Singh, who was similarly

employed. As Tara Singh naïvely remarked, when afterwards giving an account of his efforts, 'On each occasion that I saw Bir Singh he was in company with my so-called nephew, who told me Bir Singh's name and who he was'. Tara Singh was thus put on the first stage of the road to discovering a photograph of Bir Singh. The clerk and official photographer already referred to, showed Tara Singh and his friends various interesting state photographs, including a group in which Bir Singh appeared sure enough. But all Tara Singh's efforts to obtain a loan, or temporary possession, of this photograph failed, as the clerk said that he was a state photographer, and was not allowed to part with copies of such photographs. So Tara Singh's partially successful visit failed in achieving its ultimate purpose, and he returned to B on the night of the 15th of August. It now remained for him to take other steps to obtain a copy of that, or of some similar group, containing the portrait of Bir Singh.

We must now turn for a moment to the movements of one who subsequently became the chief figure in this long investigation, and whose adventures form the main feature of this story. This was Abdul Aziz, a Mohammedan of good family, with some cultivation of his own. He had been in the police force of X for some twenty-five years, and was now attached to the Criminal Investigation Department. He had some knowledge of men and matters in Y, and on the 11th of August the Superintendent employed him to enquire into the robbery case. He was told that Bir Singh was suspected; but there were also others, including two men of the Criminal Tribes, who were under observation, though it finally turned out that they had had nothing to do with the crime.

He went to Y, where he had friends, and made a few secret and discreet enquiries. He happened to get into

touch with the *Kotwal*, or principal police officer, at Y, and learned from him, in some remarkable way, that he knew that Bir Singh either had, or was supposed to have, committed the robbery. The *Kotwal* tried to find out from Abdul Aziz what he was doing in Y, but Abdul Aziz did not tell him. Abdul Aziz learned about the photograph which had been shown to Tara Singh, and it was much to his credit, in the view of his superiors, that he soon discovered where a copy of this photograph was to be found in X. He summoned the possessor of it to the *Kotwali*, and eventually succeeded in making him hand it over. He then showed it to Kahan Chand, who recognised the features of a man in the group as being those of Kirpal Singh. From this date the identity of Kirpal Singh with Bir Singh, the man in Y whom the police in X had begun definitely to suspect, was established. The next question was how to effect the arrest of Bir Singh. It would be dangerous, even if possible, and it would certainly be extremely difficult, to catch him in Y.

On the 20th of August Abdul Aziz was able to hand over the photograph to Hazura Singh, and to assure him that it included the portrait of Bir Singh, whom Kahan Chand had picked out as being Kirpal Singh. The Superintendent then took the photograph to the shop from which the stolen jewels had come, and obtained further identification of Bir Singh as being the supposed Raja's minister who had called there, in the name of Kirpal Singh, and selected the jewels. Hazura Singh, who realised by this time that he was in for a contest over the arrest of Bir Singh with the police, and probably also with the state officials of Y, appears to have gone to Delhi on an official visit, presumably to confer with some experienced officials in authority there, and afterwards to have consulted the Prime Minister in his own state of X. There can be no doubt that he felt

himself in a difficulty, and, while prepared to do his duty if he was called upon to do so, he was not unwilling to let the matter drop if it should appear to others in authority that it was the wiser course. Whether this is so or not, he renewed his efforts as soon as he returned from these interviews. It came to his knowledge, towards the end of August, that Bir Singh was in a favourite Hill station in British India, much patronised by Indian gentlemen, and he took steps to procure extradition warrants to enable him to take Bir Singh to X if he should succeed in laying hands upon him. It will not surprise the reader to hear that, when at last the extradition warrants had been obtained, the Superintendent learned that Bir Singh had left the station three days before. It would have been a great achievement, and this story would never have been written, if the Superintendent had been successful in his efforts to arrest Bir Singh in British India. But Bir Singh was too wide awake for that.

On the 8th of September Abdul Aziz went to Y in plain clothes, taking with him an orderly of the name of Ali Sher Khan. They reached Y in the evening, and Abdul Aziz sent off his orderly to find a man named Teja Singh, while he himself remained at the *serai*, or large open waiting-place, provided outside big railway stations for the use of Indian travellers and other members of the general public. Abdul Aziz' account of his original acquaintance with Teja Singh is a delightful story. Teja Singh used to work as a petition-writer at a place in Abdul Aziz' circle, which we will call D. He was then a widower, and was carrying on an intrigue with a woman of the name of Balwant Kuer. This woman was the wife of a *Sadhu*, or priest, named Gopal Dass. About the year 1914, Gopal Dass instituted a complaint against Teja Singh, charging him with abduction and dacoity. Probably what he meant by dacoity was house-break-

ing, because the offence of dacoity requires at least five people to take part in it. But a charge of house-breaking against a man whom a husband suspects of being after his wife is one which is familiar to all who have had any experience of criminal work in India. A husband will hardly ever make a charge of adultery. On this occasion Abdul Aziz had had to deal with the complaint made by Gopal Dass, and he had reported that it was false and that it was really a case of adultery. He had informed Gopal Dass that there was an appropriate section of the code under which the charge ought to be made, and that it was not a police matter, but that the prosecutor must take proceedings on his own responsibility. This is another stumbling-block in the way of an outraged husband, as he does not relish having to start the proceedings himself, and is filled with the idea, for which there is undoubtedly no slight foundation, that neither the police nor the magistracy will take much interest in proceedings for which they are not themselves responsible. When proceedings were brought by Gopal Dass, Teja Singh alleged that he had connived at the adultery for two years. He was grateful to Abdul Aziz for what he had done. They became friends, and in due time Gopal Dass died. Whether or not Balwant Kuer had accelerated this fortunate solution, Teja Singh married her and continued to keep up friendly relations with Abdul Aziz.

Ali Sher Khan found Teja Singh in Y at the address given to him, though Balwant Kuer was not there; but at D, Teja Singh told him to go back to his master and inform him that he would follow on. He did not intend to accompany the orderly, though, of course, the latter was in plain clothes. It was just as well that he did not go with him, because a group of Y police stopped the orderly and asked him who he was. He gave some pretext, and was not further molested. Teja Singh followed

on, and arrived at the *serai* soon after Ali Sher, to whom he gave a letter, telling him to go to D and give it to Balwant Kuer. There was something mysterious about this letter. Abdul Aziz said that Teja Singh did not write it at the *serai*. He must, therefore, have written it at his house before he came to the *serai*, and it must, in consequence, have related to some matters other than that for which Balwant Kuer was required in Y. During the interview at the *serai* Teja Singh, who had already given assistance to Abdul Aziz when the latter was searching for the photograph, promised Abdul Aziz to assist him in his efforts to secure the arrest of Bir Singh. Teja Singh said that the best person to make enquiries as to the whereabouts of Bir Singh was Balwant Kuer, and Abdul Aziz told Ali Sher Khan, when he found Balwant Kuer at D, to bring her along with him.

The next day Ali Sher Khan arrived by train with Balwant Kuer. Abdul Aziz went to the station to meet them. It happened that the *Kotwal* (principal police officer) of Y was also at the station, so Abdul Aziz held no communication with his friends there, and they came to him at the *serai*. There Balwant Kuer was given instructions to watch certain houses, and to ascertain where Bir Singh was to be found. As she left the *serai* where she had her interview with Abdul Aziz, the *Kotwal* of Y left the station on his bicycle, and when he overtook her he got off his machine and spoke to her. If Abdul Aziz had any notion that the police in Y were watching his proceedings, this ought to have put him particularly on his guard, and have warned him that there was danger in trusting to Teja Singh and Balwant Kuer. But in this respect he was obtuse and disregarded the incident. Late that night they all met at a rendezvous in the jungle, and Abdul Aziz was informed that Bir Singh had gone away, probably to a place called Kaithal. Teja Singh and Bal-

want Kuer asked to be given the assistance of a man in making their enquiries, and Abdul Aziz, who left Y that night, sent a constable, Fateh Mahomed, to them with instructions that he was to do as they wished. Kaithal was drawn blank, but news was received that there was a possibility of running Bir Singh to earth in Delhi. Teja Singh had a married daughter living in Delhi, and the suggestion was that Bir Singh might be decoyed there. It was considered advisable that Teja Singh himself should not go to Delhi, but Balwant Kuer was conducted there by Abdul Aziz and Ali Sher Khan, and went to the house of Teja Singh's son-in-law. The Superintendent, Hazura Singh, also went independently to Delhi. The next day Ali Sher Khan was informed by Balwant Kuer that a party consisting of a man named Daulat Ram, a woman, and a Sikh whose name she could not find out, but whose appearance seemed to correspond with that of Bir Singh, had been staying at the premises occupied by Teja Singh's son-in-law, but had left there three or four days before. The pursuit of Bir Singh began to look very like a wild-goose-chase, and it was open to question whether either Teja Singh or Balwant Kuer were satisfactory guides.

The next plan made was that Balwant Kuer, Teja Singh's daughter, and Ali Sher Khan should return to Y from Delhi, and that Teja Singh should come to D for an interview with Abdul Aziz. The former told the long-suffering Abdul Aziz that he did not know where Daulat Ram and Bir Singh had gone to, but that he did not think it was any good continuing to trace them at Delhi. Their visits there were probably for the purpose of disposing of the jewels, and if any of the jewels should eventually be traced to Delhi it would be time enough to go there again. He thought that the men they sought had probably returned to Y, and that it would be best for him, Teja, to go back there and to send a

wire if there was any news worth communicating. As it was not safe to send a wire in their own names, the telegram was to be addressed to a sweet-seller in B. He further added that he knew of a woman in Y who would probably be able to help them to effect the arrest. On the 20th of September Abdul Aziz received, through the sweet-seller, a message from Teja Singh at D to the following effect: 'The work is ready; come quickly'. Abdul Aziz took his necessary luggage with him and went off to D, where he had another interview with Teja Singh. Teja Singh then informed him that the woman, of whom he had already spoken to him, was there, and that she had ascertained that the friends of Bir Singh, thinking that the chase was getting rather too hot, had arranged to have him secreted in a well-known military station in British India, and that the woman would be able to attach herself to him, which she was quite ready to do, and that on the journey there she would arrange that Bir Singh should be arrested. Teja Singh added, however, that the woman would want a good deal of money for her trouble. Abdul Aziz said that no arrangement could be better. It is, no doubt, tempting to criticise the conduct of others, especially if it is supposed to have been particularly smart, and it is easy to be wise after the event. But it really does seem remarkable that, by this time, Abdul Aziz had not begun to suspect something. At each stage which he reached under the guidance of Teja Singh he was told that it was necessary to take a fresh step, and he seemed to be getting no nearer to his goal. This was the second woman who had been introduced as an *agent provocateur*, and it is a rare occurrence in police investigations in India to utilise the services of women at all. He was now required to find, or at least to promise, a substantial sum of money.

None the less Abdul Aziz continued to nibble.

Whether he hoped to acquire kudos from his principals, however feeble the results he was able to show, or whether he firmly believed in the friendship of Teja Singh and his gratitude for past services rendered, although, especially as one was a Mohammedan and the other a Hindu, he ought to have known better, or whether he hoped gradually to obtain sound information for himself, and trusted to his own wits to be able to profit by it, he continued to nibble. Teja Singh went on to say that the woman actually wanted no less than one thousand rupees, and that, if that amount were promised, he would arrange an interview between her and Abdul Aziz. Abdul Aziz reasoned out with himself the matter of the pay, and explained it to Teja Singh. The firm of jewellers had offered a reward of fifteen hundred rupees for the recovery of the lost property, and the state of X would be certain to give another if Bir Singh were captured, so that, as the arrest was imminent, he could now well afford to discount some of his promised gains, and to undertake to pay the woman one thousand. One can only say, from one's experience of the police in India, that in all likelihood Abdul Aziz had not the slightest intention of ever doing anything of the kind. He must have trusted to his intelligence, or to his ordinary good fortune, to find a way out of paying anyone, particularly a woman, such an extortionate sum. But he promised to pay it, and Teja Singh left him. He returned an hour later with the woman. She kept her face covered, but Abdul Aziz was able afterwards to recognise both her general appearance and her voice. Her name was Khairan, and the reader will shortly hear a good deal about her. She detailed the arrangements she was ready to make for her journey, not merely with Bir Singh, but even with the stolen jewels—a contingency so extravagant and extraordinary that it ought again to have put

Abdul Aziz on his guard—and she told him that she would let him know at what railway station he would find them. There must have been something about Abdul Aziz which inspired these people with confidence approaching recklessness. Teja Singh then whispered to Abdul Aziz that the woman was very fond of money. In this respect, she seems to have been like most of her sex. He added that she would probably like something on account. This also was both probable and natural. Abdul Aziz had in his pocket two notes of fifty rupees each, being government money with which he had been provided by Hazura Singh for unforeseen contingencies, or what the French call *imprévues*. Khairan was certainly an *imprévue*, and he gave her one of the notes. Teja Singh and Khairan then left on their return journey to Y, after making an appointment with Abdul Aziz at a spot in the jungle near the railway station at Y, at night, in twenty-four hours' time. Before going to keep this appointment Abdul Aziz had an interview with Hazura Singh, to whom he related what had happened. Hazura Singh gave him instructions to go to Y and keep the appointment, but to return by the early morning train to D. This interview took place at the railway station at D, and Abdul Aziz went on to Y by the same train as that which had brought the Superintendent, so they could not have had much time to discuss details. This may explain why Hazura told him to return so promptly, and also why Hazura was not more suspicious than he was. He may have been fortified by the evident confidence of Abdul Aziz in his mission.

Abdul Aziz, of course, took Ali Sher Khan with him. On their arrival at Y they had another fine goose-chase in their unavailing efforts to find Teja Singh at the appointed place. Abdul Aziz took the most elaborate precautions. Ali Sher Khan got out on the platform,

with instructions to look for Teja Singh in the station and in the passenger-shed. Meanwhile Abdul Aziz got out on to the line, on the other side. This is such a frequent method of alighting for the casual Indian traveller that he would attract no attention, and, by wandering about on the line, would probably be taken for an ordinary Indian foot-passenger who had lost his way and was looking for the passenger-shed, where it is the commonest thing in the world for hordes of third-class passengers to remain for twenty-four hours, frequently sleeping on the cooler and quieter platform until it suits them to get into a train. He walked to the appointed place in the jungle, but found nobody there. Ali Sher Khan had taken the luggage with him. This consisted of the usual carefully corded parcel, and contained a small amount of bedding, a *lota* or water-jug, without which few Indians travel, a metal tumbler, a *huqqa*, and a small change of clothing, all of which Abdul Aziz had brought with him, when he did not know whether he might have to stay a night or two at Y. Ali Sher Khan failed to find Teja Singh, so he went off in search of Abdul Aziz, carrying the bundle of luggage with him. They met at the gateman's cabin, close to the level-crossing. Lying outside was the usual *charpai*, or string cot, where the gateman sleeps in the open, trusting to luck or to habit to wake up when he is needed for the performance of his duty. On this *charpai* Ali Sher Khan deposited the luggage, and, leaving Abdul Aziz there, went off into the city to Teja Singh's house. There he found Balwant Kuer, who was alone, and who told him that Teja Singh had gone to the station to meet Abdul Aziz. So Ali Sher Khan returned and rejoined Abdul Aziz. The train had arrived at about six o'clock in the evening, but by this time it had become dark. Thinking that he had possibly missed Teja Singh, Abdul Aziz sent Ali Sher Khan back to the house to see if Teja

Singh had returned. Ali Sher Khan was then told by Balwant Kuer that Teja Singh had come in, in the meanwhile, and had gone out again, and that he had better tell Abdul Aziz to come straight to the house. So Ali Sher Khan returned to the level-crossing a second time, and gave Abdul Aziz Balwant Kuer's message. Thereupon they both went off to Teja Singh's house, carrying the luggage with them.

Abdul Aziz was getting anxious as to how he would be able to carry out the Superintendent's order to return to D by the early morning train. The train left at 1 A.M., and it was now getting on for eight o'clock. It was the rule in Y for the city gates to be closed at ten o'clock, and unless travellers got away before that hour they had to spend the night there. But Ali Sher Khan assured him that, if they had any difficulty in getting through the gates after ten o'clock, he knew places in the city walls where they could get through. In the courtyard of Teja Singh's house they found Balwant Kuer cooking food, and two men, who appeared to be Sikh cultivators, sitting there. Teja Singh was sitting on the roof with his daughter and another man. Balwant called out to Teja Singh that the Pundit had come. Abdul Aziz and Ali Sher Khan went up to the roof, the latter still carrying the luggage. Teja Singh proposed that they should eat before talking, and Abdul Aziz, nothing loth, agreed. He was given potatoes cooked in whey, wheaten bread, some cream and lime, and some mango pickles. The meal sounds a light one but somewhat indigestible, with its mixture of cream and pickled mango, but the latter are considered wholesome in hot weather, and it was very warm. Partly on this account, and partly because he did not wish to attract attention to any kind of police uniform, Abdul Aziz had changed his trousers for a *dhoti*. He appears to have been comfortable and unsuspecting, and quite willing to await the convenience of

Teja Singh. He had no objection, although a Mohammedan Rajput, to taking food cooked by a Sikh woman, while travelling on duty. After the meal was over, Abdul Aziz reproached Teja Singh for not having kept his appointment. Teja Singh replied that he had been to the station, but had failed to find him. He then went on: 'The woman's husband is ill, and, though Bir Singh is ready to start, she is making excuses in order to detain him, so that she can give you information before they set out. You will understand better when you have talked with her. I had better go and see her.' Teja Singh then left. He returned in half an hour, saying that the woman was alone in her house and wanted Abdul Aziz to go and talk to her. Abdul Aziz did not like this suggestion, and pointed out that he might be seen, and that the plot would be ruined. However, Teja Singh assured him that there was no risk, as the woman's husband was in hospital and she was alone, so that no one would be likely to see. Abdul Aziz was still anxious about getting out before ten o'clock and catching his train back. So he decided to get on with the job, and, leaving Ali Sher Khan at the house with the luggage, he went off with Teja Singh, who conducted him to Khairan's house.

Teja Singh went in first, while Abdul Aziz remained outside. In a few minutes Teja Singh called him in. There was no one there. The room was dark, but a lantern was hanging on the wall, suspended over a *charpai*. Abdul Aziz asked, 'Where are they?' Teja Singh replied, 'I left her here. She must be somewhere near. Sit down while I go and look for her.' So Abdul Aziz sat down on the *charpai*, which was in the room near the entrance, and waited. He had not sat there for many minutes before he heard a sound as of men's footsteps drawing near from the street outside. He turned and saw a body of men making towards the door of the house. He could not fail to notice, from the sound made

by their footsteps, that some of them were wearing shoes, and it flashed across his mind that there must be police officers amongst them, and that he had been led into a trap. He had hardly time to rise from his seat and to face his visitors before ten or twelve men in police uniform rushed upon him and, seizing hold of him, flung him, with incredible violence, back upon the *charpai* and proceeded to bind his hands and legs with stout cords. Here we must leave him for a while, a prisoner in the hands of the Y police force, and turn to the story told against him, which led to this sudden arrest and to his subsequent imprisonment and trial upon a charge of rape. Of course neither he nor Ali Sher Khan were able to catch their train; and when the Superintendent met a train arriving later in the day at D, in the hope that they might come by it, he learned from the railway police that one of his *daroghas* had been arrested in Y on a charge of rape.

The principal complainant was a young woman of about twenty years of age, named Rahmat-un-Nissa. She was the wife of Inayat Mohamed, a Sheikh, who lived in Delhi. She did not get on well with her husband, who did not live regularly with her, but visited her from time to time at the house where Khairan lived at Y, and cohabited with her. She complained of his cruelty, particularly in relation to the sexual act, a complaint not infrequently made by girl-wives in India, as those who have studied *Mother India* will remember. Khairan was the sister of Inayat Mohamed. She was married to Mohamed Ibrahim, and Mohamed Ibrahim, Khairan, and Rahmat-un-Nissa all lived together in a house a few paces down a lane which led into a main street. Without the house being recognised as one of ill-fame, the two women had the reputation of being of loose character. The allegation that Abdul Aziz had asked his way to the house, and had made no secret of his inten-

tion to visit a woman there, whether true or untrue, caused no surprise amongst the people living in the neighbourhood. Both Inayat Mohamed and Mohamed Ibrahim had been connected with some kind of police force at one time or another, but their conduct and character do not greatly affect this story. It was difficult to say what was the true history of Rahmat-un-Nissa's life up to this date. She made so many irreconcilable statements. And when she conceded that a statement formerly made by her was untrue, she adopted the usual feminine resort of attributing her previous falsehood to the compulsion of her husband. She declared that she no longer desired to live with him, which may be explained by her being quite comfortable and happy with her sister-in-law. She was only a recent convert to Mohammedanism, her father being a Hindu and a member of the well-known literary caste of *Kayasths*. She had been married originally to a Hindu police constable. In fact, during most of her life she showed a distinct leaning towards policemen. She left this one, she said once, on a pilgrimage. It was an odd sort of pilgrimage. She was persuaded or decoyed away by another woman, who was no doubt one of the many who engage in the nefarious trade of finding wives or women for men who cannot get women of their own caste, with dowers, to marry. She went to Muttra, which is a place of pilgrimage, but went on to Delhi, which is decidedly not. The woman told her to come on to Delhi, because there she would find for her a good man to live with. Of course Rahmat-un-Nissa said she did not want this at all, but she went all the same. She went on to say, on one occasion, that she was wandering about on the platform when she met her future husband, Inayat Mohamed, and he asked her to marry him, and she said she would, though she was still a Hindu married woman on a pilgrimage, and he was a Mohammedan. It was one of the

oddest courtships that ever was. Inayat Mohamed gave another account of it, but not always the same one. So the sympathetic reader will appreciate the faithful historian's difficulties in unravelling this lady's antecedents. There are also difficulties about her story of the rape, as the reader will discover, but these could not have been entirely her own fault, whether her story was, in the main, a true one or not. It is, perhaps, better to give it in her own words. She was examined by a magistrate at her own house.

One night, at seven or eight o'clock, I was sleeping on a *charpai* in the outer room. Khairan woke me up, saying 'Get up; you are asleep with your face uncovered. There are men here.' I woke up and saw two men standing in the courtyard. I sat on a small stool in the inner room. The two men came in and sat in the outer room. Abdul Aziz sat on a *charpai*. He asked Khairan where Mohamed Ibrahim had gone. She said he had gone out to some *tamasha*, and would not be back for two or three hours. Khairan then filled a *huqqa* for Abdul Aziz, and he began to smoke and asked for some *betel*, and gave Khairan some *pice* to go out and get some. Khairan said she would not take his money, but would go and purchase some with her own. As soon as she went out Abdul Aziz began to make jokes to me. I asked him what right he had to do this. As he did not stop, I went into an inner room where he could not see me. The other man went outside and closed the door. Abdul Aziz then came to me, and, putting his hand on my mouth, forced my head back. I tried to call out, saying that he was dishonouring me. He began to pull the upper part of my clothes down and expose my breasts, and bit me once on each cheek. I shouted for help and struggled. While we were struggling together I bit him twice on the chest. My clothes got torn. He opened the string of my pyjamas, and pulled them down as far as my ankles. He then undid his *dhoti*. He took hold of my legs, and put one of my feet on each shoulder. While he held me in this way, he got on his knees, and proceeded to have connection with me. He had put out the lamp in the outer room, but my cries must have been heard, as two men came in to my assistance. It was only when they arrived that he got off me. He tried to run away, but the two men caught hold of

him, and held him. I was weeping. I pulled up my pyjamas, and as Abdul Aziz stood there he used his own *dhoti* and my pyjamas. . . . After a long while Khairan came back, and I told her what had happened. She went off to make a report. Meanwhile, some more men from the neighbourhood came in, and later on the police arrived, and the *Kotwal* had Abdul Aziz handcuffed. He took away some things from the *charpai*, where I had been lying, and he found some broken glass bangles. Some time after the police had gone away with Abdul Aziz a *dai* (native nurse or midwife) came and examined me and my clothes. She examined me again the next day. I had suffered pain and inflammation.

Khairan, who gave her age as 35, made a statement to the Magistrate to the following effect:

I knew Abdul Aziz, as he was said to be related in some way to my husband's family. He had been to our house, and I had cooked for him, but had not spoken to him. I used to preserve *purdah* [the veil] before him. Rahmat-un-Nissa also always preserved *purdah*. On this occasion my husband was out, although he had been ill. Abdul Aziz came to our house with another young man about nine o'clock. The other man appeared to be a servant, and carried a bundle and some clothing. We were both lying asleep on *charpais* in the outer room. The doors into the courtyard were closed, but were not chained. The door was pushed open, and I woke up. Abdul Aziz called 'Ibrahim'. I asked, 'Who is there?' He said, 'It is I, Abdul Aziz'. I said to him, 'Stop a minute; the girl is sleeping with her face uncovered'. I woke Rahmat-un-Nissa, and she sat on a stool between the two rooms. The second man sat on the ground. Abdul Aziz sat on a *charpai*, and I prepared a *huqqa* for him. He said he would wait till Ibrahim came home. He asked me to get some *betel*, and offered me some *pice*, but I said I would get it with my own money, and went out to buy it. I was away for about half an hour, as all the shops were shut. When I came back, Abdul Aziz was being held in the outer room by two men. Rahmat-un-Nissa was standing in the inner room. Her breasts were exposed, and her pyjamas were stained, and she was crying. She had marks of bites on her cheeks, which were bleeding. Her glass bangles had been broken. She said to me, 'This man has deprived me of my honour, and raped me'. I said to Abdul Aziz, 'Why have you

done such an evil thing?' I told the two men to hold him while I fetched the *Kotwal*. I went to the *Kotwal's* house, expecting to find him there, but by chance I met him, on my way, in the grass market, and told him what had happened. He sent a constable with me to the *Kotwali*, where I made a report. I did not send the servant of Abdul Aziz to buy the *betel*, because he did not know the way.

Witnesses from the *mohala*, or immediate neighbourhood, were called to corroborate the stories told by these two women. Chief, of course, among these witnesses were the two men who came in first on hearing the cries of Rahmat-un-Nissa. Strictly speaking, from the point of view of the law, no such corroboration was really essential. If corroboration were required, it was to be found in amplitude in the flesh marks, fresh and blood-stained, on the bodies of the woman and the man, and in the weeping condition of the woman, and her stained clothing and broken bangles. Misunderstanding sometimes arises about the meaning of corroboration, and the difference between mere technical corroboration, on the one hand, and the weight to be attached, on the other, to evidence which is put forward in support of such a story. If the appearances just mentioned, found on the spot, were really there, they were in themselves ample corroboration. The culprit, in fact, was caught practically red-handed. It is unnecessary to examine in detail the evidence of these corroborating witnesses. It contained many inconsistencies. But it contained also certain *a priori* improbabilities, which would have made it almost certain that an English jury, trying the case, would have refused to act upon their evidence. One difficult feature about it was the reason they gave for having entered the house at all. They said they were attracted by the sounds of a woman's voice, apparently crying, or in some distress. But it can hardly be said to be the usual practice, or a natural proceeding,

for anyone passing along a street, and hearing a voice crying inside a house, to enter, as a matter of course, in the expectation of discovering someone within in the act of committing a crime. But an even more glaring difficulty was the story they told about a second man, who must have been Ali Sher Khan, who, according to the woman, was waiting outside, but who, according to the neighbours, rushed out on their approach. Why they made no effort to catch hold of him, or to follow him, but assumed, one and all, that the disturbance was due to someone else inside, so that they all went in and ignored the man escaping, no one attempted to explain.

There were also difficulties in accepting the explanation of the arrival of so large a police force, after Khairan had left the house a second time, when she learned what had happened, and had found the *Kotwal* in the grass market. She said, it will be remembered, that the *Kotwal* had sent her off with a constable to the *Kotwali* to make a report. It did not appear, under these circumstances, how the *Kotwal* knew where to go to find the culprit, and why he took so many policemen with him. Someone may have known Khairan's house, but she did not say who she was, and she said she had her face covered. The *Kotwal's* explanation about the number of police whom he was so conveniently able to take with him to the house was, to say the least of it, quite remarkable. There were some public festivities going on, and an unusual force of police was out in the streets that night. But, according to the *Kotwal*, it so happened that, when Khairan found him at the grass market, he had gathered a number of constables there in order to detail them for their night duties, and he took them with him to the house, so that he might complete the business of drafting them off to their duties, when he had finished enquiring into the affair at Khairan's house.

At this stage it is natural to ask oneself what probability there is, on general grounds, of the story of a rape having been committed by Abdul Aziz, under the special circumstances in which he was placed, having a grain of truth in it at all. He was in Y on a very special and responsible mission, for the arrest of Bir Singh. Having regard to the relations between the police force to which he himself belonged, and that of Y, he was, so to speak, in an enemy's country. He was there more or less in disguise. His mission was a secret one, for which he had employed, as he thought, a friend as a sort of spy. He was engaged in a plot which required both secrecy and expedition. He was in close contact with his superior officer, and under orders to get away by the night train. He had his personal luggage and another member of his own force with him. Under these circumstances, when for all he knew he was being watched, is it conceivable that he would have been so mad as to court disaster either by going into a house of ill-fame, if it was one, or of attempting an outrageous rape upon a perfectly respectable woman? Such conduct becomes still more difficult to believe when it is remembered that it was alleged to have been committed in the very house to which he had been directed for the completion, as he hoped and trusted, of his mission. These considerations seem insuperable, even bearing in mind the old saying of a wise man, that there is nothing which is not possible to everyone.

We will now turn to the story told by Abdul Aziz himself, about what happened to him from the moment when we left him, a prisoner, in the hands of the police who had rushed into Khairan's house while he was sitting alone waiting for the return of Teja Singh. He recognised the principal amongst them as the Court Inspector. They carried him off the *charpai* where he had been sitting, and, taking him into the inner room,

threw him upon the *charpai* there. Someone took hold of his beard and shook his head from side to side, a pleasing method of breaking down his resistance. The Inspector, according to Abdul Aziz, slapped his face with his open hand, and indulged in the favourite village abuse of indecent references to his mother and his sister. They took off his coat, tore his clothes, and bit him twice on his naked chest. They pulled down his *dhoti*, and two men scratched his thighs, till the blood came, and then left his lower parts naked. Teja Singh was in the attack, and he searched Abdul Aziz' pockets, and found the other fifty-rupee note, which he had not given to the woman at the interview. This was taken from him, together with his diary and note-book, and his watch. They then carried him into the outer room, and put him on the *charpai* there. The *Kotwal* then arrived, with some more constables and handcuffs. He was carrying a revolver, and one of the constables had a breech-loading gun and some cartridges. Abdul Aziz was then handcuffed. The *Kotwal* gave an order: 'Bring them!' Whereupon the two women, Khairan and Rahmat-un Nissa, were brought in. The lantern was still burning on the wall, and Abdul Aziz was able to recognise the women's faces. Rahmat-un-Nissa stood by the foot of the *charpai*. On the order of the *Kotwal* the upper part of her dress was disarranged by some constables, and her breasts were exposed. Abdul Aziz complained that he was himself exposed, so they covered up his legs with his *dhoti*. They told the woman to have a good look at him, and then an order was given for the neighbours to be brought in. The women were sent out into the courtyard, and Abdul Aziz was taken back to the inner room. After a few minutes some neighbours came in with the police, and to them the charge was made by the police that Abdul Aziz had been found raping Rahmat-un-Nissa. They were con-

ducted into the inner room, and there Abdul Aziz and Rahmat-un-Nissa were shown to them. Then it was that Abdul Aziz noticed that the woman had a blood-stained mark on each cheek, which looked as though they might be bites, and he asserted positively that these had not been there when he first saw her, and that they had been made while he was handcuffed and in the hands of the constables. As a piece of realism this conduct on the part of the constables in biting or scratching the cheeks of the unfortunate woman, who must have been almost as disgusted by the treatment inflicted upon her as Abdul Aziz himself, has the distinct merit of originality and realism. It showed, however, great poverty of imagination. No doubt the idea was to aggravate the offence as much as possible, though the offence was one so aggravated in itself, that the addition of a small detail of this kind could have little effect upon the mind of any ordinary person who had to adjudicate upon the case. What it did, however, was to throw great doubt upon the truth of the story of the rape. If one considers the story as told by the woman herself, one finds great difficulty in believing that any man, however drunk or mad with lust he might be, would attempt such a useless and difficult form of cruelty. It would certainly very much impede his efforts, and he would derive no benefit or satisfaction from such an unpleasing form of attention. But more than that it was in the highest degree absurd to suppose that a responsible police officer, pressed for time, and desiring to commit a rape of any kind in such circumstances, would go out of his way to do anything so insane.

In the face of such astounding allegations as were made by Abdul Aziz about his treatment that evening, it would be superfluous to dwell upon other dramatic details with which his account of the scene was rounded off. He was finally taken off through the crowd which

had, by this time, gathered on the spot, to the house of the Chief of Police. There the women were waiting for him, with their faces covered. Khairan it was who made the charge. She said that she was the wife of Mohamed Ibrahim, a mounted policeman, and that Abdul Aziz was a perfect stranger to her, and that she had never seen him before. The Chief was alleged by Abdul Aziz to have then said, 'Khairan, can't you keep the matter quiet, and take twenty or thirty rupees and say no more about it?' Her answer was said to have been, 'Sardar Sahib, if he had only had connection with me, it would not have mattered, but I cannot permit the honour of my relative to be outraged'. After this little comedy had been completed, the women were allowed to go, and the Chief said that the matter must take the usual course. Abdul Aziz then complained to the Chief that he had been led into a trap by Teja Singh—a circumstance which he might well have suspected a long time before, and so saved himself much suffering and humiliation—and that he had come from the house of Teja Singh where his orderly, Ali Sher Khan, and his bedding still were. The Chief then gave orders for the orderly and the bedding to be fetched and said that he would make enquiries of Teja Singh in the morning. So Abdul Aziz was led off to the lock-up and was eventually placed in the jail where his legs were put into heavy irons, which were chained to the wall. He was subsequently examined, together with his *dhoti*, by a doctor, and some three or four days later he was taken to the house of Khairan, where a magistrate recorded the statements of the two women in his presence.

We may now turn to the events which happened at the house of Teja Singh, where we left Ali Sher Khan in charge of the bedding, and to the account which he gave of his arrest. According to him, when Abdul Aziz left with Teja Singh to go to the woman's house, he

went to sleep. He was on the roof, and, as far as he could say, it was about eleven o'clock when he was awakened by a man shaking his legs and telling him to get up, because Abdul Aziz and Teja Singh wanted him downstairs. He went down the steps, taking the luggage with him, and as soon as he got into the street he was confronted by a large body of men, who immediately seized hold of him. He was knocked about with sticks and fists, and, on asking why he was being arrested in this way, he was informed that he would find out later on. The luggage fell from his hands and he did not see it again. He was taken to the *Kotwali* and there handcuffed and locked up for the night. He again asked what the charge against him was, and was told, generally, that there were too many *badmashes* (scamps) coming into the state of Y to cause trouble. The next day he was taken before an Inspector and ordered to make a statement to the effect that he had gone, the evening before, to the house of Mohamed Ibrahim, with Abdul Aziz, and that there, after sending out the wife, Khairan, to buy *betel*, Abdul Aziz had made him sit outside, and that while he was doing so Abdul Aziz had raped a woman in the house. Ali Sher Khan refused to make this statement. Eventually he did make a rambling sort of statement to the effect required, after he had been submitted to a specimen of what are known as 'Third Degree' methods. Ali Sher Khan was only a subordinate and his fate on this occasion is only a subsidiary part of the lurid story. But the methods employed to extract admissions out of him, as subsequently described by him, are worth repeating. They strike one as original, like many of the methods employed in Y on this eventful occasion, but not as methods which ought to be treated as precedents for similar occasions. They first placed him on his face on the ground and beat him, on his bare buttocks, with shoes. There was nothing original about

this. It was, of course, painful and humiliating. In fact, as all who know India are aware, there are few more degrading and resented insults which can be imposed upon an Indian of good caste than to be shoe-beaten. But the real effort of undue pressure was yet to come. Ali Sher Khan said that he was made to sit down cross-legged while four or five men stood over him, and, placing their heels upon the inner surface of his thighs, they forced his thighs up and down with their heels. This process does not, at first sight, occur to one as a particularly effectual method of inflicting suffering, though it must be very uncomfortable. But it was no doubt known, by experience, to be very painful, and so Ali Sher Khan found it. He cried out with pain, the only effect of which was to cause the constables to redouble their efforts, until the unfortunate man gave way under the strain. He then made a sort of confession, which was taken down by a member of the police force, whom he believed at the time to be a magistrate. Later on he was taken before a magistrate to make a formal confession. The method adopted for taking this was, to say the least of it, according to Ali Sher Khan, original, and will interest those acquainted with the provisions of the code, which prescribe the way in which a formal confession before a magistrate is to be taken. He was not asked whether any pressure, or inducement, had been used upon him in order to obtain his original admission. Nor was he asked to make any fresh confession or statement to the Magistrate. He was merely asked by the Magistrate whether the statement, which was then on the table before him, was his, which it certainly was, and the Magistrate then proceeded to copy it out. He was then told to put his thumb impression upon the copy, which he knew better than to refuse to do. This seems to be all the evidence which the police could possibly have made available for the case against him, unless one

makes an exception in favour of the vague statement made by the two neighbours, who said they arrived first upon the scene and saw him running away before they went inside to find out what was going on. But it was considered to be sufficient to put Ali Sher Khan upon his trial, and he was committed to the Sessions.

Although it has been already pointed out that Ali Sher Khan's part was an entirely subordinate one, it is worth while to stay for a moment to consider what case there was against him. The charge could only be that of aiding and abetting the rape. But if a subordinate officer has to accompany his superior to a house, and when he gets there is told to sit outside and wait while his superior goes inside, he is, so far, doing no more than his duty, and is certainly countenancing no crime, nor even an act of trespass. He may have reason to suspect that his superior is up to no good. But if the door is closed he cannot possibly know what particular form of iniquity is being either contemplated or perpetrated. Even if it be the case that a man who, knowing that his companion is intending to commit a rape, if he can, remains outside to give warning, 'keeping *cave*', as one used to say at school, may be held guilty of aiding and abetting, this conduct could not be attributed to Ali Sher Khan, who was not alleged to have given any warning of the neighbours' approach, but to have run away when he saw them coming.

It only now remains to give some account of the unsuccessful, indeed futile, efforts of Abdul Aziz' superior officers, and of his son, to hold communication with him, and to provide for his defence. Many details must be omitted, because their inclusion would only make the story unduly long, and even wearisome, without adding anything to its main structure. The general outline here given is, in the highest degree, entertaining, in spite of its serious aspect in relation to a criminal charge, alleged

to be false, and to have been deliberately plotted against a responsible police officer. And it is as fine an example as could probably be found of diplomatic delay, and masterly inactivity, when practised in pursuance of Oriental obstruction. On the other hand the rapidity of the procedure by which Abdul Aziz, and Ali Sher Khan, were put up before a magistrate, committed to trial, and tried and convicted at Sessions, would satisfy the highest ideals of the most ardent law reformer. The one criticism which it is impossible to bring against these proceedings is the old complaint of 'The Law's Delay'. The alleged offence was committed on the 21st of September. The hearing before the Magistrate opened on the 26th. The accused were committed to trial on the 28th. The trial at Sessions began on the 4th of October and was finished on the 6th, and the judgment recording the convictions and punishments of both accused was given on the 12th of October—just twenty-one days after the alleged offence. No civilised country can match this record. But the treatment of the prisoner's friends was quite otherwise.

The first step taken by the Superintendent of X, Hazura Singh, when he learned of the arrest of Abdul Aziz, was, after a flying visit himself to Y, to depute Hardial Singh, one of his Sub-Inspectors, and two other members of the force, to go there, and to make enquiries with a view to ascertaining what foundation there was for the charge. He could not bring himself to believe that Abdul Aziz could have been guilty of such conduct while engaged upon an official mission of importance, and he realised that it was of little use going himself until he was armed with some state document authorising him to take official action. Like Gilbert's billiard sharp, in the Mikado's song, 'the doom' of Hardial Singh was 'extremely hard'. He also was arrested. He was charged, and convicted and sen-

tenced to six months' imprisonment for having been 'drunk and disorderly'. It is not known what precise manifestation he gave of such strange conduct on the part of a detective inspector, charged with urgent duty in unsympathetic surroundings. The question whether a man is, or is not, drunk in a public place is a matter of opinion, as we know from many recent instances, and acute discussions on the subject. It is also a matter of opinion upon which the views of individual members of police forces, and also of medical men, are apt to differ very widely. It is difficult to know, sometimes, what particular stage in the process of intoxication a constable, who gives evidence about another's man state and condition, really means by the terms he uses. 'He weren't exactly what you might call drunk, sir, but 'e'd 'ad some!' is one not uncommon form of ambiguity. One is also familiar with such degrees of hilarity, or alcoholic liveliness as, 'in liquor', 'not sober', 'rather the worse', and 'market drunk'. There could have been nothing convivial about Hardial Singh on this occasion. Judging by what the Chief of Police was alleged by Hazura Singh to have said at an interview which took place between them, one of the grievances against him was that he was a member of the C.I.D., and that he had been taking notes, in court, of the proceedings before the Magistrate. This may have appeared to the Magistrate to have been 'disorderly conduct', but it can hardly have been reasonably regarded as a sign of intoxication. He displayed other symptoms of 'an atmosphere of preparedness' for disorder—to use a phrase popular with politicians in India—by taking a rather stronger line than anyone else in his requests to be allowed to interview Abdul Aziz and Ali Sher Khan, and to attend the court proceedings. And when he was threatened with proceedings against himself for having been guilty of such con-

tumely, and naturally asked what his offence was, and under what provision of the law he could be so charged, he was informed that there was an Ordinance which rendered any one liable to imprisonment for a maximum period of two years, who was found drunk in any public place to which women had access. This enigmatical dictum must have puzzled the Sub-Inspector, and may have been intended to alarm him and to keep him quiet. It is the unknown we have to fear! And if a court may be said to be a public place to which women have access, and if it is an indication of insobriety to be seen taking notes of proceedings in court, then it must be acknowledged that there was a *prima facie* case against Hardial Singh. It was under that Ordinance that he was arrested. But, on the other hand, it became clear to the police of the state of X, and to those who were anxious to get into touch with Abdul Aziz, and to watch the case against him, that the Magistrate's court was not a 'public place', in the true sense of the word, for, from this time forward they were refused admission while the case was going on against Abdul Aziz and Ali Sher Khan.

Hazura Singh arrived at Y on the 26th of September, having procured from the Foreign Minister of X a letter addressed to one of the Ministers in Y. He was met there by some of his officers who detailed to him their experiences up to date. They were accompanied by some of the relatives of Abdul Aziz, amongst whom was his son. The proceedings on the charge against the two accused had begun that day. They had been to the court, but had been refused admission. They were told that it was the rule of the state that no one could attend the court without having first obtained permission from the High Court. So they went to the High Court to obtain permission, but although it was only ten o'clock in the morning they found that the Judges had left.

Aziz was taken out. The Magistrate complained to Hazura Singh that his men were annoying him unlawfully, and that one of them had done something with a piece of stamped paper which rendered him liable to punishment, under a certain Ordinance, by imprisonment for two years.

Hazura Singh resorted to a rather smart move, and stated that he would direct the man to surrender and to take his trial. This seems to have acted like the pouring of oil on troubled waters, and the Magistrate said that he would not proceed against the man, as no formal complaint had been made, while the Court Inspector placed himself at the disposal of Hazura Singh. So Hazura Singh asked him if he could arrange for an interview with Abdul Aziz. The Court Inspector said that he had no objection, and that the court could give permission. On the matter being mentioned to the Magistrate he gave his consent. This seemed to be all that Hazura Singh had been waiting for, or required, and he proceeded to the longed-for interview. But a fresh difficulty arose in the Magistrate's mind. Abdul Aziz was then outside and on his way to jail. So the Magistrate explained that the application had to be in writing. It is true that he might have sent for Abdul Aziz and had him brought back into court, but that does not seem to have occurred to him. He wrote something on an application, which was eventually handed in, and Hazura Singh was compelled to point out that the order was meaningless. He then orally requested that he might be allowed to have an interview, then and there, in the presence of the Magistrate himself, without the necessity of following him to jail and going through the formal procedure. The Magistrate said that he could not allow that. Hazura Singh suggested that Abdul Aziz might be brought back into court for the purpose of selecting a lawyer. The Magistrate then had four *vakils*,

or lawyers, produced, but no Abdul Aziz. The Superintendent chose a *vakil*, and obtained an order for an interview at the jail, where he proceeded in company with the *vakil*.

The door of the jail was not opened to them, but the Superintendent was allowed to put his copy of the order through the trellis window. Having done this he had to wait some ten or fifteen minutes. The *vakil* chosen happened, curiously enough, to have been formerly in the Police in the state of X. During the wait outside he let himself go. He said that he did not want to appear for the defence. He could do no good because, although it was a fabricated case, everyone was in it, and that if he defended the case properly he would certainly be ruined. This seemed to cause Hazura Singh no surprise, and he released him from his engagement. On the jailor's return the door was again not opened. The jailor told Hazura Singh that he must apply to the High Court, where the petition would be forwarded, with a note by the jailor that he did not think the interview ought to be allowed to take place. As the High Court was not sitting, Hazura Singh appreciated the value of this fresh proposal, and did nothing on it.

As a last resort he went back to the Minister, to whom he had the letter of introduction, and whom he had already seen, and he requested him that the papers of Abdul Aziz should be handed over. The Minister asked to be supplied with a list of them. Hazura Singh pointed out that it was impossible for him to do this unless he had an interview with Abdul Aziz, who alone knew what the papers consisted of. The Minister then expressed his regret that he could do nothing more, and the Superintendent returned home once again, having effected nothing by his two visits.

It so happened that the only friendship and assistance extended to Abdul Aziz during the short time he had

So they went to the residences of the Judges, and were there told that they must apply at the High Court, during office hours, next day. They then returned to the Magistrate's court, and renewed their application there. The result of this visit was that they were not only refused admission, but were told by the police that if they remained there they would be arrested. They were not allowed to hire a *tonga*, and had to walk to the station.

Hazura Singh then went to pay his call on the Minister. He asked that Abdul Aziz should be released on bail, and that his documents should be handed over to the Superintendent. The Minister said that he would communicate with the Chief of Police. Hazura Singh requested that the Chief should be sent for, but the Minister said that he would not come to his house if he sent for him. Hazura Singh then suggested that the Minister should accompany him in his car to the house of the Chief, but to this the Minister, not unnaturally, objected that it was beneath his dignity to visit the Chief of Police. Hazura Singh then asked what he should do in order to obtain an interview with Abdul Aziz, and to assist him in his defence. The Minister replied that he did not know, as it was outside his department. Hazura Singh then drove to the *Kotwali*, and asked to be allowed to enter his arrival in the general diary. He was told to put his application in writing. He thereupon asked if he would be given a receipt for it. He was told that the *Kotwal* could not give him a receipt before consulting the Chief of Police. So Hazura Singh asked for an interview with the Chief. A man was sent to the house, and brought back the reply that the Chief could see him at five o'clock that afternoon. Hazura Singh then left the *Kotwali* and called at the house of the Magistrate, who was also the Superintendent of the jail. He explained that all that he wanted

was an interview with Abdul Aziz, in order to arrange for his defence. The Magistrate said that this could only be done with the permission of the Chief of Police. So at five o'clock Hazura Singh kept the appointment at the office of the Chief. The Chief said that he understood that the arrest of Bir Singh was sought, but that the police declined to give him up on account of some cross claim, or grievance, which they had against the police of X. With regard to the case of Abdul Aziz he referred to Khairan as being a woman of the worst character, and repeated what has already been related on the authority of Abdul Aziz, that he, the Chief, had offered her twenty rupees to withdraw the case, and that she had said that she would not have complained if the act had been done to her, but that she could not tolerate a relative being outraged. The Chief added that, as the case was now public property, it would have to proceed, and that Hazura Singh would not be allowed to interview Abdul Aziz, or to attend the proceedings in court, and that no outside *vakil*, or lawyer, would be allowed to be heard. This being all the response he could get to his simple demand, after struggling for the best part of a day, the Superintendent returned to his home in his car and came back next day.

On his arrival he found his subordinate officers, about one hundred yards from the court. They reported that the adjourned hearing had begun that morning before sunrise, and that they had tried to attend it, but that, on entering the court, they had been turned out. They had then been to the High Court, but found no Judges there. While the Superintendent was outside the court a messenger from the court came to him and told him that unless he had the permission of the Chief of Police, he must not loiter outside. Just then he received another message that the Magistrate wished to see him. As he went into the court Abdul

to wait before his case was disposed of at Sessions, came from the jailor, whom he had known, in days gone by, in the police force. He advised him to confess, and told him that if he did so he would have a better chance of escaping with his life. Whether he really believed this, and wished to help Abdul Aziz, one cannot say. But Abdul Aziz always said that he felt he was able to turn to him as a friend. When Abdul Aziz was ordered by the court to put in a written statement, which he had to prepare in jail, the jailor told him to show him whatever he wrote. This the prisoner did, and at the instance of the jailor he omitted and altered several things, which the jailor assured him would only do him harm. It is possible that this was honestly done in Abdul Aziz' interest. Of course, it produced the result that his written statement did not contain all that he subsequently stated as having actually happened to him, and it omitted many important facts. But so far as the trial was concerned it is unlikely that the contents of the written statement made much difference. Abdul Aziz —and in this respect the case of Ali Sher Khan was much the same—was unrepresented, friendless, and practically defenceless. And realising that nothing was to be gained by anything which he either said or did, he said and did as little as possible, for the moment resigned and patiently hoping that some day a change of fortune would bring redress. He was sentenced to five years' imprisonment and a fine of five hundred rupees, a severe, but not excessive, punishment for a bad case of rape, bearing in mind the opinion held, at any rate amongst many people in India, that Indians require severe sentences and misunderstand moderate ones. Ali Sher Khan received only six months, which looks as though the judge had some doubt about his guilt. Indian judges seem to be tempted by the compromise of a light sentence, when they are not willing to acquit,

but feel a scintilla of doubt about the justice of a conviction. But it is the prisoner who pays for this little weakness of human nature. There was an appeal to the High Court. But an Appellate Court can do little in a case of this kind, when it has not seen the witnesses and the accused has not called evidence. It is, as I have said, a defect about the criminal law in India, that no accused person can give evidence as a witness in his own behalf, but it is improbable that this right would have been of any assistance to the heroic but unfortunate Abdul Aziz. He is entitled to be remembered as a martyr. It is to be hoped that he was duly compensated by state X for his sufferings. But if an attempt were ever made to canonise him, the 'Devil's Advocate' would have some strong points to make in support of the view that he was partly the architect of his own ruin.

IX

THE HORSE ERRANT

A MAN once remarked to a friend of mine that he had lived and worked with horses for the best part of his life, and he had not yet discovered how a horse 'does his thinking'. The remark recalled to my mind an article written for the *Saturday Review* by Lord Suffolk in the year 1886. It was originally entitled 'The Horse considered as a B.F.', but it appeared under the title 'Horse-Idiocy'. It pointed out, for example, how one of the best-known characteristics of the average hunter, a true aristocrat in the ranks of horse nobility, is that nothing will induce him to step on a hound if he can possibly avoid doing so; yet he will frequently, without any apparent provocation, lash out behind and kick one of the pack. How is it possible reasonably to account for such sensitive delicacy with the fore, and such reckless violence with the hind, feet? Again, even the maternal instinct, strong in the horse as in all other animals, is not yet strong enough to counteract the bias of inherent foolishness. The brood-mare, a blue-blooded matron, with a warm thatched hovel amply provided with litter, forage, and all things necessary for her comfort, unless she is shut in, will stand outside her door for hours in snow, or rain, or wind, for no discernible purpose except that of starving herself or her foal to death. Others, under similar conditions, with equally convincing reasons for staying at home in a warm crib,

will start off at full gallop through the gate of the stable-yard, and career madly over a bleak and inhospitable adjacent common, until they are brought to a standstill, in a state of lather and exhaustion, by some fence, or hedge, which they are unable to negotiate.

One more incontrovertible observation may be made about the horse. We were all brought up, from our earliest days in the nursery, in the belief that the horse is a noble animal, only to discover, in our years of maturity, that persons associated with him in matters of trade, and such minor affairs as the purchase and sale of his oats, are among the most shameless rascals to be found anywhere. The following story of an unsuccessful charge illustrates both these characteristics of the horse community, and at the same time presents a familiar picture to those whose occupations take them into the criminal courts in India, of the sheer delight which many people find in making 'False Charges'. The errant horse in question was a true aristocrat, being the charger of a captain in command of a squadron of cavalry in a native state. He had gone slightly lame, and was under treatment, which was, no doubt, equally unintelligible, and irritating, to his horse mind. But it will be better to let the witnesses, who gave evidence at the subsequent enquiry, tell their own stories.

Mohan, *syce*, or groom, said:

> I am *syce* to Captain Baldeo Singh. The horse became lame. I was ordered to take it every day and make it stand with its four legs in water. I was making it stand in the pond one afternoon, about four o'clock, when it got frightened and ran out of the water.

It is important to note here that the *syce* did not say originally what else he was doing besides 'making it stand in the water', but when he was cross-examined he said that he was holding it. The *syce* is the most indolent

of men, and very fond of sitting down to smoke and of visiting the sweet shop.

The horse was lame [he went on], but it could go fairly fast when there was no one on its back. I ran after it. It used to stop, but, when I got close to it, it used to run away again. In this way it ran for three miles, and eventually got into the fields of Pharwahi village, close to the boundary between Pharwahi and Rajgarh.

Now, it must here be noted that between the villagers of Pharwahi and those of Rajgarh there was no love lost.

'It stopped by a well [continued the *syce*], near which there was a stack of sarson stalks. It began to graze on the stalks. There I caught the horse. Just after I had caught the horse four men came up from the east. They asked me whose horse it was. I said it was a cavalry horse. They then took the horse from me and beat me. They all four had *chhavis* [small agricultural implements], and they beat me with the wood of the *chhavis*. I called out for help. Four men came up from the Pharwahi side and remonstrated without effect. One of the men who beat me took the horse, and three men dragged me along. They took me to a village. After the moon rose they took me to a police station, and I was kept all night in a room there. A man was put over me to guard me, who was relieved from time to time during the night. At about ten o'clock in the morning a constable took me out to allow me to ease myself. While I was easing myself he commenced to clean his teeth. While he was doing this I managed to get away, so that he could not see me escape. I do not know whether he followed me. I ran for two miles, and took good care to conceal myself while I was running. After two miles I did not go so fast. I did not know my way, but I went a different way from the way I came, and passed no villages. When I got back home I reported to the Captain.

This account of the *syce's* escape is not convincing. The Indian invariably cleans his teeth out of doors, using water, and sitting on his haunches while he rubs his teeth with a small twig. It seems in the highest degree improbable that a constable would allow a strange man over whom he was set in charge to be out of his

sight, and to escape in this way, and it is obvious that there is nothing in the teeth-cleaning operation which would impede his free movement. The absence of any pursuit is almost incredible. Of this part of the story there could be no corroboration, but of the capture, and of the beating of the *syce*, there was plenty. Out of the four men from Pharwahi who were said to have witnessed the affair, three gave evidence. The chief man among them said that their attention was attracted first by the horse cantering up to the fodder by a well, when he was captured by the *syce*, and afterwards they heard the *syce's* cries for help. He knew the four men who were beating the *syce* as villagers of Rajgarh, and he gave their names. He said that they took the *syce* and the horse over the border into the village of Rajgarh, and that he and his companions then followed them. They asked them why they were treating the man and his horse in that way, but they remained at a distance of some fifty yards during the conversation, and having nothing in their hands, and being threatened by the other men, they desisted and went on with their work. There was not much which they could be expected to do. One of them happened to be an exceptionally big, strong man, and they were in a majority of five to four, but they said they had no agricultural implements in their hands, and the men of Rajgarh were not likely to wait with their capture in the open, while the others fetched their weapons. Otherwise there were all the elements of an ordinary village fight. The other two men who were called supported the story, and gave their accounts simply and straightforwardly without any contradictions or discrepancies.

The extent and nature of the beating of the *syce* may be judged from the evidence given by the doctor, who said: 'I found on him a contusion one inch by half an inch on the right of the collar-bone; a con-

tusion one inch by half an inch on the left forearm; and a small contusion about the size of a split pea just under the nail of his right little finger. I do not think the injuries could have been inflicted by falling down. They appeared to have been inflicted by human agency.'

There is a certain charm about this evidence which is not infrequently met with in Indian courts. This gentleman had been in state employment for twenty-eight years, and had doubtless examined many superficial bruises. It would have been interesting to have asked him how he was able to recognise those which were inflicted by human agency alone. But the titbit was the bruise under the nail of the right little finger. It showed scrupulous care in the examination of the patient, and exceptional skill in the wielding of agricultural implements on the part of the assailants. It recalls the famous telegram of the railway station *Babu*, who reported an accident on the line, by wire to headquarters in the following terms:

> Regret to announce collision between up goods 27, and down passenger 19. No damage, thank God, except to up goods guard's left eye.

It should be mentioned here that the village of Pharwahi was situated in the native state which is described by the letter 'X' in the story of 'The Biter Bit', told in the previous chapter, and that the village of Rajgarh, just across the border, was in the state which has been described by the letter 'Y'. The foregoing statements constituted all the evidence in support of the *syce's* complaint. The villagers of Rajgarh told a different story. The chief witness was a *zemindar* who had been identified by the witnesses of Pharwahi as being one of the assailants. He related the following story:

> When I was on my threshing floor, in the evening about an hour before sunset, a stray horse wandered up by itself. We tried

to catch it, and I eventually got hold of the halter. I took it to Bir Singh, *lambardar* [one of the chief men of the village], and asked whether it should be put in the pound. He said that, as it had a number marked on it, it was probably a state horse, and that it was a valuable animal which was too good to be put in the pound. He told me to take it to another village where there was a Head Constable. After I had had my meal I collected two villagers, and three *chamars* [men of low caste who do the dirty work of the village]. Just as we were starting off, a man came up who said he was the *syce*, and he came with us of his own accord. When we got to the village we found the Head Constable, and he told one of our party to take the horse away and stable it at Phul. The *syce* said it belonged to the state cavalry of X. The Head Constable asked him to prove it. He could not prove it, so the horse was not given to him. He then went away. No one interfered with him, or beat him. The place where we caught the horse was within the boundary of the village of Rajgarh, about half a mile from the inhabited quarter. It had been doing damage, and had injured the crops on my threshing floor.

Six witnesses gave evidence in support of this story. They had all taken part in the chase, and they all agreed that the *syce* did not come up to claim the horse until after it had been captured, and that he had gone off to the other village with the rest of the party, and had interviewed the Head Constable, to whom he made his claim, without complaining that he had been assaulted. All agreed that the Head Constable refused to recognise the claim, because the *syce* was a stranger to all of them, and could not produce anything in writing to show that the horse was his. It occurs to one to wonder why the Head Constable took so much pains to require evidence of title, and why the ordinary pound was not thought good enough for a stray horse, however valuable. The villagers who caught the animal were in no way responsible for it, nor were the police, and the latter would have been justified in handing it over to the *syce*, after trying some ordinary test to see whether he could really identify it. No questions of this kind were asked, and the

cross-examination of the Rajgarh witnesses elicited nothing new, except the fact that one of them had been unjustly charged with stealing somebody's sheep, and had been acquitted. This was the witness who took the horse to Phul. He rode it bare-backed, at a walking pace. He declared that it was not lame, which may have been because its long canter across country had done it good. But it may also have been because the witness and his companions were determined to contradict everything which had been alleged by the other side.

In the face of this conflict of evidence, apart from the somewhat dubious points in the *syce's* story, the charge was held to be unfounded, and, indeed, to have been fabricated by the *syce*, not for mere amusement, but because he was suffering from a guilty conscience for having let the horse get away from the pond, and had to invent the story which he set up as a sort of 'camouflage' to cover his own default. But the story does not end here. Some few days before the escape of the horse from custody, one of the state camels of Y, used for the postal service, was seized, together with its rider, by the police of X. Let the witness, Data Ram, tell his own story:

> I am in the Mounted Branch of the Police as a camel *sowar* [rider]. I used to carry money to the Branch Post Offices. The Postmaster gave me a thousand rupees in a yellow bag to take to Lohatbadi. I reached a bridge at seven o'clock in the morning. There I was arrested and my money and sword were taken from me. A false charge of causing hurt was brought against me, and I was convicted and sentenced to six months' rigorous imprisonment.

The official explanation of this affair was that the said Data Ram had made indecent overtures to one Musammat Nuradi, who was walking in the same direction as himself, and that when a Mohammedan remonstrated with him, he assaulted him. He was also said to have admitted that he was carrying the thousand rupees to a

notorious and dangerous' criminal. This does not sound a very likely admission to be made by a police officer. But the camel and the money on the one side, and the errant horse on the other, caused a deadlock, and became an affair of high international politics, between the two states. Six months after the capture of the horse, the matter was still the subject of important correspondence, in the course of which a Minister in X stated the position to be as follows:

> According to law, and the established practice, all articles found with or on an accused person are kept by the Police, and are returned to the accused on his release, subject to all Government charges against the accused or his property. The accused, or any person duly authorised by him, may apply to the court for any particular orders as to such articles. The camel, it is reported, is rather in a bad condition, and may die any time. But we fail to see as to how the retention of articles or cash found on search of an accused person, who is subsequently convicted by a competent court, can form an excuse for a refusal to return the horse belonging to the cavalry, which was, at the most, a stray horse.

X

A POST-OFFICE PROBLEM

THE story of the conviction, and subsequent acquittal on appeal, of the Post-Office clerk, whom we will call Gulzari Lal, contains some facets and niceties in weighing evidence, as neat as one could desire in a case of difficulty, and some half-truths and suggestive innuendoes which are typical of the kind of evidence one has to deal with in India. The conviction was recorded by an experienced English Sessions judge, with the most complete confidence in the soundness of his decision. The Assessors who sat with him were in favour of an acquittal upon grounds which do not bear examination, but it was eminently a case, if there are such cases, in which the opinions of Assessors might be regarded as carrying some weight. My colleague, who heard the appeal with me, felt some difficulty in allowing the appeal, though he also felt some doubt about the justice of the conviction. On the other hand, I felt the same degree of confidence in the propriety of an acquittal as the Sessions judge had felt in the propriety of a conviction. Most of the facts were incontrovertible. But there were some flat contradictions in the evidence of the Post-Office employees on certain vital incidents, and it was precisely with reference to these vital incidents that the difficulty of drawing the right inferences seemed so great. My desire is to tell the story, and to set out the opposing views, and the con-

flicting considerations, with absolute impartiality. The main problem is one which can now never be solved, and which was probably always insoluble—namely, whether the subordinate employees of the office, who undoubtedly sympathised with their colleague, the accused, were trimming their evidence in his favour with the intention of assisting him, or whether they were honestly convinced of his innocence and were occasionally bending their statements in favour of the authority on behalf of whom they were called, out of fear, real or imaginary, of possible consequences to themselves.

The ordinary up-country post-office, or district sub-post-office, as this one was, is not a pleasant place either to look upon, or to work in. It is generally dark and airless, and seems to be permeated with *khakhi*-coloured paper, dust, and a general air of untidiness. The clerks, who wear harassed looks, and every conceivable variety of headgear, sit about in strange attitudes at uncomfortable-looking tables, on still more uncomfortable-looking chairs. The floor on the public side of the counter, which may be one of the said tables, or may be a wooden barrier, surmounted by a grid, is generally bespattered with marks of expectoration, blood-red stains of *betel*, and nondescript bits of paper and other rubbish, deposited by the very 'imperfect ablutioners', who call on their lawful occasions, and who are in no hurry either to transact their business or to take their departure. Their presence seems to be almost resented by the weary-looking clerks, who divide their attention between clerical work at the table and waiting upon the general public. The public thirst for information seems insatiable; and the willingness of callers to part with what is required of them is in a sort of inverse ratio to their anxiety to get possession of what they seek. Their hazy notions about postal requirements, and the mixture of confiding curiosity, and of suspicious dread of

being 'done', which they exhibit, seem to be in strange harmony with the darkened, fusty atmosphere, from which every possible effort is made to exclude the fierce glare, and blazing heat, of the outer air. A heavy cloud of physical and mental nostalgia hangs over the place, and the lassitude which appears to affect the staff is to be found, only too often, in the supervision, whose lack of grip leads inevitably to a looseness of discipline. This *laissez-faire* atmosphere, in which the work is usually done, was responsible for some of the difficulties in arriving at the actual truth of the case with which we are now concerned.

It is important for our purpose to have a clear notion of the construction of the interior of the post-office in question. It was situated on the first floor, the ground floor being used for storerooms. The clerks, who were eleven in number, sat at tables, ranged side by side across the office, facing the space set apart for the public. The Sub-Postmaster, who was in charge, and the Deputy Sub-Postmaster, were each provided with a separate table, some feet away from the general body of clerks. Gulzari Lal's table was the ordinary office desk, with side drawers, and a kneehole in the centre. Under each side drawer was a small cupboard containing a shelf inside. These cupboards formed the pedestals on which the flat of the table rested. Two staircases led from the interior of the office down to the ground floor. The positions, and uses, of these staircases became of considerable importance during the case. Staircase A led to the ground floor, and was used by the public as their means of ingress and egress to and from the office. Near the landing at the top sat the parcels clerk. This staircase led to the courtyard below, and also to the Telegraph department. From this department a passage led to the record room, but access to this room could only be obtained by those who had authority to go

there, and to use the passage for that purpose. The Telegraph department was separated from the record room by a barrier, over which any unauthorised person would have to climb if he wanted to get into the record room. The record room consisted of an enclosure, which was partly closed in, and contained cupboards and shelves, where forms for the use of the public and other official documents were stored. The other part of the room, abutting upon the courtyard, was an open verandah, where a *chaprasi* sat for the purpose of supplying blank official forms to the members of the public who required them. Staircase B led down direct from the office, inside the building, to the record room itself, and also to the private indoor latrine. The door to this staircase was usually kept locked, the key being in the charge of either the Sub-Postmaster or the Deputy.

On the morning in question, which was a Monday, Gulzari Lal had been detailed to take charge of the registered letters, which were kept in the office to await the personal application for them of the persons to whom they were addressed. Registered letters for small amounts were sent out by postmen to be delivered on their daily rounds. But it was the rule with regard to letters containing, or declared to contain, value above a certain sum, that they should be kept in the office, and that notifications should be sent to the addressees informing them that their letters were available for them on personal application. The Registration clerk took charge of these letters during the daytime, and handed over to the Treasurer, each evening, all those which had not been applied for during the day, and received them back from the Treasurer next morning. When he went off duty, which he did from time to time, he handed over the letters in his charge to the Export Registration clerk, taking a receipt for them. On this occasion the Registration clerk went off duty about ten o'clock

neither the Deputy, nor anyone else, bothered their heads further about the matter. It must be taken as practically certain that Gulzari Lal returned to the office under the influence of the drug, and probably, therefore, somewhat stupefied. One cannot put it higher than this, because although his drug-taking habit was relied upon in the curiously stupid defence which was set up on his behalf at the trial, not a scrap of evidence was tendered on either side at Sessions to indicate that he showed any of the effects, which are usually apparent, either in his appearance or by his demeanour.

At about a quarter past twelve Gulzari Lal took the insured and registered envelope over to the table where the Deputy was sitting, and showed it to him. The flap end was still closed and sealed, though the seals showed some signs of wear. But the other end had been slit across the fold, to the extent of a little more than half its width, apparently with a penknife, and the opening thus made had been stuck together again with paste, which was still damp. It may here be stated that at the table next to Gulzari Lal sat a clerk who had charge of the paste-pot, which was used by everyone in the office as occasion required. This clerk was not called at the trial, and no evidence was given of any use which had been made of the paste by anyone in the office that morning. It is significant that, according to the evidence of the Deputy, Gulzari Lal drew his attention to the fact that the seals at one end of the envelope were broken, but did not refer to the fact that the slit had been cut, and pasted together again. He merely observed that he must have received it that morning in the condition in which it was. The Deputy then examined the contents. He found inside the envelope a note for one hundred rupees, and five notes for ten rupees each, together with two letters in Urdu. One of these letters showed that the envelope ought to contain notes for three hundred

rupees, the amount for which it had been insured. The Deputy told Gulzari Lal to enter this discovery in his Error Book, and meanwhile wrote a report to the Sub-Postmaster, who was then off duty in his private quarters. Here, again, we arrive at a curious gap in the evidence, which must be attributed to the oversight of the lawyers who were engaged in the case. No questions were asked of the Sub-Postmaster as to when, and why, he went off duty, nor as to the time when he was last in the office.

The Sub-Postmaster came at once to the office and had an interview with Gulzari Lal, in the presence of the Deputy. Nothing was then said about Gulzari Lal having left the office that morning. The latter repeated that he must have received the letter in that condition. But it was pressed upon him that his signature to the receipt made it impossible that the letter had already been tampered with when he received it. Indeed, the fresh condition of the paste which had been used made his contention futile, and it appears to have been dropped from that moment.

The Sub-Postmaster then proceeded to institute a search for the missing notes for one hundred and fifty rupees. At that moment no one, except the thief, knew how this sum was made up in notes. The Sub-Postmaster conducted the search himself. It consisted of four stages, and it will be convenient to set out the evidence relating to each stage separately and without comment.

STAGE 1.—This took place at the accused's table in the office. The accused was not ordered to open the drawers and expose the contents himself. This was done by the Sub-Postmaster. There were present, besides the latter, the Deputy, the accused, and two clerks known respectively as the Parcel Window clerk and the Packer. The Sub-Postmaster first opened the right-hand

in the morning, and he handed over the registered letters to Gulzari Lal. The latter was not the regular Export Registration clerk, but, as has already been observed, he had been detailed specially for that duty that day, and he gave the usual receipt. For all that appeared to the two men, all the letters signed for were in good order and condition.

Among them was a long envelope, registered and insured for three hundred rupees, and sealed at one end with two wax seals, and at the other, which was the flap end, by three wax seals. It was addressed to an employee in a Government office. It had arrived in the post-office four days before, and presumably the man had had no time to come and fetch it. In accordance with the regular procedure it had been carefully weighed on arrival. The object of this procedure was, of course, to provide a check against tampering. But like many an office rule it was of little practical value, because it was not carried out to its logical conclusion. The letter was not weighed again, and it was clear that in the handling which it had sustained during the four days of its presence in the office some of the dry wax of the seals had been chipped, or rubbed off. At the trial it was made quite certain that it had lost weight by the time it reached Gulzari Lal, and that it was not weighed on the day when he signed for it. It was also made certain by ocular demonstration that it was possible for the fold at either end of the envelope to be slightly slit open, as indeed one end certainly was at some time in the office, without the fact being noticed when it lay flat on the table, or in a batch of other similar letters, unless it was submitted to a close examination. The fair way to state it is that there is no reason for supposing that it had already been slit when Gulzari Lal received it with the other letters handed over to him, but that it was not impossible that it had been.

Some little time before noon Gulzari Lal got up from his place, and went to the Deputy and asked permission to leave the office for an act of nature. He did not ask for the key of the door leading to the staircase B, which was the staircase to the latrine, and it was not given him. It was an instance of the looseness of discipline and order which appears to prevail in these public offices that no one in the office was afterwards able to say how he left the office, nor how long he was gone. No book was kept, nor any record, of the comings and goings of the clerks during the day. The parcels clerk at the landing of the staircase A might have seen him if he was not busy at the moment. Or he might have failed to notice him if Gulzari Lal went down at the same moment as members of the public. The *chaprasi* below would probably not notice him in any case. The fact is that there was no official evidence at all as to which staircase he used. On the other hand, the Deputy gave evidence on oath that the door to staircase B was locked. The only positive statement in the evidence about the way he went was that of Gulzari Lal himself, who said that he went out by the staircase A, to the public road outside, not for an act of nature, but to take a drug, *ganja*, with a *faqir* (religious mendicant) who was a friend of his, and in the habit of supplying it to him. The fact that Gulzari Lal was a drug-taker was notorious in the office. Once it becomes a habit it is a sort of necessity to a man, like taking a drink, or smoking a cigarette, only more insistent, and it is quite impossible for a man in Gulzari Lal's position to hope to conceal the practice from his colleagues, even if he wished to do so. It must be accepted, therefore, that when Gulzari Lal asked the Deputy for permission to leave the office the latter knew quite well, from his not having asked for the key of the door leading to staircase B, that he was going outside the building for his usual self-indulgence. Probably

drawer, and no money was found there. He then opened the left-hand drawer. According to his own statement he took from it two notes for ten rupees each, which he found there. The other witnesses said that after he had opened the drawer they saw the two notes in his hand. The Deputy and the Parcel Window clerk, whom the Sessions judge described in his judgment as 'a lad of 21, who was transparently honest', each giving his evidence while the other was out of court, volunteered the statement, 'I did not see the notes in the drawer'. At this point in the first stage of the search no one said that the two notes were part of the contents of the registered envelope, except that the accused made the remark that they must have slipped from the envelope. But there is no question that they were. This stage of the search then came to an end. The cupboards underneath the drawers were not searched. The Sub-Postmaster asked, 'Did the man go out?' The Deputy replied, 'Yes, he asked permission to go for an act of nature'. The Sub-Postmaster then suggested that they should go downstairs.

STAGE 2.—The Deputy and the Packer accompanied the Sub-Postmaster and the accused down to the record room. They did not go to the latrine. The Sub-Postmaster alone went into the record room. The other three remained outside. He only remained inside for a minute or two, which was quite insufficient for a thorough search, particularly as he had no guide as to where to look. But he broke off this search uncompleted and went back upstairs in consequence of something said by the accused. As to what this was there was an acute conflict of evidence. In his report to headquarters the Sub-Postmaster wrote that the accused said, in the presence of the Deputy and of the Packer, 'One note of one hundred rupees will be found in another drawer of the Registration Export department'. No one had any reason to know then that there was such a note, except

the thief. This evidence was flatly contradicted by the Deputy and by the Packer. They both said that what the accused said was, 'Whatever there is must be upstairs'.

STAGE 3.—Upstairs the party then went, and returned to the accused's table. The same witnesses were present, and they said in their evidence that the accused began to search in the left-hand cupboard, and that somehow a currency note, rolled up in a ball, fell on the floor. It was found to be a hundred rupee note. But no one, except the Sub-Postmaster, said at the trial that they saw it in the cupboard. The Sub-Postmaster said, 'He opened the cupboard and began to move the forms. Then a note for one hundred rupees was found, rolled up into a ball. It fell out on the floor.' In his written report he had said, 'Gulzari Lal took out one note of one hundred rupees from amongst the forms of this branch kept in his left-hand drawer and gave it to me'. There was a further conflict of evidence about the finding of this rolled note. The Sub-Postmaster said that he asked the accused what it was, and that the accused picked it up and handed it to him, saying, 'This is the hundred rupee note!' The same two eye-witnesses again flatly contradicted him. They said that the Sub-Postmaster asked, 'What is that?' and that the accused then picked it up, saying 'Here it is', and that nothing was said about one hundred rupees until the note was unfolded. The other cupboard, which had not yet been searched, was not then opened, and the search at the accused's table was again broken off uncompleted. The search was transferred to the record room once more, and the fourth stage was entered upon. The evidence as to how this came about was again conflicting. The Deputy said that the suggestion came from the accused. The Sub-Postmaster said it came from himself. According to him, he asked the accused where

the remaining thirty rupees were, and the accused replied that he had not taken them and therefore did not know, and that he himself said, 'I will go and search again downstairs'.

STAGE 4.—The evidence as to who went downstairs, and as to what happened when the party got there, is again terribly conflicting on the vital points. The only thing certain is that three notes for ten rupees each were found in a stock wardrobe, or cupboard, in the wall, where money-order forms were kept. First, as to who went. The Sub-Postmaster said in his evidence that he, the accused, and the Deputy went down. The Deputy contradicted himself about this. He first told the police that he did not go down the second time. At the trial he changed this evidence, and said that he did go down and that the Packer went too. But the Packer said that he did not go, and in this he was supported by the Sub-Postmaster. So that as to the presence of the Packer the Deputy was contradicted by both the Packer and the Sub-Postmaster, while as to his own presence he contradicted himself. On this, it becomes very doubtful whether anyone, besides the Sub-Postmaster and the accused, were present when the last three notes were found. The last search in this room did not take long, and it is, of course, certain that one of the two men knew where the three notes were. The Sub-Postmaster said that the accused found them. The accused said that the Sub-Postmaster found them. And there the matter rested. Not even the Deputy, in his altered evidence, said that he saw them found. He said that he did not enter the record room.

In addition to all this oral evidence, the accused made a sort of confession in writing, which was rightly excluded from evidence. It was the duty of the Sub-Postmaster to make a report in writing to headquarters, and one of the office rules required him to take statements

from the clerks who were witnesses. Presumably, such statements are intended to be voluntary statements, if they are willing to make them, of what they are prepared to say. The statement written by the accused was a rambling and partly incoherent story, amounting to an admission of guilt. But it contained the statement that it had been made after a promise by the Sub-Postmaster that no action would be taken against the accused. It also contained a marginal addition in the handwriting of the Sub-Postmaster himself, and the Packer said in his evidence that it was dictated to the accused by the Sub-Postmaster. The accused said the same thing. The promise, of course, made the document inadmissible on a criminal charge. Further, the promise was one which the Sub-Postmaster had no authority to make and no power to fulfil.

This concludes the evidence, which I have summarised without comment, so far as it is possible for me to do so. One friendly critic of my *Indian Village Crimes* expressed regret that the author had to rely on official records and was unable to describe dramatic and instructive incidents, or to portray the demeanour and appearance of the witnesses in court. This is true, but inevitable. It would be possible in many cases to give the verbatim record of the witness' evidence, and sometimes it has been necessary to reproduce the *ipsissima verba*. But in the vast majority of cases the verbatim evidence in criminal cases in India is so voluminous in proportion to its materiality, so full of irrelevancies and so ill-arranged in relation to the sequence of events and ideas, that the task of wading through it is often extremely wearisome, and would certainly embarrass, if not irritate, the ordinary reader. For the most part, a fair summary of it is the only reasonable method of dealing with it. But in this case we have the advantage of certain comments upon the demeanour of the wit-

nesses which were made by the trial judge in his written judgment. As regards the Sub-Postmaster he wrote, 'The lack of power of observation which is shown by the Sub-Postmaster about the accused's table is surprising, and I think really goes to strengthen the confidence which one can repose in his evidence'. I do not profess to be able to follow this, but that is how this witness struck him. Of the Deputy he wrote: 'I have noted in regard to this witness that he is extraordinarily stupid, but apparently honest. This was the impression which his demeanour conveyed to me.' He added that 'cross-examination of these two witnesses has not really succeeded in weakening their statements to any serious extent'. Of the two corroborating clerks, he wrote of the Parcel Window clerk, what I have already quoted, that he was 'a lad of about 21, who was transparently honest', and of the Packer that 'he showed some signs of having been *won over* to support the accused in any way he could'. It may here be noted that the expression 'won over' is a very common one in my experience, both in judgments and in argument, about witnesses for the prosecution who appear to give any evidence favourable to an accused person, without reference to any proof that they have departed from their previous statement, or that they have allied themselves to any party or faction or fixed theory from which they may be said to have been 'won'. On the other hand, tampering with witnesses, coaching them, and getting them to alter their evidence or statement already given is very usual, and is frequently demonstrated by contrasting their various statements. It may also be mentioned that after the appeal of the accused was allowed, it became very generally known that the whole of his fellow-workers had convinced themselves of his innocence, and that as their hopes rose, during the long hearing of the appeal, they prepared a feast at which they subsequently celebrated

his acquittal. This, of course, may mean nothing, and may occur in the case of a man who has been wrongly acquitted. But it may explain the Packer's demeanour.

The belief in the office was said to be that the notes were planted on the accused. This, unfortunately, was not the defence at the trial, nor the line which the accused himself took, though it is my belief that if the law had allowed him to give evidence on his own behalf, it might have been otherwise. The conduct of the defence was utterly mistaken, even disastrous; and the cross-examination of the post-office witnesses left very much to be desired, as the reader will see, if he has not already done so, when I come to comment on the gaps and difficulties in the case. The defence put forward at the trial was that, if the accused had opened the envelope and removed the notes and endeavoured to secrete them, he must have done so under the influence of the *ganja* or drug which he had been smoking. Witnesses were called for the defence to prove that he was a smoker of *ganja*, and the accused repeated his statement that he had left the office to join his friend for the purpose of smoking this drug. The utter folly of this line of argument is apparent on the face of it, even assuming that drug-intoxication would afford a defence if established in fact. It was entirely inconsistent with all the known facts of the case. When the accused returned to the office, between twelve o'clock and a quarter past, he did not leave it again. He could not, therefore, have taken the three notes down to the record room. The only possible theory connecting his departure from the office with the commission of the crime was that he took the envelope, or some of the notes, with him when he went out. Even this is far-fetched, because he put the bulk of the notes, if he was guilty, in his own table. Everyone, including the judge himself, overlooked the physical impossibility and absurdity of this explanation. It is

better to quote the exact language of the judgment dealing with this point:

The only remaining question (wrote the judge) is the extent of the accused's guilt, a matter which has to be studied in the light of his subsequent conduct, and of certain evidence on the record which goes to show that he is to some extent a victim of the drug habit. Further, we have his conduct on this occasion. First of all, he extracts 150 rupees in notes and then proceeds to scatter them about, and to make no reasonable or sensible attempt at concealing them. He then makes an almost ludicrous attempt to put a bold face on the matter and to throw the blame on another clerk. Finally, he gradually weakens in his brave attitude and produces all the notes by degrees. There is a great absence of intelligence about the whole of his actions. On the other hand, on a careful examination of these actions I can find no sign of repentance. After examining the record originally when the accused was committed to this court, I thought it advisable to send for the accused at once to enquire what plea he intended to take. The accused, who had a *vakil* with him, informed the court that he wished to contest the case in the ordinary way. Subsequently, the case was heard through, when, at the time of making his statement as accused, he still maintained that the notes fell out of the envelope accidentally, although at the same time he made a statement which clearly showed the impossibility of anything of the kind happening. Thus it is clear that there is no question in this case of any sort of repentance. Now, in the light of this state of affairs, it is of very little use for the accused to take the plea, which is taken on his behalf by his learned *vakil*, that if he did anything wrong (which is of course denied) then he must have done it under the influence of *ganja*. Had this plea been accompanied by an admission of guilt, and a throwing himself on the mercy of the court, there would have been nothing, I think, to prevent the court from taking it into consideration. . . . I am satisfied that he opened the cover, and withdrew the notes, with the intention of committing theft, and I would further hold that intoxication, while it may explain the lack of intelligence displayed by the accused in his attempt to conceal the stolen property, and also the lack of moral fibre which led him to commit the crime, is no defence against the present charge.

It would be hypercriticism to dwell upon the apparent

confusion, in this passage, between the materiality of intoxication as a ground of defence, and its relevance as a ground for mitigation of sentence if guilt is established. Similar lack of clear thinking appears in the judge's dealing with the confession. He was right to rule it out. But, he added, 'That, however, has little or no effect in the present case, as the whole of the evidence, not including this confession, conclusively proves the prosecution case'. I have always felt considerable hesitation about trusting a judgment which, while properly excluding a confession, goes on to say that its inclusion would have made no difference. Most lawyers have met, in the course of their practice, a similar sort of protestation when a confession or a previous conviction has been improperly admitted. The Assessors thought the man ought to be acquitted. This is not surprising, as most people would say that no jury would have been likely to convict. But it must be acknowledged that their doubts, as they expressed them, were not 'reasonable doubts'. One found that the accused was intoxicated, and the other found that the notes fell out accidentally. I feel some sympathy with them. They did not believe in the case for the prosecution, and each seized upon one of the only points offered by the defence. Whether they acted independently, or tried to make a presentable whole out of two perfectly impossible halves, one cannot say.

When the case was presented in the court of appeal, a very different line was taken. The case lasted two days, and was ably conducted. It was frankly argued that the accused was the victim of a 'plant', and that, in any case, it was so doubtful that he ought not to have been convicted. The accused had a record of eight years' good service, and although no evidence of enmity on the part of the Sub-Postmaster had been proved, it had been shown that the Postmaster-General had recently

inspected the office, had passed some scathing comments upon the state of it, and had made some order against the Sub-Postmaster, which had been afterwards cancelled, and the suggestion was that the latter had got up a case against the accused in order to gain credit. The frequency with which false charges are fabricated in India made the suggestion more plausible than it may appear to an English reader. My colleague on the appellate Bench did not feel so strongly about the difficulty of upholding the conviction as I did. My doubts may have been sufficient to create his. It is right, therefore, to quote his expression of opinion.

> The evidence adduced [he said] about the manner in which the currency notes were discovered from the different places is not quite satisfactory. . . . None of the persons working in the telegraph department downstairs, and nobody attached to the record room, has been produced to show that the accused had gone to that room, when he went out to attend to the call of nature. . . . There is no proof of any ill-feeling between the accused and the Sub-Postmaster, and in view of the fact that no less than eleven clerks were sitting in the room where the insured letters were lying, the possibility of the Sub-Postmaster, or any of the clerks, combining to injure the accused is very thin indeed. All the same, the evidence adduced to connect the accused with the removal of the notes from the envelope is not sufficiently conclusive to justify us in convicting the accused.

Let us now consider the case for the prosecution on its merits, and examine the conduct of the accused upon the hypothesis of his guilt. He was doing the work of the Export Registration clerk that morning *pro hac vice*. He was ordinarily intelligent and capable, and it was proved that he had handled 192 transactions that morning without showing any signs of abnormal stupidity. He could not run the risk of getting rid of the envelope as it was officially recorded as being in his possession. If he tampered with it he was certain to be found out when he delivered it up in the evening. He

must have known that it contained currency notes, the numbers of which would have been carefully kept by the sender. There are several ways in which a postal clerk may peculate, but to rob an insured letter which has been entrusted to his sole custody would seem to be the very height of folly, involving certain disaster without a remote possibility of gain. But assuming that he determined upon such an insane piece of robbery, why should he have stopped at taking half instead of taking the lot? It is impossible to give a reasonable answer to this. The same consideration does not apply to a schemer who wished to fix him with such a robbery. He would have to act quickly, while the accused was out of the room, and it would not matter to him whether he took the whole contents or not, as actual appropriation would be no part of his scheme. It would be sufficient for his purpose if the accused were believed to have taken merely one note. This may explain why the envelope was cut open across only part of its width. But assume that the accused decided to take only half the loot. He must have done this before he went out to smoke *ganja*. Why should he distribute portions of it in different parts of his table, and any of it, let alone a small proportion, in a stock room, where he had no business to be, and no ordinary opportunity of access? The obvious course was to take it all with him when he went out. He was away for about half an hour and had ample opportunity of disposing of it. Why should he delay pasting the slit until his return? And if he did, why should he hand the envelope over to the Deputy while the paste was wet? He chose his own time for handing it over. Why should he put his head in the noose by handing it over at all if he really intended to get away with the money? I have never been able to find satisfactory answers to any of these questions. On the other hand, assume a plot to ruin him. It must have

been done during the absence of the accused, surreptitiously and expeditiously, possibly with the connivance, or unwilling abetment of the clerk who had the paste. It seems to me that it is at least easier to accept this explanation of the admitted facts than the theory of the accused's guilt.

Now let us turn to examine what seem to be the gaps left in the story by the failure to probe the evidence at the trial. Why was the Sub-Postmaster in his private quarters when the accused returned? How long had he been there? Was he away from his post during the whole of the half-hour of the accused's absence, and for somewhile before and after, until he was sent for? Why did he suddenly break off on both occasions the search which he was making officially in the accused's table? What led him to ask whether the accused had gone out that morning? What put it into his head? What made him go straight to the record room to search without any suggestion from anyone when he conducted the party downstairs? How was it that thirty rupees were found almost immediately at the second visit to the record room and nothing at the first? How can one reconcile his statement that the accused said, at the first visit downstairs, that the hundred rupee note, the existence of which could only be known to the guilty party, would be found upstairs, with the later statement which he attributed to the accused that he did not know where the remaining thirty rupees were, in consequence of which the Sub-Postmaster decided upon the second visit to the record room?

Upon the hypothesis of his innocence, the prisoner certainly was guilty of equivocal conduct during the investigation and search made on the spot, and of strange lack of grip when the notes were supposed to be recovered from his possession, and from his alleged hiding-places for them. But in an Indian, in a subordinate

post in a Government office, this is hardly a matter for wonder to anyone with experience of civil and criminal cases in India. As the judge said, the habit he had contracted, and the self-indulgence he had permitted himself that morning, may explain his conduct on his return to the office, though no one said in evidence that he actually betrayed symptoms of drug-taking that morning. It is true to say that an obviously futile explanation is more likely to come from an innocent man who is unnerved when suddenly confronted with what appear to be awkward coincidences, or damning evidence of guilt, which he sees to his horror have convinced his superior officers, than from a cold-blooded thief who has, at any rate, the nerve to run the risk, and to prepare himself beforehand with some plausible explanation.

For a long time afterwards, the accused and his friends made every effort to get him reinstated. Though I have seen too much of bureaucratic frigidity and autocratic superiority, which seem to flourish in a particularly fertile soil and in a favourable atmosphere in India, to be anything but sceptical about the chances of an appeal *ad misericordiam*, particularly on behalf of a man whom a department has unsuccessfully prosecuted, I thought it right to encourage these efforts and to give them my support. They utterly failed, at least for the five years during which I had any knowledge of them. Perhaps the authorities continue to believe in the man's guilt. Or it may be that they think they are well rid of a drug-taker, though it is unlikely, after the lesson he received, that the man will ever resume that habit, unless he has been driven to it by despair. He has never ceased to protest his innocence, and to pray that he may be restored to the postal service, where his father worked, with a good name, for many years. And for aught I know, he is still knocking at the door.

XI

WHAT IS A PROFESSING CHRISTIAN?

VOLUMES have been written, and interesting volumes might still be written, about the great work done by Christian Missions in India. Generalisation is dangerous and apt to be misleading. But it is safe to say that, so far as the observation and experience of those who have no intimate knowledge of their inner working enable them to form an opinion, their success seems to lie more in the direction of civilising and humanising influence, than in implanting sound doctrine and in producing orthodoxy. People at home can have little conception of the difficulties, psychological, social, and particularly matrimonial, in the management of a converted Christian community, living, and working, and passing their daily lives in the midst of a huge non-Christian population, which by instinct, tradition, and habit is peculiarly tenacious of its own religious creeds, and expert in the arts of ostracism and social blackmail. Before he becomes a Christian, an Indian, at any rate amongst the millions of the ordinary population, or what you may call, if you like, the lower classes, must become a 'sweeper', or 'untouchable'. In any case he is called a 'sweeper', and is treated as such. He becomes outcasted, and theoretically joins the dregs of society. This is heroic, but extremely inconvenient. Hardly any official of my acquaintance in the capital of the United Provinces employed Christian servants. The late Bishop had none. They seemed to be reserved for

people, like High Court Judges, who come out, at a mature age, from England, knowing nothing of life in India. The trouble about them is that high-caste Indian servants do not want to work with them, and a compound of Christians, or 'sweepers', gets a bad name. There are other reasons. I had, for years, an almost ideal cook. He had been with an American missionary and had become a leading light in the Wesleyan community. I believe he occasionally preached. He had gentle, charming manners, and a singularly soft voice. For some time he had only two wives, but after he had been with me long enough to have several rises in his wages he took unto himself a third.

You all remember Rudyard Kipling's pathetic story of 'Lispeth of the Kotgarh Mission', who saved a young Englishman's life, carrying him in her arms for miles, nursed him back to health, fell in love with him, and was told she was to marry him. When she found that she had been deceived she 'verted to her mother's gods, married a hill wood-cutter who beat the beauty, and most of the life out of her, and she died a drunken old hag. 'There is no law whereby you can account for the vagaries of the heathen', said the Chaplain's wife, 'and I believe that Lispeth was always at heart an infidel.' Even amongst Christians queer questions arise for missionaries to decide, and I know that the late Bishop Westcott of Lucknow, who was half a lawyer, as every bishop ought to be, continually got posers. It was said that one Government servant in my station sent each of his children to a different place of worship, and that each joined the community belonging to it. There were just enough to go round. He may have thought that there was safety in numbers, and that one of them must be an orthodox Christian.

It is with matrimony that the chief trouble naturally arises. The present story of a leading criminal matri-

monial case would probably appear to most readers absolutely incredible, if it were not true. I happened to be one of the Bench which had to deal with the appeal. With the greatest respect to the devout missionaries concerned, I thought then, and I think now, that it was the most misconceived prosecution I ever heard of, and I protested against it from the Bench.

By way of further preface, it is necessary to deal shortly with the legal aspect of the case. It must always happen, especially in a great world-wide power like the British Empire, that Christians find themselves up country in some out-of-the-way part of the world and want to get married. The Consular Marriage Acts and the Foreign Marriage Act of 1892 in England provide for such cases. There are certain authorised 'Marriage Officers', and a marriage solemnised by such an officer, in a prescribed place, and in accordance with the requirements of the Act, is valid, although it does not comply with the law of the domicile of the contracting parties. It follows that such legislation must be carefully hedged round, and that every possible precaution must be taken to prevent pretended marriages and shams under the Act, by unauthorised persons masquerading as authorised ones, or evading the performance of necessary conditions, so that the woman may find herself afterwards unmarried and liable to be cast off, while the children born of such a union would be illegitimate. It is sought to provide the prevention by the enactment of severe penalties on those who either solemnise, or abet by taking part in, such pretended marriages.

The Indian Christian Marriage Act of 1872 was framed on the same lines, and was probably suggested by the English Acts. But it was a consolidating and amending Act, replacing the English Acts of 1818 and 1851, and the Indian Acts of 1852, 1865, and 1866 dealing with marriage in India. The history of the legis-

lation shows that doubts had arisen as to the validity of certain marriages, and it was intended to validate them, facilitate them, and to guard them against abuses. The Act clearly dealt with Christian marriages, or with those which purported to be so.

The principal defendant to the charge in this case was one Maha Ram, the son of Kallu. Kallu had for twenty years been a member of the American Presbyterian Mission in a large town in the United Provinces. He had been elected to the position of Elder in the Presbyterian Church; he had been confirmed; he was licensed to preach, and he taught Christianity in his own and in neighbouring villages; he was a Moderator each year; he was a member of the local Church Committee; and he was allowed, under certain circumstances, to administer the Sacrament. The definition of a Christian contained in the Act is 'a person professing the Christian religion', and it was clear that he was a Christian to whom the Act applied. The evidence about Maha Ram was by no means so positive. Kallu was a Christian when Maha Ram was born, and Maha Ram was baptized and entered in the Baptismal Register at the age of three. He was entered in the Industrial School to learn carpentry, and he remained there up to the time of his marriage. The school was one for Christian boys, and he dressed as a Christian and was always supposed to be one. The clerical witnesses said that he attended the services and classes, and always professed Christianity, but no evidence was given of any definite acts performed by him, or of any express profession of faith, beyond what may be taken to be comprised within the sort of passive Christianity already mentioned.

He decided to marry a 'sweeper' girl, and, in accordance with her wishes, which meant the wishes of her parents, he decided also to be married by the *bhangi* rites usually followed by 'sweepers'. With one exception, his

own brothers and sisters, who were also members of the Mission, had been married according to *bhangi* rites. The missionaries and his own father tried to persuade him not to do this, but he had made up his mind, and no doubt his future wife's family and their friends were behind him. The night before the wedding, one of the missionaries sat up with him into the small hours of the morning, trying to persuade him to go through the Christian ceremony of marriage, but he was adamant. In a marriage according to *bhangi* rites, fire is lighted and *Devi ka puja*, or worship of the Goddess Devi, is performed. Two 'sweeper' priests, named Bachhan and Mangli, who were also members of the Mission, and who, according to the evidence, had professed Christianity much more definitely, took part in the ceremony and performed the worship of Devi.

They were all three prosecuted under Section 68 of the Indian Christian Marriage Act. This section imposes penalties for solemnising or professing to solemnise a marriage contrary to the provisions of the Act. The Sessions judge who tried the case, finding them all members of the Mission, felt that he had no alternative but to convict all three. The Assessors got out of the difficulty by finding that the defendants were not Christians. The judge obviously disliked his task, and said so in his judgment. But he held himself bound to follow two decisions in another High Court in India, which were the only reported rulings on the section. He said in his judgment that it was repugnant to his common sense, but he convicted the two 'sweepers' of having transgressed the Act by solemnising a marriage otherwise than in accordance with its provisions, and convicted the bridegroom of the only offence of which he could conceivably be held guilty, namely, aiding and abetting the priests, and he sentenced each of the three to one year's rigorous imprisonment.

It is not necessary to dwell at length on the reasons which induced the High Court in question to hold that the Act applied to such a case. The point argued before them for the defence was that the marriage in question was not a 'solemnisation', and the decision seems to have turned on that, while the real difficulty was not argued or touched upon. But the same High Court had previously held that such a marriage as this was valid by Hindu law, if a custom governing such marriages was established. The result of this was, and, so far as I know, may still be, that in one province in India a valid Hindu marriage may be a criminal offence on the part of the celebrant, and that the unfortunate bride and bridegroom may be sent to prison for aiding and abetting him.

The arguments of counsel who sought to uphold the conviction in the appeal before us were no less incongruous. It was seriously contended that as Maha Ram had, from the time when he was a baby in arms, enjoyed such benefits as attached to membership of the Mission, he was 'estopped' from denying that he was a Christian. The logical consequence of this was that he had become both a Christian and a convict by estoppel—a sort of legal abortion—through marrying a 'sweeper'. A further contention was that, in 1872, there was a great mass movement of Christian revival and conversion in India, and that the Legislature wanted to close the ranks of Indian Christian communities, and to prevent the country from being flooded with concubinage and illegitimate children as the result of void marriages. This overlooked the fact that nothing could be more likely to increase concubinage than sending people to jail for marrying according to the rite they preferred.

My brother judge, the late Sir George Knox, one of the greatest Churchmen and Indian Civilians of the last generation, was content to find that there was in-

sufficient evidence that Maha Ram was 'a person professing the Christian religion'. I took the more summary view that a man who declines to be married as a Christian, and, in spite of all persuasion to the contrary, deliberately chooses to marry a 'sweeper' by 'sweeper' rites, and does public worship to Hindu gods in the presence of his relatives and friends, is certainly not 'professing the Christian religion'. There was no prohibition against a man renouncing his faith in any way he chose, or against his marrying into, and by the rites of, any faith he chose. I went further, and definitely held that the Act could not and was never intended to apply to non-Christian marriages. I did this partly because the finding of fact did not affect the case of the two 'sweeper' priests, and also because I thought the prosecution wholly misconceived, an abuse of the process of the court, and against the public interest, and I felt that it was our duty to make such prosecutions impossible in future.

We had decided, on the issue of fact, to hear additional evidence in the appellate court, and the Principal of the Mission, and Kallu, the father of Maha Ram, both gave evidence before us. I asked the Principal what the object of the prosecution was. It appeared that the Mission were in a dilemma. Several such marriages by persons who had attached themselves to the Mission had already taken place, and the missionaries had to decide between winking at them and thereby shaking the very foundations of their teaching, or expelling the offending Benedicts and thereby seriously diminishing their numbers and their record of converts. The Principal agreed that this was so, and said that it had occurred to someone that if the strong arm of the law could be invoked on the side of orthodoxy in the matter of matrimonial ceremonial there would be no more 'sweeper' marriages, or Devi-worship.

An object-lesson of this policy was publicly presented in court which would have been intensely amusing, had not the subject-matter been so serious, It is worth reproducing. The examination of Kallu, the father, proceeded somewhat as follows:

Question. Do you know the Christian Mission?
Answer. No, sahib! (*Sensation.*)
Q. Don't you know the Principal?
A. No, sahib.
Q. Oh! come now. You must know him. Let the Principal step up. There! Do you know that gentleman?
A. I do not know him. I never saw him before. (*Laughter.*)
Q. Have you not taken an active part in the work of the Mission for some years?
A. No, sahib! I do not know it! (*More laughter.*)

We had to consider whether we ought not to direct his prosecution for perjury, but we came to the conclusion that no public interest would be served by our doing so. The Presbyterian Elder may have been warned by his lawyer not to admit that his son professed the Christian religion. But judging from his surly demeanour, and the expression of stifled rage with which he looked at the Principal, he could not forgive the sentence passed upon his son, had renounced the Mission, and was no longer 'a person professing the Christian religion'.

XII

THE 'THIRD DEGREE'

'THIRD DEGREE' methods in the home of that terse, but vague, term are usually employed upon suspected persons to extract information and admissions out of them. In India they are certainly not confined to the bullying of supposed offenders. They appear to be applied impartially to anyone who seems to a corrupt police officer to offer a favourable opportunity for practising a little extortion. The term itself has no definite meaning, but is really 'slang', and a term of abuse for any kind of duress and extortion practised by men in authority upon comparatively helpless individuals who happen temporarily to be in their power. According to Western notions and practice, they may be said to be employed, however unlawfully, in the public interest, as part of the machinery for discovering crime and for bringing criminals to justice. At least, that is the public belief and the general understanding of the term. But some of the police in India do not take so narrow a view of their opportunities for wrongdoing. They regard them, not merely from the point of view of their duty to the public in suppressing crime, but also from the standpoint of their own pecuniary interest, as a means of supplementing their slender pay, and also, it is generally believed, of supplying the demands of their superior officers, who, like many others in this world, find their incomes insufficient for their needs. So that 'Third

Degree' methods are quite frequently practised upon complainants and witnesses, simply for filthy lucre, and not for the public weal, and the authors of it feel little compunction about it, in a country where petty corruption is rampant amongst subordinate officials in almost every public department. This explains why it is often carried out with almost brazen effrontery, and with what seems to be perfectly reckless disregard of the risks of discovery. Several instances of this were given from the evidence in the case of 'A Police Pantomime', which appeared in *Indian Village Crimes*. Men in police custody were there held to ransom while their families and friends in their own villages were dunned for paltry sums, exiguously scraped together to purchase their liberty. A similar sort of thing will be found in the present story.

Sukkhoo was a small cultivator in a fairly substantial village. He arrived one day at the police station with a complaint against two Mohammedans for having abducted his wife. Abduction, seduction in the sense of persuading or cajoling away from their husbands or parents, and kidnapping young married women and girls are common offences in some parts of India. There is great scarcity of marriageable young women in the Punjab and other parts of northern India, and a considerable number of vagrant criminals indulge in this traffic. Fairly large sums will be paid for young women, and prospective husbands are not overcareful about the enquiries they make into the antecedents of the girls offered to them, and of those who offer them. They are frequently swindled, and find themselves involved in legal proceedings instead of in the domestic felicity for which they have parted with their savings. A number of women are engaged in this traffic, their office being to make the acquaintance of the usually innocent and unsuspecting though sometimes ambitious victim, and

to lay the train by painting attractive pictures of the advantages of a change of life and scene. This crime is difficult to trace and prove. It is part of the game to take the women long distances, both on foot and on the railway, with frequent stops and changes, and to pass them from one to another, through intermediaries, who are either deputies or dupes. It follows from all this that the injured husband knows very little about the case when he first becomes a complainant, and when he has to make that most important of all statements in India, 'The First Information Report'. As his position in life, and the information in his possession, are alike in direct contrast to his mental distress and to his anxiety to discover where his wife is and to punish the culprits, he is easy prey to an unscrupulous Sub-Inspector. He wants, not merely his wife, but a son, and he will find it difficult again to get the one who will provide him with the other. Sukkhoo was in great distress. He charged two Mohammedans, at once the most common and the most maddening class of offender to a strict Hindu. He named them, stating that they had abducted his wife, together with two hundred rupees in cash and ornaments of the same value. He made statements against the two men which he hoped would give the police a sufficient clue, but which he had probably embroidered. He probably also paid the usual *baksheesh* for being allowed to make his report. This I believe to be an absolute necessity, the amount, which begins at a *minimum* of not less than three rupees, varying according to the position of the complainant. There were occasional troubles in my compound in Allahabad which resulted in some servant having to make a report to the police. They were invariably asked for *baksheesh*; at least, so they said when they came to me to borrow the amount. I gathered that it was impossible either to check the practice or to prove it, and it would probably have handicapped them if I had tried,

so I got over the difficulty by going with them to the police station when I could.

The Sub-Inspector, Ratan Lal, was seated in the station when Sukkhoo's report was taken down. But in such cases it is usually difficult for the investigating officer to take the prompt measures which alone would satisfy the anxious husband, and he probably finds that a little delay is useful in putting on the screw for extracting more pecuniary 'gratification'. Whatever the reason, Sukkhoo in course of time grew dissatisfied with what he thought was the inaction of the police, and he made a complaint to the Magistrate. No doubt the Magistrate instituted enquiries which excited the wrath of the Sub-Inspector. Some two or three weeks afterwards, Ratan Lal, with two constables, named Ghafar Khan and Sheo Prasad, who were subsequently put upon their trial, visited the village of Sukkhoo. The Sub-Inspector sent one of the constables and a *chaukidar* to summon Sukkhoo before him. After a little preliminary conversation, Sukkhoo was ordered to strip himself down to his loin-cloth. While he was in this state of practical nudity, the Sub-Inspector informed him that his complaint against the two Mohammedans for abduction was false, and without more ado proceeded to give him three or four cuts across his bare body with a stick. Sukkhoo was then handed over to Tulshi Ram, a *chaukidar*, who was ordered to take him to a tank some half-mile away, and to compel him to sit there in the water. A village tank is not the same sort of thing as we understand by that name in England. It is generally a large rough reservoir, dug out of the earth, containing stagnant water collected during the rains. Some tanks are fed by streams and in some cases by springs, and contain fish which manage to live there. But they are generally the most uninviting-looking places, full of dirty water which looks like thick soup of a yellow colour, in which all

kinds of refuse is thrown, and where the animals of the village gambol and wallow. It was the month of January, the early part of which is the coldest time of year in the United Provinces, when the night temperature invariably falls below 40°, and occasionally as low as freezing-point. The water would be very cold, and the air, even in the sunshine during the day, when the thermometer rises to about 75° in the shade, would be cooled by a keen west wind. The bed of the tank would be almost certainly muddy and slimy, and though soft would be far from comfortable to sit upon for any length of time. Here Sukkhoo was made to sit for four and a half hours. It seems almost a miracle that he did not get a severe attack of pneumonia, the average Indian being liable to feverish colds, and generally weak in the chest. He had to sit up to his neck in the cold, dirty water, and of course would have no support for his back. This may not be so serious to an Indian as it would be to an Englishman, as they do not use chairs, and are accustomed to sit in this way for a certain length of time. It is difficult to imagine quite what it would feel like to be seated in water in this way, but it must become, after an hour or so, a perfectly fiendish type of torture. If anyone has any doubt on the subject, he ought to try it for a couple of hours. One wonders how the man could possibly stay there, as he was under no physical restraint. The incident shows what effect upon the mind and *morale* practised compulsion, brutality, and menaces by a police officer in high authority will have. No doubt the poor creatures are obsessed by fear of the consequences if they disobey an order of this kind, though the sequel in this case shows that Sukkhoo could have been no worse off if he had defied the Sub-Inspector, escaped from the *chaukidar*, and run home. The penance lasted from about half-past nine in the morning till two o'clock in the afternoon, when Ghafar

Khan arrived with an order that Sukkhoo was to be taken out of the water and brought back to the Sub-Inspector. This was done, and he was led back, still in a state of nudity except for his loin-cloth. The Sub-Inspector then gave him four or five more cuts with a stick, and allowed him to put on his clothing. He then handed him over to Ghafar Khan, and the other constables. Sukkhoo was made to realise that he was under arrest, or at any rate in police custody. In the evening, Sheo Prasad, the constable, informed him that he could obtain his release by the payment of fifty rupees. There was some dispute as to whether the Sub-Inspector was actually present when this offer was first made. It does not matter, because Sukkhoo said that the Sub-Inspector told him that it would be better to pay cash in order that his body should not be 'troubled' any more! But no constable in the position of Sheo Prasad would be likely to propose such a payment without the authority of the Sub-Inspector, when the latter was present in person directing the treatment of the man.

The amount may seem small. It would be a little less than four pounds in English money. But it would be a large sum for a cultivator to find at short notice, and a few fifties in the course of a month would make a substantial addition to the pay of a Sub-Inspector, even though he had to share out a fair proportion of it. As a matter of fact, when experienced police officers handle this sort of dirty work, they have an excellent *flair* for the sort of sum the man is able to pay. They do not put it absurdly high, but generally just above what is reasonable, so as to give themselves a slight margin for retreat if the man shows his willingness to come somewhere near the figure. Those who read 'A Police Pantomime', in *Indian Village Crimes*, will remember that the uncle of two brothers, who were in custody, was asked for fifty rupees for each of them, and managed to

liberate one by raising forty-three. He had only two rupees in cash in his house, and had to sell a bullock and some rice to procure the rest. Another man was offered the release of his son for twenty rupees, and procured it eventually for ten, which was all he had. Another man was allowed to go home on condition that he raised ten rupees, which he managed to do by borrowing five from one man, and pawning his pots and pans for five with another. So that fifty rupees may be considered a substantial bribe for men of this class to pay.

What strikes one as more remarkable about this kind of extortion, is the practice, already observed upon, which is followed by some Sub-Inspectors, of allowing the victims to scrape the money together in little bits from their friends, while they are still nominally in custody. This practice is obviously fraught with great risk, but it has been so frequent a feature in the cases which have come under my notice, that, for my own part, I am satisfied that this kind of extortion must be much more widespread than the mere number of cases which are discovered would lead one to suppose. When one finds a practice to be fairly systematically followed, especially one involving risk and indicating a kind of recklessness, one is bound to assume that it has been found by experience to pay.

Nine rupees had already been taken off Sukkhoo when his clothes were taken off him. He declared that he was a poor man, and could not raise fifty. He was kept in custody for no less than eight days, during which time the Sub-Inspector's terms dropped to twenty-five rupees. He was allowed to go home to try and raise the balance. The *chaukidar*, Tulshi Ram, went with him. Sukkhoo said, quite frankly afterwards, that he had as much as, but no more than, twenty-three buried in the ground in his house. But he was shrewd enough not to let his jailor discover this fact, and he went round to his

friends, and told them his predicament, and that he could only get free by finding twenty-five rupees. He visited five or six in all, and thus scraped together fourteen rupees, which was all that he could collect. He said that he gave three of these to Tulshi Ram to induce him to act as intercessor for him with the Sub-Inspector, so that he arrived back with only eleven, making, with the nine already taken on account, a sum of twenty altogether. The Sub-Inspector did not at all approve of this, and the poor man was kept another night in custody, but was eventually allowed to go.

It is a significant circumstance that Sukkhoo made complaint of his treatment, from the 12th of Janu[ary] the date of his release, till the 6th of February. It is possible that he would not have made it then, or ever if an English Superintendent of Police had not happen[ed] to visit his village on that date, to make enquiry abo[ut] other matters relating to Ratan Lal. In the ordina[ry] way, a delay of this kind in making a report throw[s] some doubt upon the credibility of the story. But in t[his] case, the number of people who saw him in cust[ody] without rhyme or reason, and the number of villa[gers] from whom he tried to borrow the funds to procure [his] release, provided ample corroboration of his compl[aint]. But his silence is, again, just one of those matters [indi]cating the great power which a man in the position [of] Sub-Inspector, in a country district, is able to wield. Th[e] villagers are so timid about making their complaints, and so apprehensive that their witnesses will be terro[r]ised and silenced, that in many cases an unscrupulous Sub-Inspector enjoys immunity for a considera[ble] period. It is much to be feared that an honest co[m]plaint is often received coldly and sceptically by th[e] district authorities, because so much of their valuab[le] and overworked time is already occupied by in[ves]gating the false charges which are made ag[ainst]

lice, and others, with much more courage and persis ence.

Ev ually, Ratan Lal, the Sub-Inspector, Ghafar Kh and Sheo Prasad, the constables, were put upon their rial for assaults, wrongful restraint, wrongful confir ment, and extortion. The defence put forward in the n n was that the case had been manufactured out of enmi , by a conspiracy. It is always necessary to look care ly into such counter-charges, because the police, in th performance of their duty, are exposed to unfair and alicious attack. But in this case it was impossible to plain the independent evidence of the men who ler oney for Sukkhoo's release, by any such circumste. Nor could any explanation be given of Sukkhoo's de ition in custody for so many days. But the trial had one remarkable feature. Most of the various charges ha to be decided by a jury, but the extortion charge by th udge alone. They were tried together, in the usual c se, in accordance with the legal procedure, which s very much from that in England, as explained in th troduction to this book. The judge convicted, but ury acquitted. The verdict being so much against vidence, the judge referred the case to the High rt, who set aside the acquittal, saying that it might been due to a failure on the part of the judge to ain the case to the jury with the same lucidity which di nguished his judgment. But a case of extortion, fai ly established against the police, is the very last case in which one would anticipate an acquittal from a jury. T explanation probably is that the prosecution evice is apt to be distrusted.

Passing from statistics, I never concealed my surprise, when I was in India, on observing—what has impressed Colonel O'Brien—that the Indian much prefers, if he can seek its assistance, the criminal court for the redress of his civil wrongs. I have heard many criminal cases for defamation, but few civil suits. Colonel O'Brien has put his finger on the real cause. Litigation is interminable on the civil side. Appeals to two courts, including the High Court, are allowed in cases even under one hundred rupees (£7 10s.), and they take at least three years. I began winding up some Companies about the year 1919. None of the liquidations were finished when I left in 1928. I once had a case before me involving less than fifty rupees, which had been backwards and forwards between the Civil and Revenue Courts for months; I was the sixteenth tribunal before which it came, and I had to remit it to the court below to have some issues of fact decided! The Privy Council, figuratively speaking, tears its hair periodically over these delays. The Indian does not mind. But he likes a little variety, and during the litigation he will fight out his battle for possession on the ground, when the crops are ripe for cutting, and before the judgment is ripe for delivery. A few skulls are cracked, and some of the parties are in jail when the appeal is decided.

Some of the commonest criminal cases are riots. They are lamentable, but in some respects almost laughable. Unfortunately, they are too full of tedious detail to be included in these stories. The time comes in the course of most village disputes, whether it be over cattle trespass, irrigation, unlawful crop-cutting, or wrongful possession, when a fight to a finish becomes inevitable.

Sometimes one of the parties goes out armed with *lathis* (heavy bamboo sticks), 'ready and willing' to meet the enemy. They will collect on the disputed ground, or wherever the threatened trespass is expected, and there await the foe. I was responsible for a ruling—doubtless other judges had also decided—that a party so drawn up to await the inevitable attack could not be said to be acting in self-defence. There is one thing alone which will stop such fights, and that is a death. They go on till someone falls with a fractured skull. Then the parties realise that the struggle must be transferred to the criminal court. The party causing the death invariably goes off first, post-haste, to the police station, and makes a false report, describing the criminal conduct of the other side, and concealing its own, almost invariably assigning a mendacious cause for the fight, which much complicates its investigation. They know that a death having occurred, the authorities are certain to prosecute, and that the party which has lost a life is certain to report against them.

The United Provinces executive invariably selected one party for the dock and the other for the witness-box. The party selected for the dock was the one which had caused the death. I often thought this proceeding misguided. The judiciary—above all, the appellate court—was powerless to alter it. One could only protest. But the practice was traditional. The magistrate and the police put every member of the party charged on his trial, no matter how numerous, including all the small fry. Nearly all the witnesses were equally guilty, and, painfully conscious of their own misdoing, indulged in the most flagrant falsehood and prevarication. It was humanly