NOTES

ON SOME OF THE CHARACTERISTICS OF

CRIME AND CRIMINALS

IN THE

PESHAWAR DIVISION

OF THE PUNJAB,

Illustrated by Selections from Judgments of the Sessions Court from 1872 to 1877.

BY

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LAHORE: PRINTED BY W. BALL,

SUCCESSOR TO THE PUNJAB PRINTING COMPANY.

1884.

Dedicated

TO

DONALD CAMPBELL MACNABB, C.S.I.,

LATE COMMISSIONER OF PESHAWAR,

IN GRATEFUL ACKNOWLEDGMENT OF THE HELP, SYMPATHY AND INSTRUCTION RECEIVED FROM HIM DURING MY SERVICE ON THE FRONTIER, AND IN TOKEN OF MY PROFOUND ADMIRATION OF HIS UNRIVALLED ABILITY AS A RULER AND A JUDGE OF AFGHANS.

PREFACE.

ALTHOUGH these notes and extracts are designed primarily for the assistance of young officers on the Frontier, I am not without hope that a larger class of readers may find them to contain some matters of interest. Many people in India and elsewhere have heard of Pesháwar murders and of the general features of crime amongst Patháns; but I doubt whether the details of more than a very few important cases have hitherto been published. It will probably be obvious to all Indian readers that many of the characteristics to which I have drawn attention are not essentially different in kind from those observable in other parts of this country. The difference is one of degree rather than of quality; for example, the practice of bringing wilfully false accusations against innocent persons prevails, I suppose, to a greater or lesser extent over the whole of India. In Pesháwar the practice is found in a most marked form.

This book is printed with the permission of the Government of the Punjab; but the responsibility for the opinions expressed rests with myself and the authorities I have quoted.

I desire to offer my warm thanks to Mr. H. T. Rivaz, Barrister-at-law, for much valuable advice and help in bringing the work through the Press.

Lahore, July 1884.


MINISTRY OF CULTURE · GOVERNMENT OF INDIA
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CRIME ON THE PESHAWAR FRONTIER.

PART I.

INTRODUCTION.—GENERAL VIEW.

THE main object of printing the following "Notes" and "Selections from Judgments"—which are very far from being exhaustive on the subjects treated—is to assist officers on our Afghán Frontier in discharging what I conceive to be one of the most difficult parts of their duty, *viz.*, the detection, trial, and punishment of Pathán criminals.

At the close of the year 1872 I was appointed to be Additional Commissioner and Sessions Judge of the Peshawar Division. The Secretary to Government, Sir Lepel Griffin, in directing me to proceed to Peshawar, explained that I had been specially selected for the post, and that the Lieutenant-Governor was "particularly anxious that the Judicial administration of the Peshawar Division should be brought into a more satisfactory condition * * * and the great murders and crimes of violence reduced." As I had never before served in a Pathán country, I could not but feel conscious of the difficulty of the task entrusted to me, and I expressed this feeling very clearly in replying to Sir Lepel Griffin's letter.

I found the work to be even more difficult than I anticipated, and now that I look back over a service of 26 years in India I am quite clear that the mental strain undergone during my five years at Peshawar was much greater than that of the whole of the rest of my service. Crime of the worst conceivable kind is of almost daily occurrence amongst a Pathán people. The discovery of the offenders is almost impossible should it happen that the influential men of the neighbourhood have a motive for desiring to defeat justice; whereas, on the other hand, wilfully

false accusations against innocent persons, supported by fabricated evidence of the most astounding character, are often concocted immediately on the occurrence of crime, in order either to divert suspicion from the real criminals or to wreak vengeance upon old enemies.

The mind of the Judge who has to try Pathán criminals is daily tortured by the dread of being induced by false evidence either to convict the innocent or to acquit the guilty. All the chief characteristics of crime, of false charges, of lying or exaggerating witnesses, which are so well known throughout the whole of India, are to be found in a most marked type on the Peshâwar border.

The principal crime with which we have to deal is, of course, murder,—murder in all its phases : unblushing assassination in broad daylight, before a crowd of witnesses ; the carefully-planned secret murder of sleeping victims at dead of night ; murder by robbers ; murder by rioters ; murder by poisoners ; murder by boys, and even by women, sword in hand.

I extract a few observations on the prevalence and the causes of this crime from a report prepared by me some years ago :—

Judicial Commissioner's Annual Criminal Report for 1860, para. 186.

At the time of the annexation of the Punjab in the year 1849-50, murders or crimes accompanied by murder are said to have been committed at the rate of one *per diem* in the Peshâwar District. I have not been able to procure any trustworthy statistics for the first three years of our administration, but there is the authority of Major James, late Commissioner of the Division, for the statement that 139 murders took place in 1851.

Judicial Commissioner's Criminal Report for 1863, para. 400.

The first annual returns of crime ever furnished for the Peshâwar Division were those for the year 1853 The Judicial Commissioner in his report fo that year wrote—'Towards the close of 185 a baro statement of the number of crimes that occurred in the Peshâw District during the year 1852 was supplied.'

The amount of crime it exhibited was quite appalling, and showed that in the Peshâwar valley every species of crime was perpetrated on an extended scale.

The number of murders in 1852 was 72; in 1853 it was 83. The Judicial Commissioner regarded the returns for that year as exhibiting a 'fearful array of crime.'

1852—1861 Judicial Commissioner's Criminal Report for 1853, para. 409.

Passing over the years 1854, 1855, 1856, 1857, 1858, it appears that considerable improvement had taken place in 1859. The Commissioner, Major James, then wrote: 'The number of violent crimes has annually decreased as much as can reasonably be expected on this border.'

Judicial Commissioner's Criminal Report for 1859, para. 482.

The number of murders had fallen from 83 in 1853 to 43 in 1859. In 1860 there were 44 murders. In 1861 no material change seems to have taken place.

In the next six years the numbers were as follows :—

1862–1872. Report of Inspector-General of Police for 1871, para. 40.

Year.	Murders.
1862	43
1863	27
1864	55
1865	65
1866	65
1867	67

In 1868, however, the number rose to 80, in 1869 it fell to 73, but during 1870, 1871 and 1872, the number of murders was 92, 93 and 103 respectively.

Chief Court's Criminal Reports for 1869, 1870, 1871, and 1872.

In 1877 and 1878 the number of murders had fallen to 69 and 53 respectively, and the Lieutenant-Governor was good enough to attribute this result in some measure to the quality of the work of the Sessions Court (see para. 4 of the Review of the Report on the Administration of Criminal Justice in the Punjab for the year 1878).

I am myself inclined to think that a more certain cause was the introduction and the judicious use of the Frontier Regulations, and especially Regulation No. IV. of 1873, whereby Deputy Commissioners of certain districts are empowered to refer the question of the guilt or innocence of persons accused of offences to the decision of elders convened according to Pathán or Biloch usage. These councils of elders or *jirgáhs* can only impose a punishment of fine, but there is no doubt that they are able to convict justly many offenders against whom sufficient evidence could not be adduced in a British Court of justice.

Statistics of population and averages.

The population of the Pesháwar District at the census of 1868 was 523,152.

Police Report for 1872.

According to the Provincial Police Report for 1872, the percentage of murders to population was 1 in 4,509 in that year.

In the Kohát District, where the conditions are much the same, the percentage was 1 in 5,014, that is to say, murder is about ten times more prevalent in Pesháwar and Kohát than in an average district of the Punjab.

Pesháwar is one of 32 districts, and its population may be roughly taken to be 1-32nd of that of the whole province. Nevertheless it has to account for at least one-third of the murders committed within the whole of the provincial area.† I do not suppose that such a state of things exists in any other part of the British dominions in India or elsewhere.

Causes originating with the People.

Character of Pathán race.

These are of course the main root of the evil. The population belongs chiefly to the Pathán or Afghán race, which has been described as follows :—

Kaye's History of the War in Afghánistan, Vol. I, p. 11.

'Brave, independent, but of a turbulent, vindictive character; their very existence seemed to depend upon a constant succession of internal feuds * * * they knew no happiness in anything but strife. It was their delight to live in a state of chronic warfare * * * Blood is always crying aloud for blood. Revenge was a virtue among them; the heritage of retribution passed from father to son, and murder became a solemn duty.'‡ * *

Settlement Report of the Pesháwar District, by Major James, C. B., paras 171-173.

Such was the character of the people when the Pesháwar valley formed part of the kingdom of Afghánistan. During the time of Sikh rule the maintenance of internal order (in the Pesháwar valley) was scarcely attempted; blood feuds between districts, villages and families

† This relates to the year 1872.

‡ I find that Sir Richard Temple, in his recently published work called "Oriental Experience" (page 320), makes the following remarks regarding the Afghán character in Afghánistan proper :—

"Let us next glance at the Afgháns. They have been said by some authorities to be democratic, whatever that may mean. They certainly hate authority of any kind. They form little societies among themselves like clans. Then every clan will insist on being a law to itself and of doing what it likes. What they all like best is this—to quarrel, kill and plunder, according to the impulse of the time * * * * * Meanwhile this people is ungovernable indeed, untameable for the most part. * * With all his blood-thirstiness and general haughtiness the Afghán as a farmer and cultivator is second to few in the world."

This latter characteristic is very observable in the Pesháwar valley, where disputes regarding interests in land and irrigation give rise to much of the violent crime. I have often heard it said by the people themselves that the two great causes of quarrel between Pathán are land and women.

were unchecked or followed only by the levy of fine, when the Government officers deemed it prudent to interfere. In fact, the Pathán continued to govern themselves by the same rude and sanguinary laws which had been handed down to them by their forefathers, and which offered to their wild nature a more congenial mode of avenging wrongs and adjusting disputes than the Courts of infidels. * * * The Sikhs were unable to adopt any systematic restraint of those deep-rooted habits and feelings which filled the district with crime and blood.

Judicial Commissioner's Criminal Report for 1853, para. 400.

Subsequent to British annexation I find the people of the valley described as a 'race of men accustomed from their youth to murder and revenge and to appeal to the sword for the settlement of every dispute.' In the Lieutenant-Governor's review of the annual Police Report for 1871, it is fully admitted that no material change has taken place.

Police Report for 1871.

'Prominent amongst the exceptional and permanent circumstances by which this excess of crime * * * may be accounted for is the large proportion of Pathán inhabitants * * * In Pesháwar the Pathán tribe does fully merit the character given of it * * * The following figures bring out in the most salient form the savage and violent character of the Pathán population :—

	Peshawar.
'Murders ...	... 93
'Attempts ...	... 26
	119 = 1 offence to 4,395 persons.'

Proportion of Pathán to population.

It may be said, however, that the whole of the people are not Pathán, for they only represent 46 per cent. of the population. But in the opinion of the late Sir Herbert Edwardes 'there is evidently something in the air of the frontier which rouses brutality in every Muhammadan.' My experience fully confirms that view. It is indeed no matter of surprise that the inferior tribes should have followed the example of the dominant race, and that Afghán customs and the Afghán code of honour should have become the fashion.

Census of 1868, *vide* para. 10, Government Review of Police Report for 1871.

Judgment in the case *Crown* v. *Ilahi Bakhsh*, dated 2nd August 1854.

Causes of Pathán revenge.

Foremost amongst the causes which excite the Pathán to revenge are wrongs and jealousies in regard to women. Husbands, however, are not the only persons who consider themselves bound to avenge injuries of this description : brothers will seek to destroy the seducers of their sisters or sisters-in-law ; parents will murder daughters who have been dishonoured before marriage ; disappointed lovers will from jealous spite kill innocent girls whom they have been unable to obtain in marriage. I have been assured that when a Pathán discovers

that his dishonour is generally known he deliberately decides that it is better to die than to live, provided he can avenge himself. Transportation and hanging are said to involve no disgrace whatever, so long as they are incurred in what is considered a righteous cause. Marauding expeditions and disputes regarding land and water are fertile sources of blood-shedding. So long as the population is armed, thieves are not likely to set forth without weapons.* When quarrels arise between two rival factions in the fields it is not difficult for them to call out armed adherents from the villages. Murders attributable to any of these causes become in their turn the sources of others,—the relatives of the victims being bound to avenge their death. Hence arise the blood feuds, which are handed down from father to son.

Further, if native opinion is to be accepted, one of the greatest causes of bloodshed is jealousy in regard to the objects of unnatural lust. This is a dark subject, and we naturally shrink from extending our knowledge of it more than is absolutely necessary, but I believe I am right when I say that it is hardly ever absent from the minds of native assessors in Peshawar trials as a possible motive for murder.†

I need not enumerate these causes further. Suffice it to say that it would seem that the spirit of murder is latent in the breast of nearly every man in this valley. Nothing more is required to call it forth than a motive which is adequate according to the Afghán code. It is remarkable to hear a bench of Pathán assessors, when they have satisfied themselves that a motive existed for the crime charged, scornfully pronounce the evidence of eye-witnesses to be utterly false, and yet find the prisoner guilty.‡ An adequate motive raises a violent presumption against the accused which cannot be rebutted, unless it can be shown that an equally strong cause existed in the mind of another. In short, given a motive for revenge,—murder is the natural result.

Difficulties of Detection of Crime.

The first Government agency called into action on the occurrence of a murder is the regular police, but it is incumbent on the village police, *i. e.* the headmen and the chaukidárs, to take action, if possible, immediately the occurrence is known. They are bound to arrest or

* "Unpremeditated murders committed by thieves and robbers, chiefly men from beyond the border, who do not scruple to become murderous assailants when interrupted in burglarious acts, cattle stealing, &c."—Annual Report by Commissioner of Peshawar, for 1868. See page 76, Chief Court's Criminal Report for 1868.

† These remarks were written in 1873, my subsequent experience entirely supports this view.

‡ As a startling illustration of the feeling of society, I may mention an incident that occurred during a Sessions trial. A. had murdered B. for coming at night to intrigue with C., a married woman, whose husband was absent on service. C.'s son deposed to the intrigue between the deceased and the woman, C. adding voluntarily,—"I am a poor fellow and unable to avenge the insult, or I should now be in the place of the prisoner at the bar."—Page 77 Punjab Criminal Report for 1868.

pursue the offenders and, if practicable, to secure the weapon with which the crime has been committed, to prevent the corpse from being buried, and to take measures against the concealment or destruction of evidence. If the village police are both able and willing to do their share, it sometimes happens that criminals are arrested red-handed, and that no difficulty of any sort occurs in the conduct of the case from first to last. The wounded man may recognize his assassin and denounce him before death. The villagers learning the line of flight may at once raise a hue and cry, pursue and arrest the murderer with the bloody knife or newly-fired pistol in his hand. The murderer on being arrested may forthwith proudly boast of his deed and proclaim his motive. Cases of this sort have come before me in which, in fact, everything had been done by the villagers themselves, and the only fear had been lest the handling by Government Police, Magistrates and Courts, should in some way or other spoil and render complicated a perfectly clear and simple matter. But such instances are comparatively rare. The victim may have been killed outright by the stab of a noiseless dagger; he may not have seen the assassin, or may have been unable to cry out; he may have been sleeping alone on the roof of his house or in his field. In short, the plan of the murder may have been so carefully laid as to make any immediate action impossible. And there are other difficulties. The murdered man may belong to one faction in the village and the murderers to another, or the assassins may have such powerful friends that arrest by the village police is impracticable. Nothing is more apt than a murder to kindle the smouldering fire of party feeling and to make one faction do all that it can to spoil the case of the other. I have more than once been astonished to see lambardárs who have given evidence before me in murder cases with a manifest show of violent and unjust partizanship, appear subsequently as assessors in cases with which they had no local connection, and display throughout the trial most intelligent impartiality. The conclusion I arrive at, therefore, is that little dependence can be placed on the action of the village police. They *may* do their duty, but the slightest temptation to neglect it is yielded to.*

The regular police.

The regular police on arrival at the spot find themselves almost entirely at the mercy of the villagers. If the village has decided that the truth is to be concealed, I believe it is but seldom that the regular police have been able to bring offenders to justice. In many of the worst villages murders are so common that on the occurrence of a crime everybody concerned proceeds to treat the matter in what may be called a professional manner. The friends of the victim probably know who was likely to have instigated the murder. He is forthwith accused, together with several of his relatives, and false evidence is at once arranged to prove that the assassins

* "Though the people know the avowed design of one person to kill another, no one will attempt to prevent it by word or deed."

"The village watchmen, not being regularly paid, are thoroughly inefficient."—Review by Punjab Government of Police Report for 1871, para 13.

were seen rushing from the murdered man's enclosure. To counteract this, the friends of the accused set up for them a false plea of *alibi*, in support of which a respectable number of witnesses is named. The police know that it is useless to go against the village, and they are obliged to accept such evidence as is offered, or at all events to content themselves with demanding an additional witness or two in support of points which the people had overlooked. The lambardárs will then ask for a few hours' grace, and finally produce persons prepared to prove the required links.

Want of success by Government Police.

It would seem that the Government Police has never been regarded as successful, either under the old or the present system. At the end of 1853, the result of enquiries in the 83 murder cases that had occurred in that year was—

4 persons convicted ;
6 committed ;
19 under enquiry in Magistrate's Courts ;

and the Judicial Commissioner remarked: 'Looking to the fearful array of crime * * * and the wondrous little success that has attended the police enquiries (even supposing that the parties in the pending cases are convicted), it cannot be concealed that the picture above presented forms a dark feature in the administration of the Punjab.' Again, after the lapse of nearly 20 years, I find the following opinion recorded by the Government:—

Annual Criminal Report, 1853, para 409.

'In 93 cases of murder committed in that district (Peshâwar) during the past year (1871), almost the whole committed by British subjects, the identification and apprehension of whom should not have been impossible, only 5 persons were sentenced to death, 5 to transportation for life, and 1 for a term of years. This result simply means that in the Peshâwar District the sympathy of the population generally is with the murderer, and that, although he is often well known to the whole of the village community, there is a common consent to keep back evidence and baffle justice.' My own experience fully confirms this view. I do not think I can recall to mind more than a single Peshâwar murder case* out of the many which I have tried, in which success has been due to the detective skill of the regular police. Indeed it may be said without exaggeration that our police system is at present powerless to check the crime of murder, and that its officials frequently do more harm than good by their interference. They often spoil a good village case by delay in forwarding it to the Magistrate, and they endanger the success of the prosecution by unduly pressing for the production of additional evidence, which, if brought forward, is generally found to be false.

Proceedings of the Punjab Government in Review of Annual Criminal Report for 1871, para. 6.

* These remarks, it must be remembered, were written in 1873, but subsequent experience does not lead me materially to modify them, and I find the present Civil and Sessions Judge of Peshâwar in his report for 1883, writing as follows:—

"The fact is the Police are altogether wanting in detective ability. I cannot call to mind a single murder case in which detective ability was shown. It seems to be thought that it is the business of the friends of the murdered men to find out the murderer and to produce the evidence. The Police never take an independent line."

Escape to independent territory.

A standing source of difficulty with which both the village and regular police must contend is the proximity of independent territory. Escape across the border is generally easy, and is frequently resorted to by murderers, who know that their guilt would certainly be discovered if they remained behind, and who can depend on finding an asylum with a society which approves of murder and welcomes murderers.

Magistrates.

When the case leaves the hands of the Police, it comes before the Magistrate, who indeed should watch its progress as soon as the crime is reported. In no other district in the Province do greater difficulties exist at this stage. In Cis-Indus districts, where murders do not occur at an average of ten in each district *per annum*, such cases are generally taken up by the Deputy Commissioner himself, or by his most experienced Assistant. In Peshâwar, however, owing to the large number of serious offences, every Magistrate must take a share; certain thânahs are made over to each Assistant, and the cases arising therein must be investigated by him, no matter what may be their peculiar features. It therefore constantly happens that cases of great difficulty come before Magistrates wanting in local experience and deficient in the power of detecting the complicated plots and enmities of the people.

PART II.

SOME LEADING TYPES OF MURDER.

The first group of selections from judgments is intended to illustrate what I have said regarding the crime of murder generally, though many of them incidentally touch upon points, *e. g.*, false accusations, which will be brought more prominently to notice further on.

It must be remembered that these judgments were, for the most part, written *currente calamo* in open Court, and have no pretensions to any merit as compositions. They are printed, with a few corrections of patent errors, almost exactly as they were originally written. I must therefore deprecate criticism from a literary stand-point.

No. 1.

CROWN *VERSUS* (1) SALEH; (2) GULAB; (3) MUWAZ.

CHARGE,—MURDER.

This was a case of agrarian crime in the Hazára district. Three men were attacked and killed in the most open manner in broad daylight.

JUDGMENT.—*6th February*, 1873.

The circumstances of this case appear to be these.—On the morning of the 15th September last, Rahmatullah Khán, a Jágírdár, proceeded to the village of Badha, in order to take steps for the realization of a decree. Apparently, some grain had previously been attached and made over to the safe keeping of Mián Khán, one of the principal cultivators of Badha. Badha is in the Jágír of Rahmatulla Khán; Mián Khán and his people are tenants. Rahmatulla Khán was accompanied by his servant, Ahmad Ali, and by Ali Bahádur, a Tahsíl chaprási. A Settlement chaprási, named Shádi, also went at the same time to the village to summon Mián Khán to the Settlement Court. Soon after the arrival of the party a quarrel arose. Mián Khán objected to give up the grain, whereupon the Tahsíl chaprási abused him. On this, Mián Khán, his sons, and others, fell upon the chaprási, snatched from him a knife, and there and then cruelly murdered him. The Jágírdár seems to have interfered, on which Mián Khán and his men, having snatched a sword from the Settlement chaprási, rushed upon Rahmatullah Khán and his servant, cut them down and mangled their bodies in a fearful manner. On this Mián Khán, his sons, and nearly all the villagers fled.

The news reached Abbás Khán, brother of deceased (witness 1), in the afternoon. He immediately set forth for Badha and found the corpses of his brother, of the servant Ahmad Ali, and of Ali Bahádur, the chaprási. The village, a very small one, was deserted; only a Syad or two and a few women were left.

The Settlement chaprási was also attacked. He escaped, however, with his life and spread the alarm. The police arrived that night; the next day the Tahsíldár came, and on the 17th September Extra Assistant Commissioner Ghulám Rasúl reached the spot. The result of the first investigation by the Police was that Mían Khán and his sons, Gulla and Muazam, together with Fazl Ahmad, Guláb (accused 2), and Muwáz (accused 3), and Fatheh Khán were held to be the actual murderers.

None of these could be found. Other men of the village returned by degrees; many were arrested. Saleh (accused 1), was arrested on the 18th September in the village of Koilka; Gulab (accused 2), was arrested on the 26th, stealing back to his home.

Mían Khán, Muazam, Gulla, Fazl Ahmad and Fateh Khán are still at large.

Muwáz (accused 3), was arrested in the Rawalpindi district on the 10th December last.

The general features of the case are as detailed above. Of the main facts there seems to be no doubt whatever. The only question is, what share the prisoners now before the Court had in the murder. If the direct evidence for the prosecution is to be believed, there is ample proof that not only were these accused participators in the crime, but that they struck many of the blows which resulted in the death of the three unfortunate men.

The evidence of the eye-witnesses is, however, not altogether satisfactory. Some of them have not adhered to the same story throughout, and it is manifest that the case has raised a strong feeling in the country-side, and that no efforts have been spared by Rahmatullah's friends to obtain direct proof.

The accused all plead *alibis*, but the witnesses called to prove their presence at other places refuse to give any evidence in their favor.

The assessors are of opinion that the accused were all present and were participators in the attacks, but they have strong doubts as to the veracity of the witnesses when they attempt to give details.

I entirely concur in this view. The accused are evidently not the principals. The quarrel arose between Mían Khán and the chaprási.

When the former and his sons had killed the chaprási in broad daylight, they probably thought they might as well carry matters farther and, as they had become desperate, kill their old enemy and, possibly, oppressor, Rahmatullah Khán. The accused doubtless joined in this attack, and were either the actual murderers or the active abettors.

The case, although of the gravest description, does not appear to call for a capital sentence in respect to these prisoners, who probably merely followed the lead of more powerful men.

Concurring, therefore, with the assessors, the Court finds the three accused, Saleh, Guláb and Muwáz, guilty of murder, and sentences them to transportation for life.

No. 2.

CROWN *VERSUS* (1) MIAN KHAN; (2) MUAZAM.

CHARGE,—MURDER.—(SECTION 302, INDIAN PENAL CODE).

This case is the sequel of the last. It is interesting chiefly on account of the attempt of Miáu Khán to make himself solely responsible for this triple murder, and thus to save his sons and followers.

JUDGMENT.—*6th June*, 1873.

The narrative of this case is given in my judgment, dated the 6th February last, in the *Crown* v. *Saleh and 2 others*. In the former case the three prisoners were sentenced to transportation for life. The convictions and sentences were confirmed by the Chief Court on appeal, *vide* Mr. Justice Campbell's Judgment, dated the 17th April last.

On the 10th February, a few days after the former trial, Muazam (accused No. 2), was apprehended. He was committed for trial on the 5th March. Mían Khán (accused No. 1), the principal criminal, the father of Muazam (accused No. 2), and of Gulla, who is still at large, was apprehended on the 12th April, and committed for trial on the 8th May. Two separate investigations were, therefore, made by the Magistrate, which, together with those relating to the persons already convicted, make a total of four distinct magisterial enquiries regarding these murders.

Before this Court the two prisoners have been tried at one time, as the case committed on the 5th March had not been disposed of when that committed on the 8th May was received from the Magistrate. Throughout the whole of the enquiry the main features of the case have remained precisely the same.

Mían Khán (accused 1), on being called upon to plead to the charge, admitted that he was guilty, and referred to his statement before the

Magistrate as containing a full and true account of all that occurred. He describes himself as the sole perpetrator of the three murders. He alleges that he had long suffered oppression at the hands of the Jágírdár,* and that he finally lost control of his temper on being grossly insulted by the chaprási, Ali Bahádur. He asserts that he committed the murders one after another, with the knife and sword which he successively seized from the chaprási and the Settlement peon. He says that no one saw what he did, and that his relatives and defendants did not come from their houses till the three victims were dead. He has no witnesses to prove the extraordinary story which he would fain have the Court believe. It is an incredible story and is rejected, as far as its details go, by the Magistrate, the Assessors and this Court. It is, however, amply sufficient, taken with the other evidence, to prove that Mían Khán was the principal offender, and that he himself inflicted the fatal sword-cuts on the head of Rahmatullah. He himself says that the sword broke in his hand, and the witness Ahmad Ali (No. 7), has from the first said that he saw Mían Khán rushing back from the scene of Rahmatullah's murder with the hilt of a sword in his hand.

I am of opinion that the sentence to be passed on Mían Khán must be capital. Even if his own story were to be accepted as true, it contains nothing which can, in any way, extenuate his conduct. Let it be conceded that the Jágírdár had overreached him and his co-tenants; let it be supposed, as indeed is probably the case, that the chaprási, Ali Bahádur, was insolent. To snatch from him a knife and forthwith to kill him might possibly be set down to ungovernable passion; but the sequel, the snatching of a sword from the Settlement peon, who had not given offence, the rushing after his old enemy, the Jágírdár, and the deliberate slaughter of him and of his servant Ahmad Ali, who probably interfered to protect his master, render the triple crime one of the very gravest description, for which, as regards the chief actor, nothing but a capital punishment could be deemed adequate.

Muazam (accused 2), as before stated, was arrested and committed for trial, more than a month before his father was apprehended. He made a lengthy statement before the Magistrate, which differs in many essential particulars from that made subsequently by his father. He described himself as having been present in the village when Rahmatulla and his party arrived, but he alleged that he went out to water cattle before

* He also accuses the Jágírdár of having procured the murder of his relative Lál Khán, who died some days before. Of this there is no proof. In the enquiry made regarding Lál Khán's death (*vide* Vernacular record) Mían Khán stated that his death was due to disease.

the quarrel took place, and on his return saw his brother, Gulla, standing over the body of the chaprási, Ali Bahádur, and proclaiming that he had murdered him. His father, however, stated that his son had left the village before the party arrived, and that he himself killed the chaprási.

Accused 2, on being asked to reconcile the discrepancies between his own and his father's deposition before the Magistrate, boldly denies that he made the statement which, being in the handwriting of the Magistrate himself and bearing the mark of the accused, purports to be his. He asserts that the Magistrate wrote down whatever the brother of the deceased Jágírdár told him. Such a plea is, of course, absurd. It is the attempt of the drowning man to seize a straw. I am of opinion that there can be no reasonable doubt whatever that accused 2 was an active participator in what occurred. I have not thought it necessary to take the evidence of the witnesses in much detail, because they were all examined by me at considerable length at the former trial, and their credibility was then carefully considered. They have now, however, given evidence, which, if believed, is ample for the conviction of accused 2. I believe that evidence in the main. I am helped to believe it by the fact that the witnesses have steadily adhered to their story, and because they told it before me, in full detail, four months ago. The assessors are also clear that Muázam (accused 2), was aiding his father in the attack on Rahmatullah and his party; but they do not feel sure of what his precise share amounted to. I agree with them in the opinion that it is difficult to define this with exactness, but I do not go along with them in the view that the witnesses have given conflicting statements in regard to his share. Some of the witnesses say they did not see him, but they do not say he was not there. It is extremely improbable that any witness saw *all* that occurred; some saw the attack on the chaprási, others saw the attack on the Jágírdár and his servant, which took place at some distance from Mián Khán's house.

I proceed to sum up the evidence against accused 2.

The Civil Surgeon and Abbás Khán (Nos. 1 and 2), who describe the wounds, show clearly that a great many more wounds were inflicted than accused 1 would make out. Thus it is proved that accused 1 did not act alone. The Settlement peon (No. 3) also, who was a stranger in the village, says that he recognized no one, but he is very decided in his assertion that he and his companion, Ali Bahádur, were set upon by a large number of men.

Muhammad Sháh (witness 4), saw accused 2 with an axe in his hand, running with others in pursuit of the Jágírdár. He did not see him, or rather did not recognize him, as he was some distance off, taking part in the attack on the chaprási. He subsequently saw him as one of the members of a party who were proposing to kill him (the witness) after they had dispatched the Jágírdár. Sultán (witness 5), says he saw accused 2 throw his arms round the chaprási immediately before the latter was stabbed by Gulla. This witness also saw accused 2 strike Rahmatullah with a stone. Hayát (No. 9), says he saw accused 2 pursue and strike the Jágírdár with an axe.

It would seem, therefore, that there is only one witness who deposes that he saw accused 2 take part in the attack on the chaprási. It is possible, therefore, that this witness may have been mistaken, or that, if accused 2 did seize the chaprási, he had no intention of killing him, and did not think of murder at all until his brother snatched the knife. But there seems to be no doubt that he was one of the party who pursued and took part in the murder of the Jágírdár and his servant. Under the supposition that Gulla and Mían Khán (accused 1), were the first to quarrel with the chaprási, it is not unlikely that when they had killed him they shouted to their relatives and adherents to join them in attacking the Jágírdár. It is, therefore, possible, as accused 2 says, that he had been outside the village, and had rushed back in time to see his brother standing over the prostrate body of the chaprási. What more likely than that he should have joined his father at this juncture and taken an active part in what followed?

But in this view, his guilt is undoubtedly not so great as that of his father and brother, who seized the deadly weapons and inflicted blows which must have proved fatal. That he intended, however, to assist his father in killing the Jágírdár is an irresistible inference from the fact that after seeing the dead body of the chaprási he joined his father in the pursuit of the other victims. There was, however, probably much less deliberation on the part of accused 2, and bearing in mind the reasons which guided me in not passing a capital sentence on the three prisoners who were arraigned at the former trial, I am of opinion that a capital sentence is, in this instance, not called for.*

* The sentences were confirmed by the Chief Court.

No. 3.

A.—CROWN *VERSUS* HASTAM KHAN & 25 OTHERS.

CHARGE,—MURDER AND RIOT.

B.—CROWN *VERSUS* HASTAM KHAN.

CHARGE,—MURDER BY POISON.

These cases created a great sensation in the Peshâwar district. Hastam Khân, the principal prisoner, was one of the chief men of the large village of Umrzâi. The riot was caused by a dispute regarding irrigation rights between certain of the dependents of Hastam Khân on the one hand, and of Arsalla Khân, a rival Malik, on the other. The party of Arsalla Khân was the weaker. Two of his men were killed. The object of the prosecution, as representing the interests of Arsalla Khân, was to show that Hastam Khân in person led a band of armed followers, and with his own hand committed the murders.

The object of the defence was to show that an ordinary riot had occurred, in which both sides had suffered equally, and also that Hastam Khân himself was not concerned and was entirely innocent. A second charge against Hastam Khân was that he had poisoned one of his own followers, Jang Báz by name, who happened to have been slightly wounded in the affray; Hastam Khân's object being to magnify the degree of guilt attaching to the opposite party.

CROWN *VERSUS* HASTAM KHAN & 25 OTHERS.

CHARGES,—MURDER AND RIOTING.

JUDGMENT.—20*th February*, 1873.

This case and that of the Crown *versus* Hastam Khân,—charge, murder of Jang Báz by poisoning,—have been tried at one and the same time. They are intimately connected together. Hastam Khân and 25 others were committed for trial on the charge of murder and abetment of murder, on the 15th September last, of Muhammad Ali and Wali Muhammad. Hastam Khân was also charged with the murder of Jang Báz on the 17th September. He has been on his trial for both offences throughout the whole enquiry. The evidence regarding the second charge against him has been recorded partly in the file of the first case and partly in the file of the second; that is to say, when a witness was found to be able to give evidence regarding both offences, his statement was taken in full at once. Witnesses, whose evidence related to the poisoning case solely, were examined at the conclusion of the major trial. The trial of the two cases has occupied the Court for seven days. The assessors have been most regular in their attendance, and have afforded much help in the examination of the witnesses, &c. They are believed to be men quite unconnected with the locality to which the prisoners belong, and to have come to the trial free from bias. I am bound to say, they have *displayed* none throughout the enquiry.

The immediate cause of the quarrel, which resulted in the death of Muhammad Ali and Wali Muhammad, was a dispute regarding the right to use the water of a small canal on the night of the 15th September last.

Umrzái is one of the large villages of the district of Hashtnagar. An irrigation canal flows on the west side, passing by the *hujra** of one of the principal headmen, Arsalla Khán. The canal is crossed by a small plank bridge,—called by the villagers the 'Náripul,'—some ten or twelve paces above the *hujra*. To the north, some fifty or sixty paces higher up, a branch-cut carries the water to the fields of certain cultivators belonging to the quarter of Hastam Khán, another head Malik of the village. When it is the turn of Arsalla Khán's people to use the water it appears to be the custom to put up a temporary *bund*, or embankment at the mouth of the branch-cut, thereby keeping the whole of the water in the main stream. When the turn of Hastam Khán's people comes, the *bund* is removed. On the day of the quarrel, Arsalla Khán's people considered that they had the right to the exclusive use of the water, and they accordingly put up the *bund* at the usual place. Certain of the other side disputed the right and forcibly removed the *bund*.

Subsequently, Arsalla Khán's men put up a second *bund*, but not at the usual place. They erected it on the branch-cut, some twenty or thirty paces from the junction. The result of this would be, that the water would appear to flow down the branch, but would not reach the fields. This action on the part of the adherents of Arsalla Khán appears to have given great umbrage to the other side, and the main difficulty in this case has been to ascertain what steps were taken by Hastam Khán's people by way of prevention or retaliation. It is, however, absolutely certain that, very soon after the second *bund* had been erected, Muhammad Ali and Wali Muhammad were carried mortally wounded into the *hujra* of Arsalla Khán, and were shortly followed by Akbar, Arsalla, Muhammad Akram, and Syad Gul, all of whom had received severe injuries. On the other side, Asaf received two deep wounds on the arm and shoulder, and Jang Báz received a trifling sword-cut on the left arm. Some others of Hastam Khán's party were scratched, but none of these admit that they were in the fight. The casualties, therefore, were two men killed and five or six grievously hurt on the side of Arsalla Khán and one man badly wounded and one slightly on the side of Hastam Khán. After a time, each headman sent word to the Police, and, on the report

* Guest house.

of the messengers, the Deputy Inspector made an entry in his charge register, the gist of which is, that the servants of the two Maliks had had a fight about water, resulting in certain casualties which are detailed. The names of persons concerned in the fight who were not wounded were not given. The Deputy Inspector, who was suffering from severe fever, reached the village about 2 a.m. on the 16th. The Tahsíldár followed about 9 or 10 a.m. Arsalla Khán produced evidence in support of that version of the affair, which has been adopted by the prosecution, the intention of which was to show that his men had been most unwarrantably attacked by an armed body of men and ruthlessly cut down within a very short distance of his *hujra*.

The opposite side were prepared with witnesses, who stated that Arsalla Khán and his son Umra Khán, enraged at the attempt of Asaf and Jang Báz to remove the second *bund* had attacked them with swords, and that a disturbance followed, of the details of which no one could give any account. The party of Hastam Khán did not attempt to explain how the casualties on the other side had occurred. This attitude has been maintained generally by the defence all through. A very great deal of evidence has been taken on both sides, and, as might have been expected, the result is that neither party can, in my opinion, be held to have given a strictly accurate account of what happened. There appears, however, to be good ground for holding that the view taken by the assessors is very nearly correct. It is that certain of Hastam Khán's men came down unarmed with the intention of forcibly removing the second *bund*; that a quarrel arose between them and those who had erected it; that certain of the supporters of the former hearing the uproar rushed armed to the spot, and attacked all of Arsalla Khán's men whom they met. Some few of Arsalla Khán's men seeing that they were to be attacked managed to get arms, and succeeded in wounding two of the opposite party. I have adopted this view after carefully considering the whole of the evidence and testing it by comparison with the early reports of the Police and the Tahsíldár. The case has caused a good deal of excitement in the district. The officials who made the local enquiry to a certain extent took different sides: the Police trying to make the matter appear in as favourable a light as possible to Hastam Khán's party, and the Tahsíldár evidently sympathizing with the other side.

The assessors have given their opinion in regard to the guilt or innocence of each one of the prisoners, and it now remains for me to record my reasons for agreeing with, or differing from them in each instance.

Three of the prisoners, Hastam Khán (No. 1), Sikandar Khán (No. 2), Azím Khán (No. 25), are own brothers. Rustam (No. 6), is their half-brother. It will be convenient to dispose of these first. The assessors have found Hastam Khán and Rustam not guilty, and Sikandar Khán and Azím guilty. I concur in this view. It appears that there is considerable enmity between Hastam Khán, on the one side, and Sikandar Khán and Azím Khán on the other. They have been bound down to keep the peace towards each other. Hastam Khán is the eldest brother. His younger brothers have quarrelled with him about the family property and have brought actions in the Courts. A long-standing enmity seems, however, to exist between the whole family on the one side, and Arsalla Khán and his adherents on the other. Despite the internal divisions, there would be nothing extraordinary in the four brothers joining together against their common foe, or in the latter attempting to include all four in a crime committed by only one or two. Now it appears pretty certain that Hastam Khán himself had no direct interest in the particular question regarding water which gave rise to the fight. He does not himself appear to cultivate, and his house is situated within the village, at a considerable distance from the place where the embankment was put up. Moreover, there appears to have been no discussion with him at all regarding the right to the water on that particular day. On the other hand, it is proved by the evidence of both sides, that messengers were passing between Arsalla Khán and Sikandar Khán (accused No. 2), with a view to allaying the quarrel. Again, Hustam Khán has brought forward five apparently respectable witnesses, who declare that he was at his *hujra* before and during the fight, and that he knew nothing about it till all was over. After hearing these witnesses I recorded a note that I was much inclined to believe them. They appear to have been named from the first. The evidence against Hastam Khán, if carefully examined, does not appear to be worthy of credit. The prosecution attempted to prove too much. It alleged that Hastam Khán himself, having come down armed to the spot, and without one word of preliminary warning, deliberately aimed at and shot Muhammad Ali, a man who is not shown to have been in any way concerned in the erection of the *bund*. This act on the part of Hastam Khán is said, by the prosecution, to have been the first violent step. The witnesses Sarfaráz (No. 2), Májíd (No. 3), Sadhu (No. 4), Samandar (No. 5), give direct testimony on this point, but my remarks made at the time show that I did not believe them, and the brother

of the deceased, Zard Ali (witness No. 25), who was with his brother, says that Hastam Khán had nothing to do with it. The evidence of the Deputy Inspector (No. 1), has a direct bearing on this point, and it is worthy of note that not one of the wounded men, who have been examined as witnesses No. 12, 13, 14, 15 and 16, take Hastam Khán's name at all.

Hastam Khán is a somewhat remarkable man in appearance. His age appears to be about 35 or 36. He has a fine open countenance, with large enquiring eyes. He has conducted himself throughout the trial with considerable dignity, and has almost courted a full investigation. He suffers much from deafness, and possibly this fact may have told somewhat in his favour. However that may be, I altogether distrust the evidence against him, and I incline to believe, almost implicitly, the defence which he has put forward. He will be acquitted.

In regard to his brothers, Sikandar (No. 2), and Azím Khán (No. 25), the case is very different. That Sikandar was taking a direct interest in the water question is abundantly proved by his own statement and that of Arsalla Khán (No. 17), and of Amínulla (No. 66). There is a great concurrence of testimony as to his having been the leader of the armed band, which proceeded from the direction of his *hujra* to take vengeance on the men who had put up the second embankment. Witnesses Nos. 8, 9, 10, 11, 14, 18 all depose to his presence,—some of them declaring that he wounded Wali Muhammad with his own hand. I discredited the witnesses No. 31 and 32, produced by this man for his defence at the time they gave their evidence, and the assessors have unhesitatingly condemned him. It seems to me absolutely certain that Sikandar Khán was the instigator and originator of the attack by armed men, who were evidently prepared to go to any length, and I am of opinion that the sentence on Sikandar Khán must be capital. It may be conceded that his side had received considerable provocation from Arsalla Khán's party, but this provocation was neither grave nor sudden, and in no way warranted a resort to arms. In deciding that a sentence of death must be passed on Sikandar Khán, I consider that ample ground has been disclosed in the present case for such a course. I am, however, confirmed in the opinion by the result of the connected case, *viz.*, the murder by poison of Jang Báz. It has therein been proved to my satisfaction that Jang Báz was poisoned by some one or other of his own party in order to make their case stronger against the opposite side. The resort to such a

diabolical course by one or other of Sikandar Khán's faction makes me the less disposed to extend to him mercy which he has in no way deserved. With regard to the other prisoners I may at once say that I do not consider capital sentences are either expedient or necessary. There were faults on both sides; passions were roused, and the Pathán dependent who follows his leader in an attack of this sort cannot in fairness be held equally culpable.*

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No. 4.

CROWN *VERSUS* HASTAM KHAN.

CHARGE,—MURDER BY POISON.

JUDGMENT.—20*th February* 1873.

This case must be read in connection with the proceedings and judgment in the case of *Crown* versus *Hastam and 25 others*, Charge,—Murder, on the 15th September last.

Jang Báz, one of the men wounded on the side of Hastam Khán's people, appears to have been allowed by the police and the Tahsíldár to be treated at his usual place of residence in the doorway of Sikandar Khán, the principal in the affray. Jang Báz's wound was slight and in no way likely to cause death. However, on the morning of the 17th September he was reported to have died, and, hearing this, Arsalla Khán, the head of the opposite party, insisted that foul play had been practised, and he demanded that the body should be sent in for medical examination. Arsalla Khán had probably heard that the wounded man had been seized with vomiting. The body was accordingly sent in, and the medical evidence proves that death was caused by arsenical poisoning. The prosecution has attempted to show that the prisoner Hastam Khán, who was at the time under arrest, was allowed by the police to go away from the place in which he was detained, and the inference sought to be drawn is that during his absence, he either administered the poison or caused it to be administered. A perusal of the evidence shows that the presumption is by no means warranted, and the fact that Hastam Khán is believed by this Court not to have been concerned in the fight, tells much in his favor.

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* Sikandar Khán died in Jail before the Chief Court had passed orders in his case. The other persons convicted do not appear to have appealed.

The assessors unanimously acquit the prisoner, and I have not the slightest hesitation in concurring with them. One Yúsaf was sent up by the police together with Hastam Khán. There appears to have been a somewhat stronger case against him, but he died of cholera before the charge was investigated. Concurring with the assessors, the Court acquits Hastam Khán and directs that he be set at liberty."

No. 5.

CROWN *VERSUS* MUSSAMMAT RAH BEGAM.

CHARGE,—MURDER.

A remarkable case of murder by an Afghán woman of the Kohat district.

Confession of the accused before the committing Magistrate.

'Ghufár, deceased, was my husband's sister's son. From his infancy he has lived with me, and I have treated him as if he were my son. For the past six years he was a bad character, and one night he came into my house and on to my charpoy and raped me by force. For shame I never told any one of this, but I told deceased that sooner or later he would come to harm. He replied: 'Is there any one who will kill me?' I answered that I would kill him myself some time or other. Since then he has frequently robbed me of my goods, notwithstanding remonstrance on my part. Four months ago, deceased married Mussammát Asha, a prostitute. About three days before his murder deceased, on pretence of a quarrel about the children, struck me a blow on the left arm with a stick. As I kept in mind my intention of killing him ever since he raped me, I waited until some night I should find him sleeping alone, intending then to kill him. On the night of the murder I saw him sleeping alone on his charpoy. It was about ten o'clock at night, when I took the large knife (Afgháni *chára*) from my house (the knife before the Court), and with both my hands I struck deceased on the right arm, cutting it through. Deceased called out: 'What you said you have done.' I replied: 'Yes! it is necessary to kill one's enemy oneself.' I took the knife with me outside and I told Músa, lambardar, when he came up, that I had killed deceased. In the meantime Mussammát Asha appeared crying out that some one had killed Ghufár. I said I had done the deed, and I re-entered and, in her presence, I struck deceased a second blow across the neck, and he

died. Músa and Sheru and Abdulla Sháh came up and arrested me with the weapon in my hand. I and deceased lived in the same enclosure, but in different houses. I murdered deceased with the knife before the Court. I had no accomplices.

'I took the knife in both hands and struck deceased with all my force across the right arm, believing that I had either killed him or that he would die from the effects. He did not die, but was crying out, and on finding that he was still alive I returned and with both hands I struck him again with the knife across the throat. There was scarcely any interval between the two blows. Mussammat Asha was not present when I struck the first blow; she was sleeping in the courtyard, and on hearing deceased crying out she was aroused. When I struck deceased the second blow she was frightened, and ran up to the roof of the house.

'I have made this confession of my own free will. No one has persuaded me to do so, and I have received no hope of pardon by doing so.'

Statement of accused before the Court of Session.

'I plead guilty to having murdered Ghufár in the manner described by me to the Magistrate and with the knife or sword now in the Court. He had dishonoured me. I am his maternal uncle's wife. Three years ago he forcibly violated me. I did not raise a disturbance at the time, because of shame. He never repeated the offence, but I told him I would never let him off with life, if I got an opportunity of killing him. My husband is a sepoy in a regiment at Dera Ismail Khán. He came to see me, and has gone back. The knife or sword is my husband's property. My husband, when he came to see me, asked me why I had not told him at the time. I said I awaited my opportunity. I have nothing more to say.'

JUDGMENT.—*5th August* 1873.

This is one of the clearest cases which has ever come before me. The prisoner has pleaded guilty to the charge of murder, and I can see no reason why she should not be convicted on her own plea. The facts are clearly and concisely set forth in the Magistrate's committing order, and they are described by the woman herself. The motive assigned by the woman for her deed is that deceased, who was her husband's nephew, raped her three years ago. She declares that she resolved to be revenged upon him, and awaited her opportunity. There is no evidence forthcoming as to the alleged rape; but even if it be conceded that that

offence was actually committed, I am unable to find any sufficient reason for not passing a capital sentence. The murder was cold-blooded, treacherous, and even according to the prisoner's own showing, it had been premeditated for a very long time. If I were to refrain from passing a capital sentence, the only reason I could give for my forbearance would be that as the prisoner is a woman and that as the law provides an alternative punishment, one would naturally desire to sentence a woman to the lesser penalty. But I feel certain that it is not the intention of the law that an intelligent, deliberate murderess of the type of the prisoner who now stands before the Court, should escape the extreme penalty on consideration of her sex alone.*

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No. 6.

CROWN *VERSUS* MUSSAMMAT MURGHAI.

CHARGE,—MURDER.

A case of poisoning by a Gujar woman. *Inter alia* it points to the necessity of exercising the greatest care in regard to medical evidence, a matter which formerly was much neglected by Pesháwar Magistrates.

JUDGMENT.—*8th October* 1874.

The persons concerned in this case are residents of the village of Sárachína in Eusafzái. They live in several houses which open into a common court-yard. The chief man of the community appears to be Dádú, witness No. 4, who cultivates in partnership with his nephew, Khudádád, No. 1. Khudádád has been married for some years to the accused, Mussammát Murghái, the daughter of Sháhmarán and Mussammát Mastái, whose house is in close proximity to that of Dádú. It is admitted on all hands that for the last year accused has been suspected of an intrigue with Ghani, a resident of another part of the village. Khudádád, Dádú and others declare that the intrigue exists, and that they have done all they can to stop it. The woman admits she has been suspected and that Ghani has made advances to her, but she denies that she has ever accepted them. She does not conceal the fact that her husband and his friends have been greatly incensed with her on account of the alleged intrigue, and that Ghani

* Sentence of death was confirmed by the Chief Court. I may add that I was by no means satisfied that Rah Begam gave the true motive for her act. Ghufár's recent marriage may have excited her jealousy, if it be supposed that they had previously carried on an intrigue.

had poisoned her husband's cattle in revenge for having been interfered with. Mussammát Murghái describes herself as being so much distressed by the conduct of her friends that she was constrained, on meeting Ghani in the village one day, to receive from him a small quantity of white powder, which he told her was *charmed salt*, and which, if administered to her oppressors, would result in their ceasing to annoy her. Accordingly, on the 29th July, when Mírdád, the little child of Dádú, was receiving some food from Mussammát Mastái, accused's mother, she (accused) took the opportunity to put the salt into his vessel. The poor child went home, ate the food, and shortly after was seized with violent vomiting. Purging followed; his mother got alarmed, sent for Dádú from the fields and spread the alarm. A charge was at once made against accused and Ghani, and the parents of the former were said to have been guilty of abetment.

The police arrived, sent the sick child to Mardán, searched the houses and found a small vessel containing a white powder like arsenic concealed in a recess in the house of accused's parents. The mother, Mussammát Mastái, declared the powder to be lime; but the Deputy Inspector saw that it was arsenic, and would not allow the old woman to taste it, as she offered to do. The Deputy Inspector is of opinion that Mussammát Mastái did not know what the small vessel contained, and that her offer to taste the powder is, to a certain extent, a proof of her innocence. She was under arrest at the time, and it is not at all surprising that in her ignorance of the extent of her daughter's wickedness she should have been ready to taste anything found on her premises. The boy was taken to Mardán. He died a day or two afterwards, all his symptoms being those ordinarily caused by arsenical poisoning. The suspicious substance found in Mussammát Mastái's house was carefully conveyed to the Civil Surgeon, who pronounced it to be powdered arsenious acid. The medical evidence, under all the circumstances of the case, leaves no reasonable doubt in my mind that the boy died of poisoning by arsenic. It is, however, most extraordinary that the Police, Magistrate and Civil Surgeon all omitted to ensure the despatch of part of the stomach or liver to the Chemical Examiner for analysis. The Police and Magistrate appear to have taken it for granted that the Civil Surgeon would do this, but the Civil Surgeon, with what appears to have been a somewhat rash contempt of the ordinary precautions in such matters, rested satisfied with his own opinion as to the cause of death,

and even went the length of destroying, on his own responsibility, the arsenious acid which had been sent to him for examination. I am obliged to notice these points in some detail, in the hope that the Magistrate of the District will take steps to ensure the best and most conclusive medical evidence being obtained in future in cases of importance. It is quite clear that, even in the present instance, had not the other evidence been unusually good, the failure on the part of the prosecution to establish the *corpus delicti* absolutely by medical evidence might have resulted in a miscarriage of justice. As the case stands, however, there can be no reasonable doubt that the boy was poisoned, and there is no doubt of any kind that the prisoner administered to him a powder, after which, in a very short space, he was seized with the symptoms of arsenical poisoning. The only point for decision is, whether it is possible to believe the woman's story that she gave the powder believing it to be *charmed salt*. The open way in which it was given and the perseverance of the accused in her admission certainly tell, to some extent, in her favour At the same time, I am of opinion that it is impossible to believe in her ignorance. She is evidently a clever, sharp-witted woman. Is it, therefore, conceivable that she, knowing that her lover had poisoned her husband's and Dádú's cattle previously, could have supposed that he would have given her a harmless charm to administer to those who interfered with her? Or, if she did, how could she imagine that the desired effect could be brought about by giving it to the little child?

I think there can be little doubt that the child was poisoned in the same spirit of wicked spite in which his father's cattle had previously been killed. The woman was, perhaps, ignorant of the manner in which arsenic takes effect, and thought to disarm suspicion by pretending to put salt in the child's cup. However that may be, the finding of a large quantity of arsenic concealed in the house where the child received the food goes a long way to confirm the belief that the prisoner fully intended the fatal effect which followed her seemingly innocent act.†

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† Sentence of death was passed and duly confirmed by the Chief Court.

No. 7.

CROWN *VERSUS* GULAB.

CHARGE,—MURDER.

JUDGMENT.—12*th September* 1876.

In this case accused has pleaded guilty to stabbing deceased as he lay asleep in the *hujra* of Mobín, in the village of Umrzái. Accused is apparently between 16 and 17 years of age. As excuse he pleads that when he was young he suffered unnatural violation from deceased, and that since then he had been subjected to much annoyance from being taunted by deceased with having been put to shame. I think there can be no reasonable doubt that the main plea is true. The criminal register of the Pesháwar district shows that in 1869 deceased was charged, at the instance of accused, with having forcibly committed unnatural crime upon him. Deceased was discharged by the Magistrate for want of proof, but there is a *consensus* between the witnesses in the present case that there was no other cause of enmity, and if so, it is easy to understand that accused might have killed deceased in revenge for a real wrong, whereas, it would be difficult to believe that he would have killed him simply because a *false* charge of unnatural crime had failed. Moreover, forcible violation of young boys is a very common crime in the Pesháwar valley. Thirteen persons have been punished in this Court for that offence in the present year alone.

In regard to the second part of the plea, *viz.*, that deceased was in the habit of taunting and annoying accused up to the evening before the murder, there is no satisfactory proof, and accused's admission in this Court, that he had vowed to be revenged sooner or later, tends to show that further action on deceased's part was not necesssary to stimulate accused to kill him. Still I am inclined to believe it probable that either by word or gesture deceased did prevent accused from forgetting his vow.

The crime of which accused has been guilty undoubtedly amounts to murder, and this Court can only choose between two sentences. A capital sentence need certainly not be passed on a young boy who felt himself bound to revenge an abominable indignity. The sentence of the Court will, therefore, be transportation for life; but steps will be taken to lay the proceedings before His Honour the Lieutenant-Governor, with a recommendation that, under the circumstances of the case and in consideration of the youth of the prisoner, the sentence may be reduced

to five years' rigorous imprisonment. I should have been glad to have recommended even a greater measure of leniency, were it not clear that accused killed his enemy in pursuance of a long-cherished design, thereby deliberately declining of accept the decision of the Courts on his complaint. Moreover, in view of the continued prevalence of blood-shed in this valley, it is necessary to show the people that no amount of past injury can be held to justify deliberate murder.

Copy of a letter No. 3772 (*Home*), *dated* 13*th November*, 1876.

From—The Secretary to Government, Punjab,
To—The Officiating Registrar, Chief Court, Punjab.

I am desired to return the files of the case of the *Crown* v. *Gulâb*, accused, charge murder, Section 302, Indian Penal Code, received under cover of your letter No. 2443, dated 26th ultimo, and to observe that His Honour the Lieutenant-Governor thinks it will be enough to reduce the sentence of transportation for life passed upon Gulâb to transportation for ten years. His Honour is accordingly pleased to sanction this reduction.

No. 8.

THE CROWN *VERSUS* DEWA SINGH.

CHARGE,—CULPABLE HOMICIDE AND MURDER.

A case of murder by a Hindu boy aged 14 years—in the city of Peshâwar.

JUDGMENT.—30*th July* 1877.

The facts of this case are very clear. Accused and deceased, boys of about 14 years of age, quarrelled in the street. They were previously acquainted. They abused each other's female relations. It is proved by the evidence of three eye-witnesses that accused deliberately drew a clasp knife and stabbed deceased to the heart. The unfortunate boy was taken to the hospital, where he died of his wound almost immediately.

Accused in this Court admits the killing, but tries to make out that there was a struggle before he drew the knife, and that he only intended to threaten deceased. This defence is flatly contradicted by the witnesses for the prosecution. The Magistrate committed the accused on a charge under Section 304, holding that it might be gathered from the evidence of Sultân Shâh (witness), that deceased tried to

force accused down. In the Magistrate's English memo. of Sultán Sháh's evidence, the witness is made to say that deceased stabbed accused. In vernacular, Sultán Sháh is represented as having said that deceased began to fall upon accused. In this Court, Sultán Sháh says that deceased did not do more than try to prevent accused from using the knife. I have added a charge under Section 302, Indian Penal Code, against the prisoner, and called on him to plead thereto. He can only adhere to his former statement, and I am quite unable to hold, on the evidence, that any one of the exceptions to Section 300, Indian Penal Code, can avail to bring the crime out of the category of murder. The Magistrate considers exception four applicable, but I am clearly of opinion that there is no proof that the fatal blow was delivered in a *sudden fight* in the heat of passion and without the offender having taken undue advantage, &c. On the contrary, all the evidence goes to show that there was no fight—that the knife was deliberately drawn and most inexcusably plunged into the heart of the unhappy boy. Moreover, the one witness who describes the beginning of the dispute shows that accused was the first to use irritating language. No argument can be used in favor of accused save that which is derived from a consideration of his extreme youth. I am of opinion that it is my duty to sentence him to transportation for life under Section 302, but the case will be submitted through the Chief Court to the Local Government, with the recommendation that the punishment may be reduced to seven years' rigorous imprisonment, the prisoner being a Hindu boy of certainly not more than 14 years of age who has committed an unpremeditated murder.*

No. 9.

CROWN *VERSUS* LAL SINGH.

CHARGE,—MURDER.

This was a case of wife murder by a Hindu who seemed to have imbibed Pathán ideas.—See page 5 *ante*.

JUDGMENT.—*10th December* 1873.

The accused has pleaded guilty of the murder of his wife by inflicting upon her many frightful sword wounds. He is a Police constable,

* The Local Government accepted the above recommendation.

a resident of Peshâwar, and apparently a most intelligent man. He confessed his crime from the moment of his arrest, and he made three formal confessions before three Magistrates at different times. In pleading guilty before this Court he refers to those confessions as strictly true. They have every appearance of being so, and the calm and deliberate manner in which the prisoner avows his willingness to undergo whatever punishment the Court chooses to impose, confirms me in the opinion that there is no reason to doubt that the circumstances have been correctly described. The only point for consideration is whether there is anything in the circumstances of the case which would justify me in refraining from passing the extreme sentence of the law. Much as one would desire to show mercy to so fearless and straight-forward a man as the prisoner, I am unable to come to the conclusion that I should be justified in passing the lesser sentence. The woman doubtless gave great provocation and was grossly insolent to her husband on, and before, the fatal day. But the idea of killing her does not seem to have suddenly suggested itself. Accused apparently considered that his wife had fully merited death at a much earlier stage, and he describes himself as having been only kept back from killing her before because he feared the Government. It appears, also, *vide* the first confession, dated 20th October, 1873, that he deliberately told the woman an hour or two previous to her death that he would kill her if she disobeyed him. Clearly, Lál Singh killed his wife on principle. He does not seem to regret his act, but, by the tone of his statements before this Court, he seems to think it possible that his conduct may be considered justified by the circumstances. I find it impossible in any way to sanction this view. Accused seems to be the very man to commit a second murder on principle, if what he considers sufficient cause were given. The element of remorse or repentance seems entirely absent.†

* * * * * *

† Sentence of death was confirmed by the Chief Court.

No. 10.

CROWN *VERSUS* (1) SITAR, (2) MIR HAMZA.

CHARGE,—MURDER.

A case of midnight assassination of a sleeping victim.

JUDGMENT.—19*th January* 1874.

This case was tried on the 6th and 7th instant. Since then I have carefully gone through the Police papers for the second time, considered the evidence to the best of my ability, visited the village and caused the principal witnesses to take me over the scene of what they had described in Court. The result is that I have satisfied myself that the assessors are right in saying that there is no reason to disbelieve the case for the prosecution. I saw no reason to differ from them at the time they pronounced their verdict, but, as a scrutiny of the Police papers raised one or two points of difficulty, and as the case against the accused rested almost entirely on the credibility of oral testimony, I thought it right to try the experiment of hearing the evidence on the spot, in order to see whether there was any inherent improbability in any part of it and whether its repetition would have the effect of strengthening or weakening my belief in it. The result is that the difficulties have been removed to my satisfaction, and the witnesses have induced me to accept their stories with greater confidence than I could have done had I heard them in Court only.

The facts of the case are really very clear and simple. A broad irregular road runs through the large border village of Reghi. As you pass along this road from north to south, you find about the centre of the village a large open space or square on the right hand. In the middle of one of the sides of this square, abutting on the road, is a small Baniá's shop with a ruined shed or two attached. In front of the shop door is a platform or *chabútra* just large enough to hold two small beds. On this *chabútra*, the shop-keeper, Rám Ditta (deceased) was in the habit of sleeping, and beside him generally slept Báwar, one of the Government chaukidárs. Báwar received a small stipend from Rám Ditta to make this *chabútra* his head quarters between his rounds.

Reghi has a small Government police post consisting of four constables who patrol at night. Three of these constables passed down the road about 1 or 2 a.m. on the 18th October last. They saw Rám Ditta and Báwar sleeping on the *chabútra* as usual. Báwar answered them when they asked if he was all right. After the constables had gone

about twenty or thirty paces they passed another Hindu's shop at the mouth of a lane, and going on they came to another open space.

The second shop belongs to Rám Dás, brother of Rám Ditta. Soon after the constables had got beyond it, Rám Dás came down the lane from his dwelling-house, according to his custom, to see if his shop was safe. He declares he does this three or four times every night. At the moment when he had come to the mouth of the lane and the policemen had got about twenty or thirty paces beyond it, a shot was fired at Rám Ditta as he lay asleep. The bullet entered the right buttock, and, passing obliquely upwards through the abdomen, escaped between the sixth and seventh left ribs.

Báwar sprang up, heard Rám Ditta cry out that he had been hit, and saw two men within a few paces running under the wall of the adjacent shed. They turned round by the end of the building, ran across the open space, and entered a lane at the right hand corner. Báwar pursued for some distance, but stumbled and fell at the entrance of the lane.

Meanwhile Rám Dás hearing the shot at once rushed to his brother, and found him wounded ; immediately after, the three constables came up, and followed the line indicated by Rám Dás as having been taken by Báwar ; they found Báwar fallen down, but ascertaining from him, that the assassins had run down the lane, they followed as fast as they could, and shortly after caught sight of two men going on ahead. The lane led into a large space, across which the men ran, pursued by the policemen. At the upper left hand corner, the ground is extremely irregular and full of excavations. In one of these the men stumbled, giving the Police time to gain on them. They scrambled out, and, running on, turned suddenly to the left into the courtyard of a *hujra*. When they had got within a few paces of the door, the Police closed with them and effected their arrest. Then they recognized them as Sitár (accused 1), the owner of the *hujra*, and his friend Mír Hamza (accused 2), a young Malik, who, although owning property in Reghi, generally resided in the neighbouring village of Ghilzai. Mír Hamza had about him a single-barrelled pistol of English make, loaded and capped. The policemen tied the hands of their captives, and taking possession of the pistol removed the cap from the nipple and placed it in a cavity made for the purpose in the butt. By this time the chaukidár Bawar had come up. The whole party then returned towards Rám Ditta's shop by a more direct line, passing through the village. When they reached the main road they

found that a number of people had collected, and that Rám Ditta had been carried to his home and had died. They learnt, however, that the wounded man had accused before his death Fíroz and his brother Sitár (accused 1). Mitha, a cousin of deceased, handed to them a large flattened bullet which he had picked up under the charpoy. The constables then took Sitár and Mír Hamza to the police post, and went to Fíroz's house, which is close to Sitár's *hujra*. Fíroz was not found; his wife said he had left her in the evening and had not returned. When he went away he had a large Pesháwari pistol and a sword with him. The prisoners on being questioned admitted that Fíroz had been with them up to *khuftán* time, when he left them fully armed. Fíroz has not been heard of since. He is half brother to accused 1, and is a well known bad character; he was only released from a sentence of 6 years imprisonment for kidnapping about a year ago. The case for the prosecution therefore is, that Sitár (accused 1), Fíroz (absconded), with their friend Mír Hamza (accused 2), conspired together to murder Rám Ditta: that they proceeded together to do so; that the shot was probably fired by Fíroz, who at once managed to escape by one of the numerous lanes leading from the main road, while his companions were not quick enough to avoid being seen by Báwar and the Policemen, who at once gave chase and succeeded in arresting them before they could get into the *hujra*.

This I believe to be the true state of things. It is necessary, however, that I should discuss the difficulties connected with the case, which have necessitated great caution in accepting the statements of the witnesses.

I. *The motive.*—It is absolutely certain that the accused had reason to be enraged and dissatisfied with Rám Ditta, but as their quarrel was about an apparently trifling matter the doubt is suggested whether there existed an adequate motive for such a cruel and cowardly murder. It appears that the young Malik, Mír Hamza (accused 2), formerly kept a *hujra* in the village. Rám Ditta was one of his dependents, living in a shop belonging to him. Part of Rám Ditta's service was to supply oil for the *hujra*. A year or two ago, however, Mír Hamza left the village, and gave up his *hujra*. Within the last few months, his friend Sitár started a *hujra* under the patronage of Mír Hamza, and the latter ordered Rám Ditta to supply oil to Sitár. A rival party in the village seems to have been indignant at the patronage bestowed by Mír Hamza on Sitár and to have urged Rám Ditta not to agree to render to the latter services which were only due to the former. Some eight days

before the murder, a disturbance took place about this oil at Rám Ditta's shop, which resulted in his and Sitár's both going to report at the Thánah. Fortunately, for the present case, their statements were written down at length, and, in my opinion, they afford good evidence that the quarrel about the oil was a deeper matter than might otherwise have been supposed. Rám Ditta made a report on the 10th October with Guláb, chaukidár, and Hassan, Malik, to the effect that, he had been beaten by *Sitár* and Wázír, about a quarrel in regard to oil at 9 p.m., and that when he cried out, his assailants ran off.

Sitár's report was to the following effect, *and it was made at* 11 *p.m* :—

'To-night, at 9 p.m., I went to Rám Ditta's for oil, then Said Ahmad, Gul Muhammad and Jalál, who were concealed, came out to beat me. When the Hindú began to give me oil, they prepared to assault me. I ran through fear of my life, and Said Ahmad and Gul Muhammad caught me running, and Husain Afzal and Jalál beat me. At last, having got away from them, I have come to report. The cause of the enmity is this; these people, on account of enmity against Malik Mír Hamza, have beaten me because I am his tenant.'

The Deputy Inspector, in sending on these reports, wrote as follows :—'Inasmuch as there is enmity between Mír Hamza and Husain about land, and Sitár is tenant of Mír Hamza, all the men of Reghi are enemies of Sitár, therefore I have referred both parties to the Courts.' In giving his evidence before this Court the Deputy Inspector, (witness No. 10), says he distinctly remembers deceased telling him that Sitár attempted to strangle him, when the other party interfered. In addition to this Rám Dás, (witness No. 3), distinctly states that he heard accused 1 tell his brother that he would not let him off with life, and it is in evidence that accused 2 told him that he would be turned out of his shop, unless he supplied the oil without demur. In short, it is absolutely clear that this question of the supply of oil was made a party one. Rám Ditta could not refuse without offending the accused. He could not agree without enraging the other side. It is clear that passions must have been strongly roused when a dispute about such a matter, at 9 p.m., induced both sides to undertake a journey of some three or four *kos* to the Thánah to report, in the middle of the night. I am, therefore, of opinion that this quarrel was a sufficient cause for a murder in this wild border village, the inhabitants of which are notoriously of a most turbulent and lawless nature. The passion of the murderers was not

directed against the poor Hindu alone, but against the powerful party who were influencing him. The accused have been utterly unable to suggest any definite cause for the murder. The Police officer, (witness No. 10), declares that during the whole time he was in the village not a whisper was heard of Rám Ditta's having been a bad character or having had an intrigue with any woman. The accused now say he was a loose character, but they do so in a vague way, and are unable to give any clue to a possible murderer other than themselves. Moreover, nothing has come out during the enquiry which tends to show that the flight of Fíroz was due to any other cause than this murder. The accused say it is quite possible that Fíroz committed it; but then what motive had Fíroz apart from that which influenced them? Fíroz is half-brother to accused 1, and apparently a desperate character, but he does not seem to have been mixed up in the oil quarrel. He must either have been engaged by the accused to take part in the assassination, or must have been hired by some other person altogether. If it be supposed tha Rám Ditta was killed on account of an intrigue, then Fíroz must have been hired by the outraged husband or his friends. Fíroz's own wife is an old woman, and no one has ever hinted at the idea of an intrigue between her and the young Hindu. Then again, is it possible to suppose that Fíroz was hired by the enemies of the accused for the sole purpose of committing the crime, in order that the latter might be falsely charged? This seems to be out of the question, for, if so, how are we to account for the fact that no one has attempted to say that accused 2 was charged by the dying man. The only two witnesses to the dying denunciation are deceased's brother and cousin. They say that Fíroz and Sitár alone were charged. If it could be supposed that the wounded man never spoke and that these relatives have been suborned, they would surely have been induced to take the name of Mír Hamza, to capture and charge whom was part of the plot. It seems to me that if it be conceded that Fíroz was one of the assassins it is impossible to deny that the story of the prosecution must be true in the main. If, however, it could be believed that Fíroz had nothing to do with it, and if the whole of the evidence of the witnesses could be rejected as false, it might be held that nothing whatever is known as to the cause of the murder, that the friends of Rám Ditta were prompted to accuse Fíroz and the prisoners, that Fíroz heard of this in time to abscond, and that the prisoners were arrested, as they say they were, when quietly sleeping in their *hujra*. But, if such was the case, why

should not the wife of Fíroz have given this simple explanation of the flight of her husband, and why should not the accused themselves, who say he was with them until late in the evening, have thought of this explanation? Their account of their capture is, that they were asleep and were called out and arrested by the constables, and that the pistol was lying under the pillow of Mír Hamza: but the witnesses whom they named to support this story would not say a word for them.

II. The next point of difficulty is the *first report of the case made at the Thánah*. Guláb, chaukidár, reported at 3 p.m., that Rám Ditta had been shot, and that his brother, Rám Dás, charged Fíroz and Sitár, of whom Sitár had been caught and Féroz was being searched for. No mention was made of accused 2, Mír Hamza. Now this report is explained by Rám Dás by saying that he certainly told Guláb to go and report that he charged Fíroz and Sitár, but that he did this before he knew that Sitár and Mír Hamza had been arrested, and when he had only his brother's word to go upon. He says that he had gone to his house when Guláb came to him, and knew nothing of the result of the constable's pursuit. Guláb (witness No. 2), called by this Court, declares that he reported *verbatim* the words told him by Rám Dás, and that he merely learned from him (Rám Dás) that Sitár had been arrested. He declares that he did not see any one under arrest, and he cannot explain how Rám Dás knew anything about an arrest, because the constables were nowhere to be seen.

The constables, on the other hand, say that when Guláb came from Rám Dás' house, they met him, and carefully told him to make a full report and to state that both accused had been arrested, and that Fíroz was also charged,—for meanwhile they had heard of the dying words. I consider Guláb's story utterly incredible on the face of it. There can be little doubt that the accounts given by Rám Dás and the constables are correct, because we find that the report actually made was a compound of the two sets of instructions. Rám Dás knew nothing of the arrest, and said nothing of it at the time: the chaukídár must have derived his knowledge of an arrest from having seen the prisoners. The omission to take Mír Hamza's name is accounted for by the fact that Guláb is the creature of a lambardár by name Abdul Kárím, who is the brother-in-law of Mír Hamza. There is nothing extraordinary in a strong effort being made to get Mír Hamza out of the scrape, when it was found that although arrested, almost *flagrante delicto*, the murdered man had not taken his name. I do not for a moment

suppose that Rám Ditta recognized any of his assassins. He merely accused those whom he thought likely to seek his life,—who more likely than Sitár (accused 1), and his desperado of a brother, Fíroz?

The Police papers show that the attempt to extricate Mír Hamza (accused 2), was kept up for some time. At the end of the first day of the enquiry Rám Dás is made to say that he still only accused Féroz and Sitár, and that accused 2 had been arrested through suspicion, but in the chálán sent in with the corpse it is expressly stated that all three were charged, and, when the Inspector of Police went out, Rám Dás distinctly stated that he charged all three. I am by no means satisfied that the Deputy Inspector's action has been *bonâ fide* throughout; his first long report shows that, for some reason or other, he was induced frequently to alter the expression 'all three accused,' into 'all two accused.' A separate enquiry will be made as to his conduct.

I conclude this judgment by stating that I am quite unable to believe that the three constables, who have given their evidence in a most straightforward manner on the whole, would have deliberately given false evidence. As far as my experience goes, it is a most unusual thing in this district for members of the Police force to go out of their way to give direct evidence in regard to crimes. Here these three men have given direct evidence, which, if believed, has the effect of incontestably proving that the prisoner took part in the murder of Rám Ditta. The credibility of that evidence is unshaken, and it is corroborated by other evidence, and I am of opinion that it must be accepted and acted upon.*

No. 11.

CROWN *VERSUS* (1) MANSUR, (2) MUHAMMAD ALI.

CHARGES,—MURDER, &c.

The murder of an unoffending child, by no means an uncommon type of crime.

JUDGMENT.—*25th November* 1873.

The prisoners are charged with having, on the 26th September last, at Páoka, a village just outside the Cantonment of Pesháwar, murdered Sarfaráz, the young son of Jumá. Páoka is a village of unenviable notoriety in regard to crimes of this sort. It appears that some eight or nine

* Sentences of death were passed, and subsequently confirmed, by the Chief Court.

years ago, Mansúr (accused 1), eloped with the wife of Mír Alam, brother of the above mentioned Jumá. He took up his abode beyond the border. In 1866 Mír Alam was shot; the general belief being that Mansúr had either come down and done the deed himself, or employed a hired assassin. However that may be, Mansúr remained an outlaw till he was apprehended at Kohát in the end of last year, 1872. His arrest seems to have been a fortunate circumstance for him, for as no proof of his guilt was forthcoming, the magisterial authorities permitted him to settle down in his old village of Páoka, and contented themselves with binding down him and Jumá to keep the peace towards each other. Two sureties, for one hundred rupees each, were furnished by Mansúr. So he settled down in his home, bringing Mír Alam's widow and daughter with him.

On the day of the present murder, Jumá, who is a man of considerable importance in the village, with a large household and a good deal of land, returning to Páoka from a visit to another village, was told that his little boy was missing. He did not get alarmed at first, but towards evening, as the boy did not come in, he sent friends to make enquiries in neighbouring villages. Just about dark a search party was organized. It went out into the fields round Páoka with a torch, but returned without success. This was not to be wondered at, because the whole of the fields to the east side of the village were covered with high standing Indian corn, intersected by narrow water-courses and field boundaries. Nothing could have been easier than for a murderer to cut the boy's throat, and to conceal the body by placing it in the middle of one of these enormous fields. Nothing but extraordinary good fortune would have enabled a party of villagers to find it at night, unless they had been guided by trackers or had employed trained dogs. It is most important that this point should be thoroughly realized in order to obtain a complete understanding of the case. It was not explained by the prosecution; it only dawned upon me during the second day of the trial, and was only thoroughly grasped when I went out and visited the fields myself. The plan prepared by the police is a good and accurate one, and I understand it thoroughly now; but I did not at first, and there was no one to explain it. On the west of the plain there are the somewhat scattered houses of the village; to the east, the fields. That portion coloured green is a sea of high crops; the blue portions are water-courses; the black lines narrow strips of uncultivated land between the fields; the yellow denotes two broad paths leading towards canton-

ments. The buff-coloured irregular line starting from the middle of one of the sides of a field, crossing the two broad paths, and winding between several fields, will be referred to further on.

To return, Jumá did not himself take an active part in the search. He seems to have soon lost heart, and, moreover, he was suffering from illness. Shortly after the return of the search party, a great cry was raised in the fields, the noise of which was generally heard in the village. The exact nature of this cry is one of the disputed points in the case, but the result was that a large party of villagers immediately went out with a torch in the direction of the cry, and found two men, Anand and Náim, standing on the edge of the field marked No. 1, at the south end of the buff-coloured line. Amír, one of Jumá's labourers and brother to Anand, was one of the first to arrive. By direction of Anand, Amír went a few steps into the field, and forthwith came out carrying the body of the boy Sarfaráz. His throat had been cut,—life was quite extinct. The corpse was stiff and cold. There was little or no blood on the ground. It seems absolutely certain that the murder did not take place on the spot whence Amír lifted up the body. It seems also absolutely certain that Anand and Náim could not have found the body by chance. The field belonged to a third person (Májíd), and is situated a long way from Anand's fields and the places where he and Náim were known to be at work.

Anand and Náim give a very simple explanation of the manner in which they arrived at Májíd's field. They did not make themselves fully understood by me in Court, and I was at first inclined to think that Anand had told a tissue of falsehoods. Moreover, the examinations of these witnesses before the Magistrate was somewhat cursory, and the essential points were not brought out. When I went to the spot, however, Anand and Náim explained to me what they really meant to say. Their account is to the following effect: Anand was sitting in the corner of his field (No. 5) arranging for its irrigation. Náim was on the southern edge,—on the broad path. Suddenly two men carrying a child's body appeared to Anand at the spot where the buff-coloured line begins. Anand declares that he at once recognized them and shouted to them, on which they hurried on, he following. Náim heard the shouting, and saw the men as soon as they got into the broad path. The men rushed on as indicated by the buff line, Anand and Náim following hard on their heels, shouting as they went. When they got to the corner of the field No. 1, the burden was thrown into the middle

of the Indian corn, while its carriers disappeared in the darkness. The villagers were soon on the spot with a torch, the body was taken up and carried in. The lambardár, Mír Aslam, on hearing Anand's story to the effect that he had seen two men and had identified them as the two accused, Mansúr and Muhammad Ali, forthwith arrested them in the crowd which had collected, and sent intimation to the Police station. The conclusion at which the assessors have arrived, and in which I concur, is that Anand and Náim have told a true story, and that the prisoners must be found guilty and punished on the facts proved by these witnesses. There is no other evidence in the case, save that afforded by the well-known fact of the enmity existing between accused 1 and Jumá, and by the complete break-down of the defence. The assessors hold that it is impossible to suppose that accused 1, the enemy of Jumá, could have taken part in the concealment of the body without having been directly concerned in the murder. Accused 2, however, is an outsider, who has no known enmity against Jumá, and who is merely a friend of accused 1. It is quite possible to suppose that his help was required merely in the disposal of the body, and that the boy had been killed by accused 1 single-handed, at an early part of the day. It is necessary to enter, at some length, on the reasons why I have decided that the witnesses Anand and Náim are worthy of credit, the more especially as, at first, I was of opinion that Anand had given false evidence. On the first day of the trial, before I had in the least realized the impossibility of the *chance* finding of the body, the main object of my examination of the witnesses was to ascertain whether or not the whole story of the discovery of the body in the field, the shouting of Anand, the starting out of a party of villagers, and the bringing in of the boy was not a fabrication. My suspicions were somewhat aroused by the father (Jumá), witness No. 2. It seemed so strange that he did not exert himself sufficiently to go out with the search party. The next witness was the lambardár Aslam, a sleek-looking, Hindustání-speaking Pathán, evidently thoroughly versed in the ways of our Courts. He gave his evidence in a plausible manner, carefully saying as little as possible, declaring that he had not heard the shouts outside the village, and that he had not gone out to the fields at all, but had merely heard the noise made by the people *after* the body had been brought in. In fact this man did his best by insinuation and demeanour to throw doubt on the case for the prosecution, and I told him so when his examination was ended. The impression on my own

mind, at this stage, was that this crafty lambardár had produced a couple of false witnesses in order to save the village from fine under Regulation 3 of the Frontier Rules, and after pretending to believe in them at the earlier stages of the enquiry, had, of design, withdrawn his support when the real crisis had arrived. The next witness was Anand. After telling his story in his own way, he was pressed by me to say who were the first to arrive at field No. 1. After some hesitation he mentioned the lambardár Aslam, the chaukidár (Atá Muhammad), the second lambardár Abdul Rahmán and his (Anand's) own brother Amír. Now Aslam had already denied that he had gone to the field at all. The two, Aslam and Anand, were confronted in Court, and they contradicted each other flatly ; the result was that Anand got excited, talked a good deal at random, and left the impression on me that the whole story of the manner in which the body was found was a pure fabrication. The next witness was Abdul Rahmán. His evidence puzzled me much. He declared that he had not gone out to the fields as alleged by Anand, but he deposed to having heard the shouts coming from the fields, and to having distinguished the actual words. In short, in every respect save one, he corroborated Anand most fully. He appeared to me anxious to speak the truth, and this impression was confirmed when I visited the village and was taken by him to the place where he was seated when he heard the cries. The 6th witness was the chaukidár, Atá Muhammad, who also denied that he had gone out to the field. His object seemed to be similar to that of Aslam, *viz.*, to throw doubt on the case for the prosecution. Then came Samand (No. 7), who generally corroborated Anand, and he was followed by Náim (No. 8). This man looked very much alarmed. Doubtless he had heard something outside the Court of the somewhat rough handling which Anand had undergone. He came in trembling. He, however, got through his examination with considerable success. He did not say that the lambardárs came out, but he mentioned the names of several persons who arrived with the torch. I was certainly favourably impressed by Náim ; the only extraordinary part of his statement being that although he had accompanied the chaukidár to the Thánah to give information, he had not told the Deputy Inspector at once what he had himself seen.

Four new witnesses were therefore summoned by me to appear the next day,—Amír Beg, the Deputy Inspector (No. 9), Amír, Chángan, and Chajju (Nos. 10, 11 and 12).

The Deputy Inspector did not give a very intelligent account of his action, and seemed principally anxious to say that the Inspector

followed early in the morning and relieved him of the enquiry. I have ascertained that such was the case; the Deputy Inspector was suffering from fever, and he seems to have been known as inefficient. He has been since reduced. The witnesses 10, 11 and 12, however, gave very clear and satisfactory evidence, and the result of their statement was that no doubt was left in my mind that the stories of Anand and Náim were true in the main, and that they had, at all events, seen some one throw down the body in the manner described, and had therefore immediately given the alarm. Chajju (No. 12) gives what seems to me to be a very probable account of what occurred. The raising of the *chighah* (outcry) in the fields gave rise to a general scene of confusion. A great many people rushed out. When the torch was brought the body was found. When the body was brought in, and the noise and confusion had subsided, people generally learnt how the clue had been obtained. It is therefore no matter for surprise that Anánd at such a time of excitement and confusion did not notice who were the first to come up in response to his shouts, and really did not remember whether the lambardárs had come or not. Like a true native witness, when pressed for particulars of which he was ignorant, he felt bound to invent them. When the accused were called upon for their defence, Mansúr (accused 1) admitted that he had been absent from the village all day, until about 5 p.m. He said he had been with his uncle Dáúd on business at the Tahsíl till 2 p.m. He gave no clear account of himself between 2 and 5 p.m. He said he had joined one of the first search parties about 7 p.m., and had actually carried a torch, adding that if he had not lent aid he would have been forthwith accused by Jumá. He alleged that after the first search was concluded he sat down near his house, and saw the witness Anand come in from the fields and whisper into the ear of Amír, on which the latter got up and, calling out for a torch, declared that the body had been found. Accused 1 called four witnesses to prove his story, and a perusal of their statements will show that each gives a different version of what occurred, and that not one supports the prisoner's account of the manner in which the final *chighah* or outcry was raised. The defence of accused 2 is a simple denial, and an attempt to prove that, after joining in a search for the body, he sat down at a *hujra* and remained there without moving till the body was found. His story is supported in a vague way by four lads, but I cannot bring myself to believe them. The more especially as there is nothing whatever to show why a false accusation should have

been brought against this man. All that he can say on this score is that a brother of Anand had to give up a field to him.

It is unnecessary to dwell at any length on the motive for the murder. The prosecution has merely proved what is indeed admitted on all hands that Jumá and Mansúr are enemies. The latter admits that he carried away Jumá's brother's wife, and has been suspected of killing her husband. Jumá appears to be a simple man, against whom no one has a word to say. His son, however, might have grown up of different mettle, and might have considered himself, in accordance with Pathán custom, bound to avenge his uncle's murder. It is not unlikely that accused 1, dreading such a possibility and meeting the boy alone amid the high crops, seized the opportunity of saving himself from further anxiety on his account.

However that may be, there can be no doubt that accused 1 had a motive, according to Pathán idea, for killing the boy, and it is not alleged by any one that Jumá had another enemy in the world.

In conclusion, I must note that nothing could have been easier than for the accused, on throwing down their burden, to make a detour and rapidly return to the village, so as to appear totally unconcerned when the body was brought in. Of course it was their only chance. Had they made a bolt for the border, their guilt would have been forthwith manifest to all, whereas in remaining at the village there was the hope that they had not been recognized, or that the evidence would not be sufficient. Mansúr probably had had enough of exile, and doubtless his having been allowed to settle down quietly at home, a few months before, served to embolden him*.

No. 12.

CROWN *VERSUS* AMIRULLA.

CHARGE,—MURDER.

This is one of the very rare cases in which the Police displayed detective skill. The judgments of the Sessions and Chief Court are given *in extenso*.

JUDGMENT.—*8th March* 1873.

The small hamlet of Káká Khel Garhí lies at a very short distance from the large village of Rajar. Káká Khel is inhabited principally

* Mansúr was sentenced to death under Section 302, Indian Penal Code, Muhammad Ali to seven years rigorous imprisonment under Section 201, Indian Penal Code. The convictions and sentences were maintained by the Chief Court on appeal.

by men of that tribe. The land is rent free. The principal men of the village are Mían Rahmat Sháh and Zamán Sháh.

In the night, between the 8th and 9th October last, Matín, son of Núr Ahmad, was sleeping on a bed at an open space on the outskirts of the hamlet not far from the house of his relative Abdulla. This place was not a *hujra*, but it seems to have been used recently as a place of assembly, for singing, &c. The village was roused by the sound of a shot. Mían Rahmat Sháh, who was at his *hujra*, not very far from the place where Matín was sleeping, got up and was preparing to go in the direction whence the sound had come. He saw two or three men coming from the direction of the *hujra* of Zamán Sháh. These turned out to be the village chaukidár, Amírulla (accused), and two men whose turn it was to act as night watchmen. They proceeded together to the place whence the sound had seemed to come, and they discovered that Matín had received a pistol shot in his right side.

The chaukidár, Amírulla, was at once sent off to the Thánah at Chársada, some two or three miles distant. The wounded man was in great pain, and he died in a short space. He did not accuse any one; said he had been asleep covered up with his sheet; had not seen the assassin, and suspected no one. His agony seems to have been such that he could hardly speak.

The Deputy Inspector, Fatheh Khán, arrived before it was light. The Tahsíldár came also. Matín had died, however, before their arrival. The bullet was extracted from the wound and the body was buried.

During the whole of the 9th October no clue to the murderer was found. The father of deceased, who on hearing of his son's death came in from another village, said that his son could not have been killed save with the connivance of Mían Ráhmat, and he mentioned that his son had been warned by the chaukidár, Amirulla, against making the place where he had been sleeping an irregular *hujra*.

The bullet, which had been extracted from the wound, appeared a very remarkable one. It had evidently not been cast in a mould, but had been hammered into a polygonal and approximately spherical form. One side of it had been flattened by coming in contact with a bone, and it is stated in evidence that there was a small piece of bone adhering to it when extracted.

On the 10th October the Thánahdár, who had kept the bullet carefully, seems to have shown it to the villagers and to have asked if any one could identify it. Upon this Núr Alam, chaukidár of the neigh-

bouring village of Rajar, came forward, saying that he had given this very bullet to Amírulla, the chaukidár of Káká Khel, the day before the murder. On his word being doubted, he said he had another bullet of almost precisely the same shape and form, and that he had made them both out of a large bullet, intending to use them in his own gun.

The second bullet was produced, and appeared to be of exactly the same description as that which had been extracted.

Now this is *the* point on which the whole case turns. Did the accused Amírulla obtain from Núr Alam on the 8th October this bullet which was extracted from the wound on the 9th? It would seem that he certainly did, and I can only refer to the statement of Núr Alam, the two bullets produced by the prosecution, and two other bullets which have been made by Núr Alam in Court in my presence and in that of the assessors as the ground of that opinion.

When I looked through the file of the case, and even after I had taken the evidence of two or three witnesses, I could not resist a feeling that the prosecution must break down. I saw that everything depended on the bullet, but as it had not been produced before up to that time, I found it difficult to imagine how it could be possible to rest a conviction on the identity of a small piece of lead. When, however, the witness Núr Alam had made his statement, the matter appeared in a very different light. I have seldom or ever seen a native witness give evidence in a more clear and satisfactory manner. Rightly or wrongly, his statement produced in my mind a strong conviction of his truthfulness, and it was manifest that it had made an impression on the assessors. Núr Alam was examined yesterday, but I called him up again to day, and asked him if he thought he could make two other bullets out of one, in the manner he had described. He said, "Yes." In a very short time the necessary tools,—a knife, an anvil and a hammer were brought into Court. The witness sat down, cut a round bullet into two, and fashioned the pieces into two bullets of precisely the same description as those which were lying on the table. The whole thing was done with a readiness which disarmed suspicion. The result is that the assessors, two of whom are unusually intelligent men, and the Court have been unable to escape the conviction that this piece of inanimate lead bears witness against the prisoner with a force which the direct testimony of an eye-witness could hardly rival.

To return to the action of the Police. The Thánahdár having obtained this recognition of the bullet, carefully examined the pistol

which had been found upon the accused. The fact that he was chaukidár sufficiently accounted for his carrying such a weapon ; but the appearance of the pistol excited suspicion. It appeared to have been recently fired, and to have been thereafter loaded with an unusually heavy charge. The Thánahdár has been called into Court and he has given a full account of his first examination of this weapon. The assessors examined him carefully for their own satisfaction. The rest of the evidence for the prosecution consists, first of the statements of Sháháb Din and Rahmat Mían, who deposed that when the shot was fired the accused tried to divert them from going in the right direction. Sháháb Dín also deposes that although he had been going the rounds with accused, the latter had left him shortly before the shot was fired, and rejoined him within a few minutes. The prisoner himself admits that he had left his companions at the *hujra* of Zamán Sháh, but he alleges that at the moment the shot was fired he was sitting down at the side of the road.

Evidence is forthcoming to show the motive which accused had for committing this crime. A very short time before the murder, a theft had taken place in the house of his sister. This was reported at the Thánah on the sixth of October, accused saying that he did not suspect any one. It is now asserted, however, by several witnesses that it was well known that accused suspected the deceased, and two men go so far as to say they heard him vow vengeance. While I hardly credit their statements, I think there can be little doubt that accused bore the unfortunate man a grudge of some sort or other. The solution put forward by the prosecution of the question—who killed Matín ?—is the only one which has been suggested. The prisoner, who from his position as chaukidár would be naturally in a position to afford a clue, cannot point to any enemy of the deceased who might be supposed to desire his death. Further, the prisoner has been quite unable to shake the evidence for the prosecution, and he can make nothing but the vaguest assertion as to enmity borne against him by the witnesses.

He has produced no evidence whatever for his defence. I am of opinion that there can be no reasonable doubt of his guilt, and I can see no reason why the evidence, which has evidently satisfied the village community, the Tahsildár and Thánahdár, the committing Magistrate (a gentleman of great experience in this district) and the assessors, should be distrusted by me. That evidence, though entirely circumstantial, seems to hold the prisoner in a vice from which he cannot escape, and it is such as to shut out all reasonable doubt of his guilt.

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CHIEF COURT OF THE PUNJAB.

Case referred by Mr. Elsmie, Additional Commissioner, Peshâwar Division, with his No. 27—540, dated 17th March 1873, under Section 287, Criminal Procedure Code.

Present :—C. R. LINDSAY, Esquire, C. J. WILKINSON Esquire, *Judges.*

THE CROWN *VERSUS* AMIRULLA, SON OF FAKIR, AGE 28 YEARS.

CHARGE,—MURDER.—(SECTION 302, INDIAN PENAL CODE).

At a Court of Sessions held at Peshâwar for the District of Peshâwar by Mr. G. R. Elsmie, Additional Sessions Judge of the Peshâwar Division, on the 8th day of March 1873, with the aid of three assessors, Amírullá, son of Fakír, was charged under Section 302 of the Indian Penal Code, with the murder of Matín. The Court, concurring with the assessors, found the prisoner guilty of the charge and sentenced him to death, subject to the confirmation of the Chief Court, for which the proceedings have now been forwarded.

On the day following that on which the deceased was shot, the Deputy Inspector of Police, from certain statements made by the two chaukidárs, Guláb Sháh and Sháháb Dín, associated with the accused, the paid chaukidár of the village, on the night the deceased was shot, had reason to suspect the accused. He examined the pistol of the accused. It had the smell of a pistol recently fired, and had also the appearance of having been lately used. It was loaded in a peculiar manner. The charge was very heavy. It had the usual flint attached. The bullet that had been extracted from the body of the deceased by order of the Deputy Inspector of Police fitted the pistol. It was shown to the villagers for the purpose of recognition. Núr Alam, chaukidár of a neighbouring village, recognized it, and said he had given it to the accused the day before the deceased had been shot, and he said he had the fellow to it, which he produced.

This evidence with the evidence given by the chaukidárs and others, induced the police to arrest and charge the accused with the murder of the deceased.

The evidence against the prisoner is entirely circumstantial. Is it such evidence as to reasonably preclude the supposition of the innocence of the accused ?

One of the two chaukidárs associated with the accused appeared in the Court of Session. The other man was not to be found.

From the evidence of Sháháb Dín (witness No. 2), it appears that he, Guláb Sháh, and the accused were on duty the night the deceased was shot. The accused, with the witness and Guláb Sháh, was in the *hujra* of Zamán Sháh.

He left his companions twice in the *hujra*.

The first time for an alleged call of nature, and was absent a long while. Shortly after his return he again left them. This appeared strange to them, so they left the *hujra* and soon after heard the report of a firearm. They went in the direction of the sound, and soon met the accused, who turned them back, saying the report was in the opposite direction to that they were going.

After a time they followed the direction they thought the right one, and met the father of the deceased, who said his son had been shot.

The father of the deceased deposes that the accused is the only enemy his son had, and that his son had the day before his death told him that the accused had threatened him for having slept on a particular mound.

Regarding the motive for the crime alleged by the prosecution, *viz.*, that the accused suspected the deceased of having committed theft in the house of the sister of the accused, this witness is ignorant.

The main evidence in this case is that given by Núr Alam. He recognizes the bullet found in the body of the deceased as the bullet he gave the accused the day before the deceased was shot.

His evidence is accepted as true by the Judge and the assessors.

There is no doubt in the mind of the Judge and the assessors that the bullet produced in Court is the very bullet given by Núr Alam to the accused and which was taken out of the body of the deceased.

I have no valid reason to disbelieve what they consider true. The reasons given for believing Núr Alam are strong, and as the prisoner has not produced any evidence of the untruthfulness of Núr Alam's account, nor even given any good reason for believing that Núr Alam's statement is false, I must accept it as true.

It would have been well had Ranbáz's evidence been recorded in the Court of Session, but it is not very material to the issue.

There are a couple of witnesses who swear that the accused, a day or two before the deceased's death, vowed he would not let the deceased off for having stolen the property of the sister of the accused.

There is the evidence of a headman (witness No. 9), in the village, that the accused is the only enemy of the deceased, and that the cause of the enmity was well known.

The fact of the theft was known to the police, but it was not known to the Deputy Inspector that the accused suspected the deceased [see evidence of the Deputy Inspector].

The witness No. 9 also states that the accused tried to make him believe that the report of the shot came from a direction other than that from which it in fact came, and he shows that the accused and the men with them went in a wrong direction.

The deceased did not charge any one with his murder, nor did he, so far as the evidence goes, say he suspected any one.

The evidence against the prisoner may thus be summarized :

1st. The identification of the bullet found in the body of deceased as the bullet given to the accused by Núr Alam a day before the deceased died.

2nd. The fact that the accused on two occasions left his companions in the *hujra*, an unwonted circumstance.

3rd. The fact that the accused attempted to prevent the chaukidárs and witness No. 9 going in the direction from which the report of the shot appeared to these witnesses to come.

4th. The fact that the pistol was, when taken from the accused, very fully charged—charged in an extraordinary way; that it had the appearance of having been lately fired, and smelt as if such had been the case; that it had a flint when taken from the accused.

5th. The fact that the only known enemy of the deceased is the accused.

6th. The fact that the allegation of the prisoner, to the effect that he received the bullet found in the pistol from the owner of the pistol is not proved.

Lastly there is the utter improbability of the accused having a loaded pistol with him at night without a flint, and the improbability of a false charge having been made and supported by the police against a paid chaukidár.

The circumstances of the case are very curious, but I believe the accused to be the murderer. Reasonably, I cannot make out a plea for his innocence. The evidence, if true, and it is accepted as true, precludes the idea of his innocence.

The sentence of death passed upon Amírullá, son of Fákír, is confirmed.

(Sd.) C. R. LINDSAY,
Judge.

26th April 1873.

JUDGMENT BY MR. JUSTICE WILKINSON.

The evidence against the accused in this case is altogether circumstantial; there is no direct evidence connecting him with the murder of Matín.

Now, in considering a charge of this kind, which is only supported by circumstantial evidence, it is necessary to consider two things: 1st, whether the facts proved are compatible with the guilt of the accused; and 2ndly, if they are so, are they such as to be inconsistent with, and preclude the possibility of, his innocence.

With regard to the facts. It is proved that on the night in question Matín, whilst sleeping in an open place just outside the village of Káká Khel, was discovered wounded in the side by a bullet, and that he died shortly afterwards from the effect of the wound; that a bullet of a particular kind was extracted from the wound, which afterwards was found to fit a pistol which is proved to belong to the accused, or was in his possession at the time of the occurrence; that shortly before the deceased was discovered in this wounded state the report of a firearm was heard by three or four persons in the direction where Mátín was found. No weapon was found near Matín, nor are there any other circumstances to suggest that he shot himself. These facts prove that the deceased was murdered. But by whom? At the time the report was heard it is shewn that Amírullá, the accused, was near the spot, and there is no evidence that any one else was till after the report was heard; besides Amírullá does not deny his having been there, though he attempts to explain the fact by saying he was answering a call of nature when he heard the shot. The two chaukidárs, Guláb Sháh and Sháháb Din, his companions, were admittedly in the *hujra* at the time, and only left it on hearing the report. They went in the direction whence the sound had come, and met Amírullá returning from that direction. Another witness, Rahmat Mían, speaks to meeting these three together near the place, but no suspicion rests on Guláb Sháh and Sháháb Din, nor upon Abdulla, whom Rahmat Mían states he met near the place and who told him that his brother had been shot. Amírulla admits the possession of the pistol which was taken from him the next day. We have seen that the ball which was extracted from the wound in the deceased's side fitted the pistol which the Deputy Inspector, who examined into the case, tells us had, from its appearance and smell when he received it from Amírulla, been recently fired. The ball is not a moulded one, but was evidently made by hammering it into a rounded form, probably not an uncommon

method with this class of people. The bullet is subsequently identified by one Núr Alam, who swore to his having given it to Amírulla the day or two days before the murder. Under ordinary circumstances, I would not believe a man who said he could identify a bullet fired from a common pistol; but in this instance I am bound to believe his evidence as that of a witness of truth, when he says that the bullet found in Matín's body is the identical one he gave the prisoner. In corroboration of his statement he calls a witness who says he saw Núr Alam give the prisoner a bullet, and he himself says this bullet was one of two which he had made from a larger one. Before the Additional Commissioner and the assessors he readily made a similar pair out of a bullet provided for the occasion. These two are, with the exception of being a little larger, exactly like the other two in workmanship and manipulation. The bullet taken out of the body is of the same size and make as the one produced and stated to have been made at the same time. That these two were made by him in the way he states and that he gave the one found in the body to the prisoner I believe, and I see no reason for not attaching the same weight to this witness's evidence that the Additional Commissioner and assessors in whose presence it was given did.

With respect to the motive which could have led the prisoner to kill the accused there is some evidence, though it is not altogether proved; but still I think there is some evidence to show that the prisoner was not friendly towards the accused. The deceased does not seem to have had suspicion of any one. At least he did not state any or accuse any one. The evidence on this point may, I think, be disregarded, for I think the links in the chain are otherwise complete. But for the admission of Amírullá this would not have been the case, for there is one remarkable fact of which there is no evidence, *viz.*, whether Amírullá had a pistol with him at all on the night in question; this, however, he admits, but in what condition it was immediately after the report and when his two fellow chaukidárs met him there is no evidence. Had the pistol been examined then it would have been seen whether it was loaded or not. Had it been loaded, as it was afterwards found to be, then I think a fair inference would have arisen that he did not fire the shot because the time between the report and his being seen was too short to have reloaded it; but he and the two other chaukidárs went away, it is said, to make a report of the occurrence, and it was not till the next day that the

pistol was given up, during which interval there was ample opportunity to reload it, and, under the circumstances, I think the pistol must have been reloaded.

Amírulla denies that Núr Alam gave him the bullet, and states that he got the one found in the pistol from one Mahbúb Sháh, who gave him the pistol some days before. This allegation only rests on his own bare statement. He might have called the man to corroborate him, but he did not, nor does he give any reason why he did not. It may be that he did get that bullet from some one else, but it does not prove that he did not receive the bullet found in Matín's body from Núr Alam. He also states that the pistol had no flint. The Deputy Inspector, however, swears it had when he received it from him. His explanation of his having a loaded pistol when going his rounds and yet no flint in it is not very satisfactory, and cannot be accepted as a reason for its absence.

I think, having regard to all the circumstances and the proved facts of the case, they prove beyond doubt that the prisoner Amírulla was the person by whom the deceased Matín came by his death, and that there is no evidence whatever to show that any one but Amírulla committed the murder. I therefore concur with my colleague, Mr. Justice Lindsay, in confirming the sentence of death passed on Amírulla.

(Sd.) C. J. WILKINSON,

2nd May 1873. *Judge.*

No. 13.

THE CROWN *VERSUS* (1) ZAIDULLA ; (2) FAKIR MUHAMMAD ; (3) SAID KHAN ; (4) HAMZULLA.

CHARGES,—MURDER AND ROBBERY.

This was a case of robbery and murder, which was well handled by the Police.

JUDGMENT.—*22nd March* 1875.

About 7 p.m. on the 15th February last, when Sádhu Singh, Police Sergeant, of the Thánah of Tangi, was investigating a theft case in the large village of Umrzái in Hashtnagar, one Amírulla of Shergarh in Hazára, a stranger in the Pesháwar district, came in hurriedly and

reported that he and two companions had been journeying towards Tangi, when about sunset four robbers had attacked them in a ravine, had wounded them with knives, and carried off their clothes and cash.

Amírulla gave a detailed account of his journey, of his having met and talked to the robbers in a village by the way, and of his having been deluded by them into a route across the barren plain or *maira*. He said he was quite sure that he could identify the robbers by their appearance if he saw them. The sergeant forthwith wrote a hasty note to the Thánahdár reporting Amírulla's statement, and then went out with some of the villagers in the direction indicated as that where the scene of the attack lay. Amírulla, however, being a stranger, could not guide them, so they were obliged to return.

About midnight Latíf (witness No. 2) one of Amírulla's companions, was brought into Umrzái. He had taken refuge in the neighbouring village of Sherpáo. Latíf's account of what had occurred tallied with that given by Amírullá.

Next morning the Police searched the neighbourhood, but not until evening did they come upon the particular ravine which Amírulla and Latíf recognized as the scene of the robbery. There, blood was found on the ground and a blood-stained sandal. About 100 yards off lay the dead body of a man, which Amírulla and Latíf identified as that of their companion Khángul. He had evidently been killed by dagger-wounds, of which there were several on the corpse. The Thánahdár arrived late on the night of the 16th of February. Amírulla and Latíf, still maintaining that they could identify the robbers, were called upon to describe them as fully as they could from memory.

They did so, as follows :—

No. 1.—Black colour, pock-marked, middle height, without beard.

No. 2.—Round face, fair, small cut beard.

No. 3.—Wheat colour, two upper teeth wanting, beard mostly black with a little white in it, full (pukhtá) age.

No. 4.—Unknown.

All three clothed in postíns, khákí sheets and coats.

On the morning of the 17th a great number of people belonging to Sherpáo were collected together, but Amírulla and Latíf failed to identify any of them. Then the body of Khángul was sent into Peshawar. Amírulla, who had a bad dagger-wound on his right arm, was sent in to the hospital. Látíf, who had only received a few scratches, remained with the Police.

During the 17th, some of the Maliks of the surrounding villages hearing the description of the robbers as given by the survivors, Latíf and Amírulla, said there were two men of the village of Chíná who very possibly belonged to the gang. These men were Záidulla (accused 1), and Fakír Muhammad (accused 2). A chaukidár was sent to bring them. On arrival they were placed amongst a large number of men of the village of Umrzái. Latíf picked them out from the crowd, as being the men whom he had described as Nos. 3 and 1 in the descriptive roll.

Considering the circumstances under which Latíf had seen them, the correspondence between the recorded description and their actual appearance was remarkable.

Záidulla (accused 1) is an elderly man with a sparse beard beginning to turn grey. Some four or five teeth are wanting in the upper jaw, and when he opens his month the bare gum cannot escape notice, though it would be easy to make a mistake regarding the exact number of teeth lost. Fakír Muhammad (accused 2) is much pock-marked, has little more than an incipient beard, and is darker in complexion than accused 1. Záidulla is the brother of Fakír Muhammad's father-in-law. After the identification a search was made in their houses. A *postín* was found in that of accused 1, which appeared to have been stained and washed. Both of these men were placed in arrest, and both denied all knowledge of the crime. Next morning, the 18th, one of the lambardárs of Chíná brought in Said Khán (accused 3) as a man likely to have been concerned. He was forthwith placed in a crowd of about 50 men and was singled out by Latíf. Accused 3 then admitted that he had travelled along the road towards Tangí, and had met accused 1 and 2 with Hamzullá (accused 4) on the day indicated by Latíf, and had also seen the three travellers. Accused 3's statement was then taken down by the Táhsildár Magistrate, who had joined in the investigation.

Accused 4 was arrested and identified. His statement, which tended greatly to implicate 1, 2 and 3, was duly recorded on the 18th by the Táhsildár.

Meanwhile, the sergeant of Police, Sádhu Singh, was deputed to make further search in the houses of accused, and he succeeded in ascertaining from Mussammát Wazírá (witness No. 3) daughter of accused 1, a little girl of some 10 or 11 years of age, but remarkably intelligent, that when her father had been called away by the chaukidár the previous day he had left behind him a bundle of clothes, which

she had made over for security to her aunt, Mussammát Wahdá. Mussammát Wahdá (witness No. 4) acknowledged that she had received the bundle, and forthwith produced it from the house of her cousin Ghofrán, resident of the adjoining village of Dághí. The bundle which was found to contain two blankets, three turbans and one sheet, was forthwith taken to the Thánahdár at Umrzái. Latíf identified the clothes as belonging to himself and his companions.

On the morning of the 19th the clothes of the four accused were carefully examined, and marks of what seemed to be blood were found on many of them. These clothes were taken possession of and, subsequently, portions were cut from them and forwarded to the Chemical Examiner Lahore, for analysis, with the following result. Evidence of the presence of blood was found on pieces cut from the páijámás, the coat, and the sheet of accused 1, and on pieces of the páijámás of accused 3. No evidence of blood was found on accused 3's clothes. Accused 4 admitted a large stain of blood on one of his clothes, but alleged that it had resulted from his having carried meat, and this may possibly have been the case.

Subsequent search on the premises of accused 1 and 2 resulted in the discovery of a dagger buried in the corner of the house of the former (*vide* witness 8 and 9) and of a similar weapon concealed amongst rubbish in an old well close to the house of the latter. Marks of fresh abrasions were observed on accused 1's legs below the knees and there was a scratch on one of his hands.

The Police enquiry having been now concluded the four accused were cháláned to Pesháwar. On their arrival they were taken to the house of the District Superintendent of Police, where, after their irons had been removed, they were placed amongst a crowd of some 50 men and were satisfactorily identified by Amírullá, who had been called from the hospital. Such is the narrative of the case, and a perusal of the evidence recorded in this Court will show that its details have been fully established by the witnesses. I am clearly of opinion that there can be no reasonable doubt that the four prisoners are the men who were concerned in the robbery. The two surviving travellers are strangers in the district and can have no object in procuring the conviction of innocent men.

Moreover there is no sufficient cause for supposing that they have been instigated by enemies of the prisoners. The assessors, who happened to be influential men from the Hashtnagar Tahsil,

had no hesitation in giving the opinion that the features of the case as disclosed by the prosecution are accurate in the main. I proceed to sum up the evidence against each prisoner individually.†

* * * * * *

† Accused 1, 2 and 3 were sentenced to death. They were executed, after confirmation of sentence by the Chief Court. Accused 4 was acquitted of murder, but was sentenced to 7 years imprisonment for robbery. There were strong reasons for supposing that although he joined in the robbery, he was no party actually or otherwise to the wounding and killing.

PART III.

FALSE ACCUSATIONS.

The next group of cases is intended to illustrate a well known Pathán custom which greatly tends to baffle justice. Nothing is more common than that the friends of murdered men should add to a true accusation against the real assassin an utterly false one against his relatives. It is also a daily practice for the prosecution to try to improve a true case by false evidence. I have had repeated instances of this abominable and embarrassing system in my own Court.

I quote the following from a judgment of one of my predecessors in office :—

Judgment of Sessions Court in *Crown* v. *Ján Muhammad*; dated 16th April 1870.

A society, where the ruin of rivals or opponents by any means, is regarded as merely a natural proceeding. * * * *

Again, with reference to another form of false accusation :—

If one could believe that Watmír and his brother did take the names of the accused in good faith, the matter would be simple enough, but the unfortunate thing is that one cannot believe these names were taken in good faith, as it is the constant practice in this country for wounded men not to take the names of those who actually wound them and whom they distinctly recognize, but to denounce the persons whom they feel sure were the instigators of the attack, thereby defeating their own object and the ends of justice.

REPORT BY MR. H. STRACHEY, dated 1803 A.D.

Report by H. Strachey, Esquire, Judge of Calcutta Court of Circuit, page 744, Vol. 1 of the fifth report on the affairs of East India Company, edition printed at Madras in 1866.

In connection with this subject, it is interesting to refer to what was written in regard to a kindred matter in the Lower Provinces so long ago as 1803 :—

In the course of trials the guilty very often, according to the best of my observation, escape conviction * * * * Very frequently the witnesses * * swear to facts in themselves utterly incredible for the purpose of fully convicting the accused, when, if they had simply stated what they saw and knew, their testimony would have been sufficient. They frequently, under an idea that the proof may be thought defective by those who judge according to the Regulations, and that the accused will escape and wreak their vengeance upon the witnesses who appear against them, exaggerate the facts in such a manner that their credit is utterly destroyed. Witnesses have generally each a long story to tell (they are seldom few in number, and often widely differ in character, caste, habits and education) thrice

over, namely, to the Darogah, the Magistrate, the Court of Circuit; they relate tediously and minutely, but not accurately, a variety of things done and said; numerous variations and contradictions occur, and are regarded with cautious jealousy, though in reality they seldom furnish a reasonable presumption of falsehood.

But who shall distinguish between mistake and imposture? What Judge can distinguish the exact truth among the numerous inconsistencies of the natives he examines? How often do these inconsistencies proceed from causes very different from those suspected by us; how often from simplicity, fear, embarrassment in the witness; how often from our own ignorance and impatience?

We cannot wonder that the natives are aware of our suspicious and incredulous temper; they see how difficult it is to persuade us to believe a true story, and accordingly endeavour to suit our taste with a false one. I have no doubt that previously to their examination as witnesses, they frequently compare notes together and consult upon the best mode of making their story appear probable to the gentleman whose wisdom it cannot be expected should be satisfied with an artless tale, whose sagacity is so apt to imagine snares of deception in the most perfect candour and simplicity.

We cannot but observe that a story before it reaches us often acquires the strongest features of artifice and fabrication.

There is almost always something kept back as unfit for us to hear, lest we should form an opinion unfavourable to the veracity of the witness. It is most painful to reflect how very often witnesses are afraid to speak the truth in our Katcheries. * * * Twice or thrice during my circuit, prisoners have escaped in spite of strong evidence against them of dacoity, because it appeared that the prosecutors and witnesses had long concealed what they afterwards pretended to know, and this concealment gave an appearance of the story being afterwards trumped up against the accused.

I do not think it will be denied that all these difficulties and many others exist in connection with trials in Pesháwar at the present day.

No. 14.

CROWN *VERSUS* (1) JUMA, (2) HAIDAR, SONS OF UJAM, (3) DAREY, SON OF UNAIS, (4) JABBAR, SON OF KHAN SAHIB.

CHARGE,—MURDER.

A case of not an unusual type. It is interesting chiefly on account of the clear opinions given by the assessors regarding the custom of adding false charges to true ones.

JUDGMENT.—*9th August*, 1873.

Akbar, the deceased, was stabbed in his court-yard in the early morning of the 23rd May last. He received but one wound, which proved fatal in a few hours. He was a resident of the village of Músázái, situated some three or four miles from Pesháwar. It is admitted, on all hands, that he had been on bad terms, for two years or more, with Mussammát Sháh Jehán, his elder wife. She had left his protection and had sued for maintenance, while he, on the other hand, had petitioned the Courts to make her over to his custody. Akbar's younger wife, Mussammát Bakhtáwára, apparently lived on good terms with him. At so late a date as the 20th May, Mussammát Sháh Jehán obtained an order from the Criminal Court awarding her maintenance at the rate of three rupees *per mensem*. The Magistrate was Lieut. Warburton, the officer who has committed the present case for trial. Two days later, *i.e.* on the 22nd May, Akbar gave a petition, the object of which seems to have been to obtain a review of the order for maintenance. He stated that his wife would not live under his protection, that she was of loose character, and he professed his willingness to maintain her properly if she would live with him.

Akbar went home in the afternoon, and in the latter part of the night he was stabbed. *Primâ facie*, therefore, the inference appears to be irresistible that the murder was, in some way or other, connected with the quarrel between the deceased and Mussammát Sháhjehán, and was either immediately caused or was precipitated by the action of the Criminal Court in regard to the claim for maintenance.

Moreover, the Police who had made a local enquiry by order of the Magistrate recommended, on the 28th April, that heavy security should be taken from both sides, lest some crime should be committed. The Magistrate took no action on this recommendation. Although Akbar appears to have got the worst of the litigation, it does not seem that Mussammát Sháh Jehán was perfectly satisfied. Previous records show that, formerly, she had been awarded a sum of Rs. 5 *per mensem*, and

had realized a considerable amount at that rate. There is evidence in the present case to show that she was dissatisfied with the terms of the new order. There is nothing in the previous records which connects the persons now accused of the murder, with the quarrel between the woman and her husband, but more than one reference is found to her alleged immoral life.

Four persons have been placed on their trial for the murder. Jumá, son of Ujam, with whom it is alleged that Mussammát Sháh-Jehán has long had an intrigue; Haidar, his brother (accused 2); Darey, his first cousin (accused 3), son of Unais, the Malik of the quarter in which the murder occurred; and Jabbár (accused 4), his cousin on the mother's side. With the exception of the evidence in regard to the motive, the case rests almost entirely on the degree of credibility which should be placed on the statement made by the deceased shortly before his death; and on those of his mother and younger wife, and of certain chaukidárs who are said to have come into the enclosure shortly after an alarm was raised. These statements, with the addition of those of Jumá, a cousin of deceased, and his son Abdulla, who say they saw accused 1 and 2 running past their house immediately after the alarm, the former having a naked knife in his hand, constitute the case for the prosecution.

If the evidence of the eye-witnesses could be accepted, the proof is of the clearest description.

It is in the first place admitted on all hands that Akbar, within a short space of receiving his wound and up to his death, which took place in an hour or two, before the Police could arrive, denounced accused 1, 2 and 3 as his murderers. He said that he had seen Haidar (accused 2) sitting at his head, accused 3 on his feet, while Jumá (accused 1) plunged the knife into his stomach. Mussammát Bakhtáwara (witness No. 2) states that on hearing her husband cry out she awoke and saw four men running off. She adds: 'I recognized them—it was starlight—and they were men of our village. I saw the faces of accused 1 and 2, but not the faces of accused 3 and 4; but the latter passed near me. They leapt over the wall close to my husband's bed; and the other two, *i.e.* accused 1 and 2, leapt over the opposite wall. They did not, however, go off quickly, as we were only women.'

Mussammát Begamjí, the aged mother of deceased, says: 'I got up, and saw four men making off from his bed-side; two in one direction and two in another. They leapt over the walls. I saw all their faces and recognized them as the four accused.'

Next comes the evidence of three chaukidárs, *viz.*, Gulái, the paid watchman, and Mansúr and Jumá, sons of Ahmad, the roster patrols for the night. The statements of these men do not tally. Gulái (witness No. 3) is clearly anxious to screen the accused. He admits that he and his companions were resting at an open space some thirty or forty paces from Akbar's enclosure, but he denies that they heard an alarm raised by the inmates. He says their attention was aroused by the cry of the wife of a neighbour who had had time to get on the top of Akbar's house and call out. Gulái admits that Mansúr reached the enclosure a few paces ahead of him, but he declares that by this time the assassin or assassins had absconded, and that they (the chaukidárs) saw none of them. Albeit Gulái allows that, from the first, deceased and the women declared that they had seen the accused, but he tries to detract from the value of their statements by saying that several friends had reached the enclosure and were sitting with the wounded man before they (the chaukidárs) had arrived. The roster patrol, Mansúr (No. 4), flatly contradicts Gulái. He says that he heard Akbar's cry, and rushing to the enclosure was in time to see three men standing by the bed and a fourth a short distance off. He says he had no weapon himself, but that he urged Gulái to strike, whereupon the latter declined. He then describes a struggle which took place between himself and Gulái, during which the accused made good their escape. Mansúr says that he recognized all the accused.

Jumá (witness No. 5) corroborates Mansúr's story in detail, but whereas he stated to the Magistrate that he had been unable to identify any of the four persons whom he saw escaping, he now states that he recognized the four prisoners. It does not appear that any attempt whatever was made to pursue the assassins and to arrest them red-handed. Their powerful relative, the Malik, Unais, who lives close by, was either not informed of what had occurred, or he declined to come to the spot at an early stage. Certain it is that the Maliks of the other quarters, *viz.*, Ghulam Khán (witness No. 8) and Muhammad Khán (No. 9) arrived separately before Unais, and had left before he came. They heard what had taken place, and, returning home, contented themselves with telling the chaukidár Gulái to arrest the accused persons and make them over to Unais. Whether this was done or not seems extremely doubtful. It is certain that Unais did not go to the wounded man till he was on the point of death. The accused were never confronted with deceased, and there was no formal arrest until the arrival of the

Police, about 6 a.m. It is extremely difficult to decide what value should be placed on the evidence of the eye-witnesses. It is certainly not of an altogether satisfactory description. Indeed, I have no hesitation whatever in rejecting the statements of the two chaukidárs. One of them has distinctly embellished his original story. The other, Mansúr, tells a very improbable tale, which is not satisfactorily corroborated by what the women say. Mussammát Bakhtáwara, when examined in regard to Mansúr's entrance into the enclosure, broke down altogether, and it was quite clear that she did not in the least know whether the chaukidárs had had an opportunity of seeing the assassins or not.

With regard, however, to the dying declaration and the statements of the women as to what they saw themselves, while I hesitate to believe them implicitly, I am unable to say that the record of the evidence or the demeanour of the two witnesses afford any *primâ facie* ground for disbelieving them. If false, this evidence has been carefully prepared so as to prevent its rejection from considerations of inherent improbability or of discrepancies.

The same may be said of the statements of Abdulla and Jumá (Nos. 6 and 7), who state that they saw accused 1 and 2 rushing past their house, the former with a naked knife in his hand, immediately after the alarm had been raised. There are no material facts proved against the accused which corroborate the eye-witnesses. The question is, can they be believed on their word alone? The verdict of the assessors,* though by no means of an unusual kind in this part of the

* The assessors, Syad Pir Ján and Abbás Khán, gave their opinion as follows :—

'The evidence against Júmá (accused 1) is correct. He is certainly guilty. We do not think the crime is proved against the remaining three prisoners. Deceased received only one wound. We see no necessity for four accused. Amongst the Afgháns, when a murder is committed on account of adultery with a woman, two brothers do not join in it.'

Q. How do you conclude that the proof is clear against Jumá and not against the others?

A. In the first place there is the intrigue with the woman; secondly, the wounded man took Jumá's name; thirdly, Abdulla, witness, saw a knife in Jumá's hand.

Q. Is it customary when there is only one assassin that the names of others should also be taken?

A. It is the immemorial custom in Afghán country.

Q. In the time of the Sikhs and the Durránís, what was the use of taking the names of other people? (*i. e.* other than the actual assassins.)?

A. The whole of their property, real and personal, and of their relatives, was obtained.

Q. Are names taken unjustly by wounded persons, or by their relatives also?

A. They are taken by both—more especially by wounded persons; for instance, in the Umrzái case [see case No. 3, p. 16 *ante*] Sikandar and Azim were the real offenders, yet the name of Hastam Khán, a very respectable person, was taken, and eye-witnesses gave testimony against him.

country, is, *primâ facie*, very remarkable. It has been recorded at considerable length and it deserves very careful attention. The assessors are men decidedly above the average in apparent respectability and intelligence. *They believe the evidence against Jumá (accused), and they disbelieve the evidence against the other prisoners.*

Their reasons are briefly these—

1*st*. They accept the evidence as to the intrigue between Jumá (accused 1) and Mussammát Sháh Jehán, and they consider that it afforded sufficient motive for the murder.

2*nd*. The wounded man took Jumá's name, as that of the actual assassin.

3*rd*. A knife was seen in Jumá's hand.

Moreover, they say: 'Deceased received only one wound. We see no necessity for four accused; amongst Afgháns when a murder is committed on account of adultery with a woman, two brothers do not join in it.'

Further, the assessors on being called upon to explain the cause of the false accusations against accused 2 and 3 and 4, gave their reasons for pronouncing such an act to be 'in accordance with the immemorial custom of the country.'

With regard to the existence of this custom, even my short experience in this Division makes me absolutely certain that the assessors are right when they declare it to exist, and I find that the Chief Court in their judgment in the case of *Crown* versus *Sirbaland and another*, dated 12th February 1869, expressly declare that—'it is impossible in dealing with evidence from the Pesháwar district to disregard altogether the custom among the Patháns of that district, which is matter of notoriety, to accuse all the members of a family when one or more of them commit an offence of this kind.'

It is impossible to exaggerate the difficulty which such a custom places in the way of our police and Courts in dealing with the crime of assassination in the Pesháwar District. If the actual murderers are to escape because witnesses in testifying truly against them have also testified falsely against innocent men, the attempt to deal with such cases in our regularly constituted Courts may be abandoned altogether, and the accused persons handed over to be dealt with by a Council of Elders convened under the Frontier rules. I am by no means satisfied that such a course might not be adopted with advantage, in the hope that the superior power of such tribunals in detecting falsehood would in

time prove to the people generally the folly and fruitlessness of charging the innocent with the guilty. However that may be, it must be readily admitted that the aforesaid practice, while it may lead to unjust convictions, may also tend to unjust acquittals. The knowledge that such a custom exists may lead the Courts to regard with exaggerated suspicion all evidence of the kind adduced in the present case, and the guilty may escape, not because the evidence against them is proved to be false, but because it is not at all unlikely that it may be so.

Therefore, in the present case, I feel that although there is sufficient evidence of an apparently truthful nature against accused 2, 3 and 4, yet, as it depends entirely on the credibility of oral testimony, which has been disbelieved by the assessors, I am bound to pass a verdict of acquittal on these three men; simply because it is not at all unlikely that, in accordance with the custom of the country, they have been unjustly accused.

With regard to the prisoner Jumá, the case is, as pointed out by the assessors, considerably stronger. Many of the witnessess have testified to the intrigue existing between him and Mussammát Sháh Jehán. It appears to have been the object of the woman, in putting her husband so frequently into Court, to force him to give her a divorce; but the plan failed, and on the very last day of his life Akbar prayed to the Court to make his wife over to him in spite of her immoral life. Akbar having no children, his two widows would share his property on his death; therefore, if it be conceded that there was an intrigue between Mussammát Sháh Jehán and accused 1, the death of Akbar could not be otherwise than a gain to both of them. I am of opinion that the motive has been established by the prosecution with a sufficient degree of certainty. Further, Jumá was declared by the deceased to be the person who actually struck the blow. It seems indeed probable from the circumstances that he recognized him. The knife is said to have been passed clean through the body, and to have actually cut the matting and the bed on which deceased was lying. It could, therefore, hardly have been instantaneously withdrawn, and full time may have been afforded for identification of the assassin.

Again, the witnesses Abdulla and Jumá (Nos. 6 and 7) declare that they saw accused 1 rushing towards his house with a knife in his hand just after the outcry. The assessors have acted on this statement, and I see no reason to suppose that they are wrong. The defence made by

Jumá is a simple denial of the intrigue and an assertion that he remained all night at his threshing-floor, some hundred paces from the deceased's house. Two witnesses are produced to prove the *alibi*, and, as usual in such cases, their statements are apparently quite untrustworthy. There is, therefore, a much stronger case made out against accused 1 than against the others, and I feel that the evidence fully justifies me in concurring with the assessors in convicting him. His punishment, of course, must be capital.*

No. 15.

CROWN *VERSUS* QALANDAR.

CHARGE,—MURDER.

JUDGMENT.—17*th March* 1876.

This case well illustrates the manner in which a perfectly simple affair may become extremely difficult and complicated, through the unblushing effrontery with which Patháns bring false accusations against their enemies. A party of lambardárs and others of the village of Sarband had been summoned by the Deputy Inspector of the Thánah of Búrj Hari Singh, to assist in the investigation of a theft case.† Towards evening they were returning homewards, a distance of some three or four miles; two of the men of Habíb's party, *viz.* Mullá Yúsaf and Abdul Rahmán, being mounted on ponies. They had to pass by the village of Hájípándu, two of the inhabitants of which, who were in their fields, saw the party going along the road. One of the Hájípándu men, by name Ghufár (witness No. 3), gives a very simple, straightforward and apparently perfectly truthful account of what he saw and heard, in the following words :—

* Jumá was acquitted on appeal to the Chief Court, Mr. Justice Campbell stating his reasons as follows :—

'I am not prepared to confirm this sentence or to uphold the conviction. The mass of evidence is undoubtedly false, and there appears to me none that can safely be accepted. I by no means say that because some of a witness's evidence cannot be believed all must be disbelieved, but in the present instance none can be depended on. It would be most unsafe to say that the evidence as to the convicted man may be trusted merely because circumstances point to him as the man likely to have committed the murder. The inference is clear that the murder resulted from the victim's quarrel with his wife, Sháh Jehán, and that Jumá was likely to have been the man to act on her behalf; but I think nothing further is shown, and that all the evidence must be rejected as worthless. I would, therefore, quash the conviction.'

† The principal men were Abdul Wáhid, lambardár, who had a large number of followers with him, and Habíb, another lambardár, who had a few men, the accused being one of his servants.

'My field is near the road. I saw the Sarband people going to the Thánah in the morning and returning in the evening about *dígar* time near sunset. Suddenly, when they were near my field, I heard the men abusing each other and saying 'don't, don't.' I came out of my field, which is in a hollow, to see what was the matter. That moment a shot was fired. I ran forward and saw that Haidar, son of Maddat, who had been ahead, was coming back towards the place where the disturbance was, and he called out to the other Haidar—'take care the murderer does not escape.' I saw that the other Haidar had put a turban round Qalandar's neck. Haidar, son of Maddat, tied his hands. Abdul Wáhid and Habíb were lying dead. I asked the people who had done it. They said: 'This Qalandar, who else? We have secured him.' They explained that he was a servant of Habíb; that Habíb and Abdul Wáhid had been struggling together, and that Habíb had probably given the sign to fire. Accused said he had killed them; had done an evil deed, and they might do what they pleased.'

The case was reported at the Thánah very soon after by a youth called Said Amír, who had recently been appointed chaukidár of Abdul Wáhid's quarter. The nature of his report is given in the Thánahdár's evidence (witness No. 6).

The report was entered in the Station-diary in the following words: 'Said Amír, chaukidár, resident of Sarband, arrived at 7 p.m. and reported that to-day at *dígar* Abdul Wáhid and Habíb, lambardárs of Sarband, and others after making their statements (at the Thánah) had started for their evidence at *dígar* time. They arrived at evening near the water-mill of Malik Fíroz of Sarband. All of a sudden the report of a pistol was heard. Habíb and Abdul Wáhid Khán both fell down. The chaukidár does not know what was the cause of this. He saw the pistol in the hand of a man named Qalandar of Sarband, and started for the Thánah to make his report immediately on seeing these two men fall down.'

When the Deputy Inspector reached the spot, he found that all the people had gone on to the village, and that the bodies had been removed. In the village he found accused with Mullá Yúsaf and Abdul Rahmán, (the men who had been riding), under arrest. On making enquiries it appeared that the friends of Abdul Wáhid, deceased, charged all three, and also one Haidar Khán, with having been concerned in the murder. It was alleged that Abdul Wáhid

and Habíb had quarrelled on the road and were struggling together, when Abdul Rahmán rode up, took a pistol from the servant Qalandar, fired and killed Abdul Wáhid intentionally and Hábíb by mistake, that he forthwith threw the pistol on the ground, whence it was picked up by Qalandar, accused, that Múlá Yúsaf dismounted from his pony, seized the pistol from Qalandar, and rode off to the village. Qalandar's defence is to this effect.

The friends of Habíb contented themselves with the simple statement that Qalandar, seeing his master struggling with Abdul Wáhid, had suddenly drawn a pistol from his belt, discharged it, and killed the two men outright, with one shot. The Magistrate who enquired into the case treated the charge against Abdul Rahmán, Mullá Yúsaf and Haidar as manifestly the invention of the partizans of Abdul Wáhid, who, indignant at their head-man having been killed by Habíb's servant or slave, wished to implicate as many of the opposite side as possible. Their story carries falsehood on the face of it, seeing that it is admitted on all hands, that accused was carrying the pistol in a belt round his waist, and was immediately arrested on the spot.

The evidence adduced in this Court is perfectly clear, and has left no doubt in my mind that accused is the guilty man, but it is not I think necessary to pass sentence of death upon him. He is a youth of about 18 years of age, and probably yielded to a sudden impulse to fire when he saw his master wrestling with the rival lambardár, or indeed he may have received a signal from his master to shoot Addul Wáhid.*

No. 16.

CROWN *VERSUS* (1) WAHAB GUL AND THREE OTHERS.

CHARGE,—MURDER.

A most common type of case, well known to all Frontier Officers.

JUDGMENT.—18*th May* 1876.

In this case the Court is asked to believe that the four accused, a father, his son, his nephew and a relative, joined together, went at night into the enclosure of Banáres, the deceased, shot him and stood round

* The prisoner was sentenced to transportation for life. He appealed to the Chief Court, but without success.

his bed giving his wife and servant, who slept, one in an enclosed verandah, the other in the yard, time to wake up and identify all their faces by the light of the flames of the quilt which had been set on fire by the discharge of the fire-arm. Also, that some neighbours hearing the shot, instead of going straight to Banáres' house, ran in a different direction, and were in time to intercept the four accused in their flight and talk to them. The witnesses who depose to this extraordinary state of things, strike the Court and assessors as being utterly untrustworthy, and their demeanour, to my mind, is so unsatisfactory and their stories so improbable, that it is altogether out of the question that the accused should be convicted on their evidence, the more especially as the alleged motive for the crime is weak and far-fetched to the last degree. Ghulám Ján, elder brother of deceased, appears to be a respectable man; he does not charge the accused, and evidently disbelieves the whole case for the prosecution.

It is, of course, quite possible that the four accused had to do with the murder, but to believe that they accomplished it in the manner alleged is simply out of the question.

The accused have all pleaded not guilty. I think it is quite unnecessary to put them further on their defence. They were fully examined by the Magistrate.

They are one and all acquitted of the offence with which they have been charged, and they are to be set at liberty.

No. 17.

CROWN *VERSUS* (1) MIR ZAMAN, (2) JAMDAR.

CHARGES,—AGAINST { No. 1, MURDER. No. 2, ABETMENT OF MURDER.

JUDGMENT.—21*st September* 1877.

This appears to be a very clear case against Mír Zamán (accused 1). The murdered man, Farid Khán, a lambardár of Achíní-páyán, was shot in the back and killed almost instantaneously as he was saying the *khuftán* prayers in a mosque on the night of the 11th June last. Several of the worshippers immediately pursued a man whom they saw running away towards the fields. After a chase of about a third of a mile they caught and arrested Mír Zamán (accused 1), who had an empty pistol in his hand apparently freshly discharged, the copper of an exploded cap being on the nipple under the doghead. He had also

a powder and shot belt containing several cartridges and bullets, and he had the empty sheath of a long Afrídi knife.

Fákharudín, the Police Sergeant of the neighbouring Thánah, to whom immediate news of the assassination had been conveyed by two chaukidárs, reached the village just after Mír Zamán had been brought in by his captors. Mír Zamán admitted the circumstances of his arrest and his possession of the pistol, belt &c., but excused himself of complicity in the murder by saying that it had been committed by one Khánai, who, as soon as he had fired the shot, forced the pistol into his (Mír Zamán's) hand and frightened him into flight by saying he would charge him with the murder. Mír Zamán repeated this statement in full detail to the committing Magistrate on the 13th June, alleging that Khánai had vainly tried to hire him to commit the murder, and had eventually succeeded in forcing the pistol upon him.

Mír Zamán is but a youth, evidently of about 18 or 19 years of age. Since his commitment he has doubtless become aware of the extreme folly of his first defence, and has now changed his ground. He says he made no statement of any sort before the Magistrate, that he had been beaten and rendered insensible by his captors, who had turned aside when they were on a hue-and-cry, and most unjustly seized him as he was working at his threshing-floor. He says the pistol was in the hands of Tursam; he admits that he was wearing the belt, but says it did not contain cartridges and bullets.

Two witnesses called for Mír Zamán are unable to say a word for him. In my opinion, as the assessors say, his guilt is 'as clear as the day.'

In regard to Jamdar (accused 2), the case is probably a good type of the manner in which Patháns so easily manage to complicate matters by the introduction of false evidence. Jamdar is a first cousin of Mír Zamán. They live together in the same enclosure, and are evidently close friends. The pistol which was taken from Mír Zamán is admitted on all hands to be the property of Jamdar. This fact was discovered at once, and immediately communicated to the Police, while its significance was strengthened by the assertion of the captors of Mír Zamán, that they had seen Jamdar running away at the same time, but had lost sight of him amongst some mulberry trees, not far from the mosque. But when the Police Sergeant went to Jamdar's house, he was told that Jamdar had gone to Peshawar in the early part of the day, and evidence has been given, of apparently the most satisfactory kind, to show that Jamdar went to the village of Dheri Bághbánán, close to the city, about 5 p.m. on the afternoon of the 10th, remained there all night, went to

the District office next morning to enquire about a case, heard of the murder and of the charge against himself, and gave himself up to the Police. The evidence to the *alibi* is so unusually good, the witnesses apparently so respectable and satisfactory in demeanour, that the Magistrate, assessors, and myself are unanimous in believing that it is impossible to suppose that Jamdar was actually present in Achíní-páyán some five or six miles from Dheri Bághbánán at the time when Farid Khán was shot. It follows therefore that the witnesses who say they saw him running away and those who say they had seen him in Achíní in the afternoon must be lying. And it was under this view that the magistrate charged Jamdar with abetment only, under Section 302—109, Indian Penal Code.

But when the statements of the witnesses to the flight are rejected, it is clear, to my mind, that the assessors are right in holding that the evidence against Jamdar is insufficient for conviction. He had certainly a motive for the murder, in that he and deceased were rival claimants for a lambardárship and that there was every reason to suppose that the deceased would be the successful candidate.* He is the cousin of the man who, beyond all reasonable doubt, fired the shot, and he is the owner of the pistol which was used; but it is perfectly possible that Mír Zamán, whose late father, Mírú, had had suits with deceased, and who was probably a warm partizan of his cousin Jamdar, may himself have conceived the idea of getting rid of the common enemy and may have possessed himself of the pistol during Jamdar's absence. Jamdar says that he lent his pistol a few days previously to Tursam, witness No. 1, to use in firing salutes at a wedding, but this assertion is entirely unsupported and is probably dictated by pure malice, as a piece of revenge against the man who was mainly instrumental in capturing the assassin. An order must be passed acquitting Jamdar.

Mír Zamán will be sentenced to death and forfeiture of property. His act was of a most deliberate and cruel description and belongs to a type of assassination which has been of frequent occurrence in the district during the last few years. Accused is but a youth, it is true, and has possibly been instigated by others, but I am clearly of opinion that the opportunity of making a severe example should not be lost.†

* Vide file of lambardári case with Extra Assistant Commissioner's opinion, dated 24th April 1877.

† The conviction and sentence were confirmed by the Chief Court on appeal.

No. 18.

CROWN *VERSUS* (1) KHALIL; (2) DILDAR; (3) BOSTAN.

CHARGES, { MURDER—AGAINST Nos. 1 & 2.
ABETMENT OF MURDER AGAINST No. 3.

This was a very characteristic case. Sháhdád Khán of Hund, a Chief whom I knew well and who had often acted as an assessor in the Sessions Court, was murdered while kneeling at prayers in a mosque. He made the task of discovering his murderer a very difficult one by declaring with his dying breath that he had turned round and *identified* 12 *members of a band of murderers.*

JUDGMENT.—30*th October* 1876.

Sháhdád Khán, Khán of Hund, was assassinated in the village mosque about 9 p.m. on the 3rd July 1875. He was engaged at the time in the *khuftán* prayers. The assassin chose the moment when the whole congregation were prostrated with their heads on the ground to deliver a well-planted blow with a dagger on the Khán's right side. The mosque is a small one, described by the Inspector of Police (witness No. 11) as being about the size of the room in which this Court is held, *i.e.*, about 30 ft. × 20 ft. The worshippers, of whom there were only about twelve, stood in two lines; the Imám being in front alone, leading the devotions. In the line immediately behind him were eight men, including the Khán. In the second line were four boys. The plan attested by witness 11 has been most carefully prepared, and gives a very clear idea of the scene in the mosque and of the surrounding lanes, *hujras*, walls and gates of the village. I am helped to make this remark by my own personal knowledge, having spent a day in camp at Hund in 1873.

The mosque being a small one, it appears that the spot where the Khán was praying could not have been much more than 15 feet from the small opening in the back wall, used as an entrance. A lamp or *chirágh* was burning in the mosque building.

Immediately on being stabbed, the Khán fell over against the man on his left hand, crying out that he had been wounded. The alarmed congregation broke off from prayers and followed the Khán, who, staggering towards the entrance, sank down at the place where the shoes had been left. The question which this Court has to decide is, whether the Khán or any of his companions, identified with sufficient accuracy any or all of the accused rushing from the mosque down the lane towards the east. It is obvious that to do so could not have been easy. The night was dark. Only a dim lamp was burning at the upper end of the mosque; the enclosure was small. The assassin had

only to retreat about five paces ere he got into the lane. His back only would be seen by the people in the mosque. Moreover, it appears from what all the witnesses say, that a certain amount of time elapsed before the worshippers arose,—very short it must have been, but still they appear to have waited till the Imám gave the signal to break off. So that the wounded Khán, who had fallen on his side, was actually the first to rise up and to reach the shoes. A few only of the men who were in the mosque profess to have seen and identified any of the assassins. The statements of most of these having varied considerably since they were examined on the following day by the Tahsíldar-Magistrate, it is necessary to compare with the greatest care the accounts given by them at the various stages of the enquiry. The principal and, *primâ facie*, the best witness in the case is one Jáfar, a distant cousin and brother-in-law to the Khán. He, with the village chaukidár, made the first report at the Thánah of Utmán Bulák, about 11 p.m. the same night. He said that five men had been seen running away, out of whom Khálíl (accused 1), and Dildár (accused 2), had been identified by him, Jáfar, Said Ali, Sher Zamán, Akhtarai, &c. He added also that the Khán had himself identified these two men, and that it was quite possible that the remaining three might have been identified by some one. Although Hund is only a few miles from the Thánah and Tahsíl, the Deputy Inspector and Tahsíldar did not reach the spot till the next morning after dawn. The delay has not been satisfactorily explained.

The Tahsíldar recorded the evidence of Jáfar fully. The witness adhered generally to what he had said at the Thánah, but, as was to be expected, gave additional particulars. He admitted that he had only seen the backs of two men going out of the door, but had, nevertheless, been able to identify them. He added that he, with Akhtarai, Sher Zamán and Said Ali, had gone twenty paces in pursuit, and that the five assassins had run to the east and escaped out of the village by the south or river gate. He tried to account for no real attempt to arrest the assassins having been made by saying that there was much anxiety felt on behalf of the Khán, and that the pursuers were afraid of the murderers.

Before the committing Magistrate, on 27th July, Jáfar dropped all mention of *Akhtarai*, whom the Police enquiry had proved not to have been in the mosque at all. A man *Sháhwali* was substituted for Akhtarai, and Jáfar asserted that Said Ali, Sher Zamán and Sháhwali had pursued further than he had, and on returning said they had

identified the 3rd, 4th, and 5th assassins as Mír Afzal, Akbar and Bostán (accused 3).

In the Sessions Court, Jáfar has added several particulars to his former statements. He has explained fully how much deliberation there was in his rising from his knees, thereby unconsciously weakening his story. He has also admitted that he only ran five or six paces from the mosque; but he tried to strengthen his evidence by declaring that accused 1 and 2 had, in their fear of being arrested, turned round their faces towards him and enabled him to identify them thoroughly by the light of the lamp. He also added that the Khán, in sending him to report, did not tell him to take any names, but said he had recognized his assassins and would himself name them when called upon. The demeanour of this witness in the Sessions Court was fairly satisfactory save when making manifest exaggerations, such as in giving the account of the assassins turning their faces towards him. The next witness to identification is Sher Zamán (No. 3). He, too, began before the Tahsíldar by naming Akhtarai as one of the four worshippers who ran towards the mosque door following the Khán, but he emphatically denied that any one had pursued the assassins, and was absolutely positive that he himself had not. He said that all had stood by the Khán. Nevertheless, Sher Zamán declared that he had identified three men who ran out of the mosque as accused 1, 2 and 3, and had seen two others (not identified) standing outside.

Before the committing Magistrate this witness, Sher Zamán, said he *did* run out of the mosque; that he identified four men by sight, *viz.*, accused 1, 2 and 3, and Akbar, and a 5th as Mír Afzal by voice. He added that he had actually laid hands on Dildár (accused 2). Sher Zamán dropped all mention of Akhtarai before the committing Magistrate and Sessions Court. His story in the two Courts was much the same, save that before the Sessions he did not mention Mír Afzal. His demeanour was, as noted at the time, 'very far from satisfactory,' and considering it, and the many variations in his stories, I should be extremely reluctant to accept his evidence as worthy of credence. The third witness to identification is Said Ali (No. 4). Before the Tahsíldár this man said that he and Jáfar had pursued the assassins for twenty paces, whom they saw from behind and recognized as accused 1, 2 and 3.

Before the committing Magistrate Said Ali stated he had identified a fourth man as well, *viz.*, Mír Afzal, whom he had actually laid hold of, and that he had been knocked over by accused 1 and 3. He explained that he had been ashamed to mention to the Tahsíldar his futile attempt to arrest Mír Afzal. Before the Sessions Court he said much the same, adding that on returning he openly proclaimed his having identified four men.

The fourth witness to identification is Sháhwali (No. 5), who was apparently substituted for Akhtarai after the first day or two. Before the Tahsíldar, Sháhwali admitted having run some twenty or twenty five paces with Said Ali and Jáfar, in the direction supposed to be taken by the assassins, but denied that they had seen any one. He said the Khán said that he had identified 'his criminals.' Before the committing Magistrate, Sháhwali greatly expanded his statement. He declared that he identified the three accused and Mír Afzal, and had actually seen them seized by the other witnesses. He said he had been afraid to speak in the first instance. In this Court Sháhwali has declared that he recognized three only—not having seen Dildár, accused, at all.

These may be said to be all the witnesses to the alleged identification; inasmuch as the prosecution, represented in this Court by Muhammad Amír, Inspector of Police, virtually lays no stress at all on the dying declaration of the Khán in which he professed to have identified five men inside the mosque and seven outside. Any more palpably false statement could hardly be conceived. Indeed, it seems naturally to suggest the remark, that it is no matter for surprise that the man who was capable of making it with his dying lips, should have had scores of enemies and should have been assassinated by some one or other of them. To suppose, however, that a band of twelve men would have gone together to effect a treacherous assassination of the kind described is altogether inconsistent with probability.

The calendar contains the names of the four boys who stood in the third row, but the prosecutor only called one of them. These boys had, in the first instance, denied having seen any one, though they were the most likely, *primâ facie*, to have been first on the alert.

The boy Gharíb (No. 9), who has been examined, professes now to have identified accused 3 and Mír Afzal as they retreated in a westerly direction, *i.e.*, in the direction opposite to that said by the other witnesses to have been taken by the assassins. It is clear that,

if this boy's story is true, the main theory of the prosecution is false; but the boy's demeanour was highly unsatisfactory, and, as the Magistrate had discredited him and his companions, I think the prosecutor did right not to call the remaining three.

I propose now to examine the evidence of the other persons present in the mosque, whose statements have been recorded. The chief of these is Fazl-i-Ahmad, the Imám, apparently a very straightforward and respectable man. The prosecutor has tried at various stages of the proceedings in this Court to make me believe that this man declines to give a tittle of evidence against any of the accused, simply through fear. I am bound to say that I can find no proof in the record that this assertion is true. In the first instance, it appears, that the Khán and his friends kept back from the Tahsíldar and Police the fact that Fazl-i-Ahmad had been the officiating Imám, so that we find no trace of his having been questioned till the 8th July. His brother, Muhammad Sádik, was made to declare to the Police that he had been the Imám, and the explanation offered is that the Khán ordered him to say so to prevent Fazl-i-Ahmad being dragged before the Courts. This seems hardly a satisfactory explanation. The prosecutor did not adopt it, but asked the Court to believe that the Khán kept back this man because he knew him to be *afraid* to tell what he had seen and heard. But it is obvious that a third explanation may be given—the more especially if Fazl-i-Ahmad can be accepted as a truthful witness, *viz.*, that he was kept back because every one knew he would not tell an untruth.

Now, on looking through the record, I fail to find that Fazl-i-Ahmad ever *denied* having been Imám. He kept silence certainly till he was questioned, but when questioned he admitted the fact of his presence freely.

The evidence given by this man in the Sessions Court is so important that I quote it almost in full:—

'I was Imám, and conducting prayers at the time of the murder. The Khán at first mentioned another because he wanted me to stay with him. There were seven men and four boys saying prayers. We were all in *Sijda*, (prostration.) Suddenly, as I was lifting my head, I heard a noise behind me. I did not hear the Khán's voice. I broke off the prayers and looked round and saw that some of the men who had been praying were out of the enclosure. Some were

round the Khán, where the shoes were, about six paces behind me. The Khán, in answer to my enquiry, said: 'Thieves have killed me.' He hadn't fallen. Muhammad Sádik and others were supporting him. He showed where his wound was. He said: 'Take me home; I cannot wait.' Then we took him home, about 80 paces off. He begged me to stay with him. I stayed accordingly, till morning. He did not tell me how it happened; he was in pain. He took no names. I was occupied in taking care of him and in tending the wound. Many people came and went, *but I did not hear anyone take anybody's name that night.* Jáfar certainly came in and went rapidly to report. He said nothing in my hearing about having recognized the assassins. *No one until morning said that anyone had been recognized.* I have been Imám for four years. My ancestors were Imáms before me. I was a great friend of the Khán. There were no secrets from me. In the mosque, there was a small *chirágh* burning. It lighted the courtyard, but had anyone been in the doorway, with his back to me, there would not have been enough light for me to identify him; but if he had turned his face I might have done so.'

Now, it is clear that if Fazl-i-Ahmad's statement is to be relied upon, it must be regarded as almost fatal to the prosecution. As far as demeanour in this Court is concerned there can be no question that Fazl-i-Ahmad appeared to be far more worthy of credit than any of the witnesses whose evidence I have already analysed, and I incline much more to believe him than any of the others. Passing on to the evidence of Muhammad Sádik, brother of Fazl-i-Ahmad, we find him in the first instance falsely asserting to the Tahsíldar that he was the Imám, joining the others in saying that *Akhtarai* was one of the worshippers who pursued the assassins, but denying that he himself had seen any one running off, and omitting to say that the Khán or his companions had taken the names of any of the accused.

Before the committing Magistrate, Muhammad Sádik substitutes Sháhwali for Akhtarai, and asserts that the pursuers returned and at once named five men—accused 1, 2 and 3, Mír Afzal and Akbar. It may here be remarked, that if they did do so, it is most extraordinary that Jáfar should not have mentioned all of them at the Thánah.

In this Court, Muhammad Sádik (No. 6) gives a very confused statement, the most important point in which is that he now omits all mention of Akbar as one of the men recognized by Mír Zamán, &c.

The next witness is Chirágh Sháh (No. 8), an old man who now gives an account so totally different from what he gave in the first instance as to be hardly worth notice.

Mahammad Said (No. 11 of the calendar) was not called in this Court by the prosecutor. It is, however, necessary to refer to his previous statement, because I find that the Magistrate, in his committing order, mentions this man as corroborating Jáfar's statement regarding the identification at the time of Khálil and Dildar. He doubtless did so in *cross-examination* before the Magistrate, but if his previous statement before the Tahsíldar is referred to, it will be found that he distinctly said the pursuers had taken no names on their return. That part of the evidence for the prosecution which relates to the finding of a knife outside the village and the identification of the assassins beyond the wall has been virtually withdrawn, and very rightly so, I think, judging from the manifestly false statement of Habíb, whom I called merely to see whether anything could be made out of this part of the case. Of circumstantial evidence against the three accused there is practically very little or none. The Magistrate has been at immense pains in going through several scores of old cases which tend to prove the enmity existing between the Khán and the various persons accused in this and the Magistrate's Court. But I must confess myself quite unable to understand the necessity for so much investigation of the past history of the parties, and I am very clearly of opinion that the time expended in the examination of these papers has in no way been repaid by the result, while the delay entailed in the committal of a case, which, when divested of all irrelevant matters, simply turns on the credibility of certain eye-witnesses, who were forthcoming at once, is much to be regretted. The value of promptitude in dealing with such a case seems greatly to have been lost sight of by the Magistrate, and, however much I may admire the great perseverance and pains bestowed on the enquiry, I am constrained to say that whatever may be the result of the trial, they were out of proportion to the task in hand, and I cannot admit that there was anything in the case, which necessitated the delay of nearly eleven months from the date of the crime till the date of committal. With regard to the motive, which may have actuated the accused, it may readily be conceded that according to Pathán ideas, they had an ample one. This is hardly denied by the accused themselves. The Khán had had a long series of litigation with Bostán (accused 3),

the last phase of which took place at Mardán on July 2nd, the very day before the murder, when, in an execution of decree case, Bostán, exasperated by the persistence of the Khán, manifested through his legal agent Azízulla (witness No. 7), burst into a rage and declared in open Court that if he had had a knife he would have killed himself or Azízulla. It is an undue straining of words to say, as the Magistrate does, that this declaration was tantamount to a threat to stab the Khán, for it is quite possible to suppose that Bostán believes the agent to have been the Khán's chief adviser in pressing his case, and may, at the moment, have been specially enraged at some word or gesture used by Azízulla. It cannot, therefore, be admitted as a logical consequence that when Bostán said he would like to stab Azízulla, he thereby indicated an intention of stabbing the Khán who was not present. Yet, at the same time, it is perfectly possible that exasperated by the steps taken to eject him from his house in the execution of decree case, he hurried home bent on vengeance, and did thereon take steps to have the Khán assassinated. But, however easy it may be to imagine that Bostán should adopt such a course, there is not a tittle of evidence to show that he did so, save that the Khán was stabbed on the evening of the 3rd July, and that on the 4th some men said they had seen Bostán running away from the scene of the crime.

Take away the direct evidence of these witnesses, and it seems perfectly impossible to fasten the guilt on Bostán from the mere fact of the existence of bitter enmity and of the scene in Court at Mardán, the previous day, the more especially as it is admitted by the prosecution that many other persons were at the time plotting the Khán's murder. So that after all I find myself thrown back on the evidence of the identification at the time, which, after weighing and analysing it to the best of my ability, I find myself quite unable to accept, as a sufficiently trustworthy basis for the conviction of the accused of a capital crime. When the various statements of witnesses 3, 4 and 5, are carefully examined and tested by comparison with those of Fazl-i-Ahmad, the Imám, and the other men who were present, I think they must all be rejected as worthless. *Primâ facie*, it is far more probable that the assassin or assassins of Sháhdád Khán were not recognized as they darted away into the darkness, than that the alarmed worshippers, who could see their backs only, clearly identified them.

The only witness whose story I have some hesitation in rejecting is Jáfar, who, as far as appears from the records, has been fairly consistent

throughout. But he is a near relative of the Khán, and his story is entirely opposed to that of the Imám Fazl-i-Ahmad, who struck me as the more truthful of the two. The strongest argument that can be put forward in favor of Jáfar's story is contained in the committing order of the Magistrate, and I will quote it in full:—

'One consideration which leads me to credit the evidence is that accusation has not been made against any of the *Khán Khel* themselves of having been the actual assassins. A Hindustáni syce has been accused as the principal, and the descendant of a Hindu renegade as his companion. This is so unlike the usual procedure in these cases, where the actual assassin, if a man of low birth, is frequently not named, but the supposed instigator of the deed is.' * * *

'In the present case, the relatives of the deceased Khán, even if accused 1 and 2 suffer the highest penalty of the law, will not, from an Afghán point of view, consider themselves revenged by the blood of a syce for that of a Khán, and this is a consideration that ought not to be lost sight of in weighing the evidence for the prosecution.'

This argument would carry greater weight if Khalíl and Dildár were men not ordinarily likely to be charged with the crime, but a reference to previous records shows that the Khán and his friends would very probably suspect both of them of having a hand in a deed of the sort. At the very time the murder occurred, an application for security to keep the peace towards the Khán, to be taken from accused 1 and 3, was pending before the Magistrate, and it is much to be regretted that circumstances prevented final orders being passed on this application at an earlier period.

And I find that the accused Dildár, who is a dependent of accused 1 and 3 and a noted bad character, had been punished for a grievous assault on one of the Khán's relatives, and had been released from prison in 1874. On his release the Khán submitted a detailed recommendation to the Magistrate in which Dildár's misdeeds were fully set forth, and a prayer made that security should be taken from him, as a very dangerous person. All this renders it very natural that Khálil and Dildár should be accused merely on suspicion, while Bostán, of whose return from Mardán the Khán and others may have been ignorant, was not charged until the next day, when it became known that he had come back.

However that may be, Jafár's evidence cannot but lose much of its value when the recklessness of the Khán in accusing *twelve men* and of his

son in trying to implicate *nineteen*, is taken into consideration. By the wicked extravagance of these statements, it must surely be admitted that the Khán's family have forfeited all their right to obtain justice in our Courts. At the conclusion of the trial I expressed my opinion to this effect to the son Azád Khán, telling him that if the real murderers of his father escaped justice either in this or in a higher Court, the fault would lie with those who had attempted to strengthen the case with manifestly false evidence. The two assessors were divided in opinion, one accepting generally the evidence for the prosecution, the other rejecting it and declaring that the identification of the assassins in the manner alleged was not only *primâ facie* improbable, but impossible. This man evidently thinks Dildár guilty from the general complexion of the case, not from the evidence. He would therefore act as one of a Council of Elders would, and give him a slight punishment. My own final opinion is that Jáfar *may* be speaking the truth, but I am not sufficiently satisfied that he is to enable me to convict the prisoners on his statement. 'It is ill work,' as remarked by the Chief Court in one of last year's cases, 'convicting on evidence like' that which has been adduced here.

For these reasons, I concur with the assessor, Abdul Azíz Khán, and, acquitting the accused, direct that they be set at liberty in respect to the charge on which they have been tried.*

No. 19.

The following case—

CROWN *VERSUS* MUBARIK SHAH, *ALIAS* BARAK,

CHARGE,—MURDER,

illustrates a phase of the custom of false accusation which is not uncommon, *viz.*, when a man, knowing perfectly well who has wounded him, through shame or for some other reason, conceals the truth and brings a false accusation against persons whom he knows to be innocent of the particular crime, but against whom he entertains enmity on another account.

JUDGMENT.—11*th March* 1876.

The committing Magistrate has discussed the various features of this extraordinary case with so much fullness and in such great detail,

* The committing Magistrate informed me some time after my order had been pronounced, that he had been disposed to recommend the Government to appeal from the acquittal, but that further information which he had obtained led him to believe that these accused did not actually take part in the assassination.

and has shown so complete a grasp of the whole of the circumstances which his enquiry has elicited, that it is impossible for me to approach the task of giving judgment without considerable diffidence and a strong feeling that the Magistrate was, perhaps, better fitted by his local experience and opportunities, combined with the great patience and skill which he brings to bear on an intricate case, to pass the final order than I am. I shall not endeavour to compete with him by compiling a second exhaustive review of all the facts—main and subsidiary—which the enquiry and trial have brought out, but I shall confine myself, if possible, to giving a brief outline of the story of the case and to the consideration of the question whether the evidence adduced against the prisoner is sufficient for his conviction.

On the early morning of the 4th August last, one Habíbulla, son of Ziáratai, of the village of Toru, was stabbed in the stomach. Ziáratai shortly after reported at the Thánah of Mardán that his son had been lying in bed at his *hujra*, just outside his house, and had been stabbed by one Músa, while Safiulla stood near assisting. The Police on going to the spot questioned Habíbulla, who was still alive, and found that he made a statement similar to that of his father. The Magistrate has pointed out, however, that Habíbulla charged Safiulla with actually stabbing him. Ziáratai had said Músa struck the blow. This discrepancy does not appear to have been noticed at the time.

Habíbulla explained that he had pursued the assassins for a distance of some forty yards, when he sank down exhausted just as he had laid a hand on Safiulla. His uncles and friends ran up to his aid and forthwith led him home. The Police noted that there were two pools of blood at the spot where Habíbulla was said to have stopped, whereas there was no blood on his bed nor in the *hujra*. The accusation of Safiulla and Músa was supported by Habíbulla's two uncles, who declared they had also seen the assassins, and by other men who said the wounded man had immediately taken their names. Certain causes of enmity, none of them of a very serious character, were alleged to have actuated the assassins. Safiulla and Músa, who had been arrested by the lambardárs, were then made over to the Police, and the wounded man was taken to the hospital at Mardán. He repeated in detail his accusation of Músa and Safiulla to the Tahsíldar and the committing Magistrate, and he died from the effects of his wound on the 7th August. Shortly before the death, however, the Inspector of Police had been assured by Safiulla and Músa and by Mullá Sarwar, father of Safiulla, that the accusation against them was absolutely false. This led to secret enquiries and even-

tually to the discharge of Safiulla and Músa, and to the arrest and committal of the present prisoner, Bárak, son of Hussan, one of the principal maliks of the village and a near relative of the Khán. This second enquiry is best described in Muhammad Amír (No. 14) the Police Inspector's evidence in this Court, from which I make the following extracts :—

'Safiulla and Músa asked me to speak with them. They assured me of their innocence, but could not say who was guilty. Next day they said the same, but still would not take any name. Then either on the 5th or 6th Mullá Sarwar, father of Safiulla, came and asked to speak to me. He said the two were quite innocent. I asked how he could prove it. He said he could not, as people called him a Wahábí, and no one would probably speak for him. I begged him merely to mention the name of the guilty person, but he would not do so. However, after a good deal of pressure, he told me to ask Saddu (chaukidár), Isrár-ul-Arifán, and two others. I let him go, and a certain amount of doubt was raised in my mind by what he had said. I therefore sent a constable to call the men whom Sarwar had mentioned. He brought them about 4 p.m. Then Saddu said that if I really wanted to know the truth he would tell me. It was to the effect that the deceased had found Bárak trespassing in his (deceased's) enclosure, had pursued him and had been wounded by him near the hedge. I asked, 'How do you know?' He replied, 'All the village say so ; and I saw him (*i. e.*, Bárak) that night going towards my house.'

The Inspector reported what he had heard to the Magistrate, and left Mardán to give evidence in a Sessions case at Cherát. Habíbulla died before the Magistrate had time to question him regarding the charge against Bárak. Secret enquires were, however, made which tended to show that there was good ground for believing Bárak to be guilty, and Safiulla and Músa innocent. Accordingly, the Police Inspector, on his return to Mardán, was deputed to make a fresh enquiry in the village, the result of which was, first, a general acknowledgment on the part of the friends of Habíbulla that they had joined him in making a false charge against the men originally accused ; and, secondly, the production of a considerable amount of evidence against Barak.

This evidence tended to show,—

1st. That an intrigue had existed between Bárak and Mussammát Begam Ján, the unmarried sister of Habíbulla.

2nd. That Bárak had been seen in the neighbourhood of Habíbulla's house some hours before the wounding.

3rd. That he had entered Habíbulla's enclosure and had sat down on the girl's bed.

4th. That he had been disturbed by Habíbulla coming in from a neighbouring *hujra*, and had run out through an opening in the wall of the enclosure.

5th. That Habíbulla had doubled back through the main entrance and had attempted to cut off Bárak's retreat, and had actually come up with him and laid hold of him at the spot where the blood was seen, and had there been stabbed by Bárak.

6th. That Habíbulla had immediately told his uncles, Fatehulla and Moza Khán, the name of the man who had wounded him, and at the same time had declared his intention of not charging him, through fear of his powerful relatives and of the shame which would be entailed, but of accusing Safiulla and Músa, with whom there was an outstanding quarrel about a *hujra*.

7th. That this intention was repeated to Habíbulla's father and other relatives on his reaching home.

8th. That Bárak was actually seen by a Government chaukidár, by name Saddu, a brother-in-law of Habíbulla, passing his house hastily about the time the stabbing took place.

In regard to all these points evidence was given before the Magistrate. In this Court some of the witnesses have gone back from their statements. I propose to examine briefly the evidence which has been adduced in this Court on each head, and to state the effect of it on my mind, and I may say, in the first place, that the experience I have had of the trial of murder cases in this valley enables me with but slight hesitation, if any, to accept the theory of the prosecution in respect to the charge against Safiulla and Músa. It was in all probability false, or, at all events, the evidence forthcoming in support of Habíbulla's statement was fabricated. Many persons charged with murder on similar evidence, have been acquitted by me under the belief that they were innocent, and I cannot call to mind a single case in which the prosecution has succeeded in obtaining the conviction of men charged with *midnight* assassination solely on the *direct* uncorroborated evidence of the wounded man and those who slept near him :

1st.—With regard to the existence of the intrigue, I think that the evidence may be accepted as sufficient, notwithstanding that the girl, her mother and sister-in-law, who virtually admitted its existence before the Magistrate, have now retracted their statements.

2nd.—The proof that Bárak was seen lurking in the neighbourhood of Habíbulla's house about midnight rests on the statement of witnesses Nos. 8 and 9. These men did not speak out till the second enquiry, and I cannot say they succeeded in impressing me with any belief in the truth of their statements—which, even if true, prove very little.

3rd and 4th.—The proof of accused's presence within the enclosure and of his being surprised by deceased, rests mainly on the statements before the Magistrate of the three women (witnesses Nos. 4, 6 and 7). These statements have been referred to under Section 249, Criminal Procedure Code,* but they have been entirely repudiated by the witnesses in this Court, as having been extorted from them. I confess I have difficulty in acting upon this evidence, although I am bound to say it describes a very likely state of things. The prosecution does not deny that it was obtained with *much* difficulty and only after the expiry of three weeks from the date of the wounding. It is also admitted that the girl would not speak until after she had been separated from her mother and lodged with one Hussan Parácha. For the defence it is asserted that this evidence was obtained only after much ill-treatment of the women by the police, and many witnesses were produced before the Magistrate to support this assertion. In this Court the accused did not call witnesses to ill-treatment, possibly because the women had retracted their former statements. Judging from the enquiry made by the Magistrate, I do not believe there is any foundation for the charge of actual oppression and bad usage, but I think it is quite possible that it required more than due persuasion to induce the women to speak out,† and I question the expediency of the course adopted in making over the girl to the custody of a stranger, no matter how respectable. To do so was manifestly calculated to give a handle to a charge of harsh treatment or torture. My feeling then, in regard to the previous statements of these women, is that I could believe them if all or most of the other points were satisfactorily established, but I cannot consent, under the circumstances, to make them the staple evidence of the case, as they clearly would be if implicitly received.

5th.—The pursuit of the trespasser by Habíbulla and the wounding at the spot near Sháh Muhammad's field. The proof of these alleged facts depend, 1st, on the statements of the three women and of Ziáratai, who professes to repeat what he heard from his son, and, 2ndly, on certain

* Act X of 1872.

† Even Ziáratai himself says that he learned nothing of what occurred from them. But this may, of course, be accounted for by their disinclination to admit to him their misconduct.

considerations arising from the nature of the wound, the position of the pools of blood, and the absence of blood at the *hujra*, where deceased said he had been stabbed. The position of the pools of blood is doubtless a very strong fact in support of the theory of the case against Bárak; but it is partly counter-balanced by the statements of the medical witnesses, who do not think it is impossible that deceased might have run forty paces after being wounded, and who do not pronounce the absence of blood in the *hujra* to be a certain test that the wounding did not take place there. Then again we have the statement of the uncle Moza Khán (No. 3), who, in the first instance, declared he had identified Músa and Safiulla, and who now probably does not quite understand the precise facts to which the prosecution wish him to depose, when he says he awoke on hearing deceased cry 'thief' and then saw him *jump* from his bed and run in pursuit. Now, of course, it is quite possible that this old man may think he saw Habíbulla jump from his bed, when, in reality, he merely saw him running through the *hujra* on his way from the enclosure to cut off the fugitive, but it seems improbable that, if he were thoroughly impressed with a belief in the correctness of the present theory of the prosecution, he would not guard against making a statement so eminently calculated to damage it.

Primâ facie, a consideration of the position of the wound, an inch or so above the navel, militates against the belief that it was inflicted in a struggle, and is entirely in favor of the supposition that it was received by deceased, as he alleged, when he lay on his back in bed. This difficulty, however, would be much lessened, if the statement of Ziáratai could be believed, to the effect that Habíbulla told him he was stabbed by Bárak's giving a back-handed thrust when he felt himself seized behind by the throat,—and I may here remark that if this account is really correct it would go far to lessen the heinousness of the act of person who inflicted the blow. It would not, probably, take his offence out of the category of murder, but it would be impossible, in this district especially, where men are expected to carry arms at night, to regard a man who, in a moment of great excitement, gave a single back-handed thrust to free himself from arrest and exposure, as in any way equal in wickedness to the perpetrator of a carefully-planned assassination.

Taken as a whole, the account of the affair as given now by Ziáratai seems far from inconsistent with probability, but the difficulty is, can we believe that it was in truth received from his son? According to Ziáratai, Habíbulla was not even consistent in the account he gave

to him, for, the old man says, his son first told him that after he had disturbed accused, he returned to the *hujra* and *there* lay down on his bed and was stabbed by some one. On looking up he saw it was Bárak, and forthwith pursued him.

On Ziáratai's being asked in this Court why Habíbulla should have told him a lie, he could only say that his son was powerful and could do what he pleased. Here again, it must be remarked, that it is most extraordinary to find one of the witnesses for the prosecution allowing himself to give *any* colour to the theory that the deceased had been stabbed on his bed if he firmly believes that theory to be false. Anyhow, it is necessary to guard against the danger of being led away by the inherent probability of the account now given by Ziáratai, and forgetting that he is a man who, by his own confession, lent himself readily to a diabolical scheme for swearing away the lives of innocent men, and who as late as the 19th August, gave a petition to the Magistrate declaring that the charges against Safiulla and Músa were true, and that the case against them was being spoiled by the accusation of Bárak. Indeed, it may be remarked here that the relatives of the murdered man have, by their own showing, absolutely forfeited all right to seek revenge for his death through the agency of our Courts. However much one may feel inclined to sympathize in the unwillingness to bring a charge against Bárak, on account of the shame which would be involved, the base act of bringing a false charge against innocent men in order that some of their enemies might suffer—as the witness Moza Khán puts it—must meet with nothing but clear and absolute reprobation.

This brings me to the 6th and 7th points, *viz.*, the alleged accusations of Bárak by Habíbulla *immediately* on being wounded and subsequently on reaching his home. In support of this, we have merely the statements of the uncles and the father of deceased, who have shown themselves ready to say anything, even to the swearing away of the lives of innocent men. The other inmates of the *hujra* were not called in this Court, as their evidence before the Magistrate showed that they were only prepared to say that Habíbulla had, from the first, determined on concealing the name of the real offender.

In the face of the conflicting statements of these witnesses (*viz.*, the father and uncles) from the date of the first enquiry until now, and of the recorded dying declarations of deceased, I feel myself quite unable to act on the supposed accusation of Bárak, which is said to have been made by deceased in private.

8th.—There remains the statement of the witness Saddu (No. 10), who now declares that he saw and stopped the accused as he rushed past his house about the time when the wounding probably occurred. It is pretty clear that had it not been for the exertions of this man the case would never have assumed its present aspect. He it was to whom Mullá Sarwar, the father of Safiulla,* referred the Inspector for information. The account Saddu then gave was very brief, and is to be found in the Inspector's report, dated 27th August :—

'Bárak had an intrigue with deceased's sister and went to her at night ; deceased got information of this and ran after Bárak to arrest him. While running Bárak stabbed deceased in the stomach with a knife, but all this was kept a secret through fear.'

The Inspector now says Saddu did tell him he had seen accused going towards his house, but it is clear he did not say he had seen him running or that he had stopped him, and not one single word was said of his having had an interview with the wounded man and ascertained the whole of the circumstances from him. According to the Khán's report, dated 13th August, which was read partly with the object of corroborating Saddu, we find that his statement in the village was far from consistent or satisfactory. Then again, in Sarwar's evidence, we find him saying that Saddu told him accused was carrying a knife in his hand, whereas this fact was not alleged by the witness in the Magistrate's or Sessions Court.

On the whole case, I feel quite unable to convict the accused, and referring to the judgment of Mr. Justice Boulnois, in the case of *Crown* versus *Masín and others* of Ormur on the appellate side, dated 5th November 1875, I can only say that it would be ill work to do so on such evidence as has been produced in the present instance.

The Police and Magistrate have had enormous difficulties to contend against,—such, I suppose, as could hardly arise save in a Pathán country—and well have they struggled against them. But, in my opinion, it would have been wiser to have followed the advice of the Chief Court, as expressed in the case marginally noted,* and referred the accused for trial to a Council of Elders, while no effort should have been spared to bring to justice all persons concerned in the admittedly false charge against innocent men. I understand, however, that these persons will now be proceeded against.

Crown versus *Juma and others*, dated 11th October 1873.

* It must not be forgotten that the clue to the case against Bárak was due originally to the endeavour of Sarwar to clear his son.

In closing this Judgment I desire to express concurrence in the views of the Magistrate and Police officer regarding the inadvisability of attempting to prosecute the Khán of Toru. I fail to perceive that he was in any way primarily responsible for the charge against Safiulla and Músa. All the evidence goes to show that the accusation against them, even though false, originated with Habíbulla himself and no other.

The Khán may have been only too glad to remain apathetic, and thereby to give indirect support to a line of conduct on the part of the wounded man and his friends, which tended to keep his (the Khan's) relatives free from suspicion, but it is clear that he committed himself to no overt act which could be regarded as amounting to abetment of a false charge or false evidence.*

It is but seldom that it is possible to bring false witnesses to justice, but the following three cases are instances in which false accusations were followed by successful prosecutions for perjury :—

No. 20.

CROWN *VERSUS* (1) ZARULLA, (2) ABDULLA, (3) MUSSAMMAT SHAH JEHAN.

CHARGES,—GIVING FALSE EVIDENCE IN ORDER TO CAUSE A PERSON TO BE CONVICTED OF A CAPITAL OFFENCE (SECTION 194, INDIAN PENAL CODE).

JUDGMENT,—*7th May*, 1874.

This is a very clear and simple case arising out of the trial of Nishán and Píro for the murder of Hájí, which was concluded in this Court on the 18th ultimo. The present three prisoners were witnesses in the murder trial, and were committed for false evidence under the provisions of Section 472, Criminal Procedure Code.

The facts are as follows : Zarulla, the first prisoner, is the man who reported the wounding of Hájí at the Thánah. In the trial he stated that Hájí had, from the first, declared that he had recognized *two* out of three assassins, *viz.*, Nishán and Píro; also that he, the witness, had made a report to this effect at the Thánah. It has been proved in the clearest way that Hájí, in the first instance, only named Nishán, and that accused 1, when he made his report, distinctly stated that Nishán alone had been

* Accused was acquitted.

recognized, and that two of the three assailants had not been identified. This is proved by the Thánahdar himself, the written entry in the Thánah diary, and by witnesses who were the first to reach Hájí after he was wounded.

Zarulla has no defence whatever, and can call no witnesses. I thought it possible that he might have called the two youths who accompanied him to the Thánah, *viz.*, Ghulám Kádir and Wali. He did not do so. However, after the trial I sent for them to ascertain whether they could say anything for Zarulla, and found that they could only corroborate the evidence for the prosecution in the strongest manner. I, therefore, fully concur in the assessors' verdict in regard to accused 1.

It will be convenient to take the case of accused 3 next. She is Mussammát Sháh Jehán, the widowed sister-in-law of the murdered man. She was suspected of being an accomplice in the deed. When the police investigation commenced, she denied having seen the assassins. Some four days subsequently she volunteered the declaration that she had seen and identified both the suspected men. Before this Court she adhered to this statement, and also declared that she made it to the Thánahdár on his first arrival and had never concealed the fact of her knowledge. In concurrence with the assessors I was of opinion that her evidence to the fact of the murder was entirely false, and she has now been tried for asserting that she gave the information from the first. It has been satisfactorily proved that she did not. The Thánahdár, who was doing all he could to obtain evidence against Nishán and Píro, cannot be supposed to have burked direct evidence against them. The guilt of this prisoner is, therefore, clear.

Accused 2 is a lambardár, who seems to have been instrumental in getting Píro charged with the murder, and who has now been tried for declaring in evidence that the woman, Mussammát Sháh Jehán, volunteered her statement on the first arrival of the Police. He called two witnesses, both of them relatives, to support his assertion and to contradict the Thánahdár. One of them denied all knowledge; the other, after having been audibly prompted in Court by the female prisoner, gave a deposition in support of his relative, to which it was ludicrous to listen. He halted through a lame attempt to say what he thought the prisoners wished him to say, in a manner which completely stamped his story as false, every word of it.† * * * *

† Accused were convicted; the convictions were upheld by the Chief Court.

No. 21.

CROWN *VERSUS* TURSAM, SON OF MAHMAND.

CHARGE,—FALSE CHARGE OF ATTEMPT TO MURDER.—SECTION 211, INDIAN PENAL CODE.

JUDGMENT.—*28th November* 1877.

Tursam, the accused, has been tried for bringing a false charge of attempt to murder against Azímulla, the lambardár of his quarter, Habíbulla, son of Azímulla, and Sikandar, their relative. Tursam, in his defence, adheres to his original story, and declares that he was sleeping in the courtyard of a mosque at night, when some one fired a shot at him ; that the bullet passed through his clothes, bedding &c., burying itself in the ground ; that he sprang up and laid hands on his assailant Habíbulla ; that Azímulla rescued Habíbulla by wounding accused on the head with a sharp instrument ; that Sikandar pushed him into a dry watercourse, whence the villagers, who came up on hearing the outcry, lifted him.

The chaukidár who reported the case at the Thánah told the Police Sergeant that he suspected there was some deceit in the matter. The result of the local and Magisterial enquiry was a belief on the part of the district officers concerned, that the charge had been fabricated in order to injure Azímulla and his son. It is a matter of notoriety that false charges of the kind are not unfrequently made in this district.

Azímulla and Habíbulla (witnesses Nos. 4 and 5 for prosecution) have deposed that they spent the night at their house, and that the charge that they attempted to murder accused is absolutely untrue ; they show that he bore them a grudge for pressing him to pay up his revenue, and further, that he is a mere tool in the hands of a rival lambardár. The medical evidence shows that there were eight very slight scratches on accused's head when he was examined by the Civil Surgeon. These scratches were not of such a nature as would probably have been caused by a severe blow from a sharp instrument, as accused describes. Moreover, the Police Sergeant and others are clear that there was only *one* slight wound on the head when they first saw accused, and accused himself is unable to account for the seven additional scratches which were observed by the Civil Surgeon. It is not, therefore, altogether unlikely that accused, if he had made a false charge, should have attempted to injure himself further during the time that elapsed between his leaving the village and the Civil Surgeon's

examination. There were no marks of burning on accused's clothes or bed, and he has been quite unable to prove the truth of his story.

Two manifestly false witnesses have been produced for the defence, one of whom says he saw two men passing through the village just after the outcry. A perusal of the evidence of these two men shows that it does not help accused. It appears that an old and blind uncle of accused was sleeping at the mosque. He has not been produced as a witness, but the record of his statement to the Police shows that he could say nothing to clear his nephew. Indeed, accused admits that, contrary to custom, he went to sleep at the mosque and did not tell his uncle. He surmises that the alleged assassins must have heard him announce his intention of sleeping away from home. A strong *primâ facie* improbability against the truth of the accused's story is derived from a consideration of the alleged motive. A lambardár, his son and nephew, are stated to have conspired together and attempted to assassinate a man whose only offence had been to decline to give evidence on their side in a petty civil case. Even in Pesháwar I have never heard of so trifling a motive having led to a deliberately planned murder.

In a case of this kind the opinion of the assessors is likely to be of value. They have unanimously found accused guilty. I am clear that this is the correct view. The accused has all the appearance and demeanour of a cunning, underhanded rogue, regarding whom it is comparatively easy to believe that he laid a plot as alleged by the prosecution.

I have no hesitation in convicting him, and I am of opinion that a substantial punishment is called for.*

No. 22.

CROWN *VERSUS* SAID ALAM & 4 OTHERS.

CHARGE.—GIVING FALSE EVIDENCE.—(SECTION 194, INDIAN PENAL CODE).

JUDGMENT.—23*rd February* 1874.

The facts of this case are very fully set forth in the committing order of the Magistrate. It is unnecessary that I should recapitulate them at length, the more especially as the evidence produced in this Court entirely supports the case for the prosecution, and as the assessors are unanimously of opinion that the accused are all guilty.

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* Conviction was maintained by the Chief Court.

Gul Muhammad, chaukidár of Topí, was shot on the night between the 22nd and 23nd November last. The shot entered the left side of the chest and passed out at the back. There was a very large wound, and death followed very shortly.

No satisfactory clue to the murderer has been obtained. The five accused persons have been charged with having given false evidence before the Magistrate, in that they declared that shortly before his death the wounded man declared that Sultanai had shot him. The prosecution has shown that there is the strongest reason for believing that no such denunciation took place. The witnesses did not come forward till late the following day, and their story is entirely opposed to that of the deceased's friends. The Magistrate visited the village the very day following the murder, and made a most careful investigation.

I think he was perfectly right to commit the prisoners. Nothing is so common in this district as the fabrication of false evidence in support of charges of murder. Such evidence is not only fabricated in support of false accusations, but very frequently in order to strengthen true charges. The result is, that justice is defeated in very many instances. When, therefore, a clear case like the present is brought up which has been thoroughly sifted by the best officials on the spot, and in which the evidence is perfectly straightforward, and in which the assessors unhesitatingly condemn all the prisoners, I think that a very severe example should be made in the hope that it may not be without effect in checking one of the worst crimes of the district.

The Court, therefore, concurring with the assessors, finds all the five accused persons, Sáid Alam, Izzat, Alif Khán, Ghazan, and Samand, guilty of giving false evidence with intent that Sultanai should be found guilty of an offence punishable with death, and sentences Sáid Alam to ten years rigorous imprisonment, with Rs. 200 fine or 1½ years additional imprisonment; and also sentences Izzat, Alif Khán, Ghazan and Samand to seven years rigorous imprisonment each, with Rs. 100 fine each or 1 years additional imprisonment on default.*

* The Chief Court maintained the convictions and sentences upon appeal.

PART IV.

DANGER ARISING TO ACCUSED PERSONS FROM MAKING FALSE DEFENCES.

The two following cases are illustrative of the danger that an accused person runs by making a false defence or by refusing to admit the truth of any of the facts proved against him. For myself I do not doubt that it occasionally happens that persons who have committed culpable homicide not amounting to murder are convicted by our Courts of murder, the unexplained facts proved against them raising a presumption which they do not attempt to rebut.

It is doubtless often the best policy for an accused person to make no admission whatever, and to leave the prosecution to prove the whole case ; but on the other hand, when a prisoner may have been guilty of a minor offence it may be his safest course to admit the fact in an answer to a charge of a graver offence of which he has not been guilty.

Courts in the Punjab, where, until a few years ago, accused persons were seldom or never aided by Counsel at their trials, sometimes found it necessary in the interests of justice to consider whether a defence not put forward by the prisoner might not be the true answer to the charge.

No. 23.

CROWN *VERSUS* ARSALLA.

CHARGE,—MURDER.

JUDGMENT.—13*th April* 1877.

According to the evidence there can, in my opinion, be no reasonable doubt that the deceased, Kajír, died from the effects of a gun-shot wound inflicted by the accused.

Kajír's dying declarations, together with the unanimous testimony of his companions who were out with him cutting grass near the border, prove that accused and Mansúr came up to the grass-cutters and remonstrated with them for being beyond the bounds of their own village. The remonstrance was followed by the almost immediate discharge of accused's gun, an old English flint musket. Kajír was wounded in the thigh. Accused and Mansúr ran off and were apprehended by Kajír's companions, all of whom declare themselves to have been unarmed. Accused and Mansúr seem to have offered little or no resistance to their arrest; notwithstanding that accused had a knife and Mansúr a loaded rifle. The witnesses for the prosecution will not admit that Kajír replied angrily to accused's remonstrances, and they do not say that a deliberate aim was taken before the shot was fired.

The accused virtually makes no defence beyond bringing forward two witnesses to say they saw him, early in the morning, fire his gun at an eagle, and asserting his belief that deceased was shot by some one of his companions and that he (accused) and Mansúr were seized as scape-goats. He admits that there was no previous enmity, that he does not belong to deceased's village, and that he had no previous acquaintance with Kajír or his companions.

The assessors were manifestly anxious to exonerate accused altogether; they almost admitted having been talked to by his friends out of Court; but on my calling upon them to state precisely their reasons for discrediting the dying declaration, and the eye-witnesses, they shifted ground, and dictated the unsatisfactory opinions which I have translated word by word.

The case is a somewhat peculiar one, and, in my opinion, the difficulty the assessors felt was probably caused by accused being afraid to make the only reasonable defence which, under the circumstances, was open to him, *viz.*, that the firing of the gun was more or less of an accident, and that he had no intention of shooting deceased. Notwithstanding the fact that accused in his ignorance does not dare to make a defence involving an admission of his having fired the shot, there is a strong conviction in my mind raised by the general effect of the evidence that there was no deliberate or even momentary intention to murder. If there was, it is difficult to understand how accused could have run off in such a cowardly way forthwith, and have made no resistance to his arrest. He had an armed companion with him at the time, and according to the prosecution, he had other companions close by, who

all made themselves scarce as soon as the shot was fired. All this looks as though accused surprised himself and everybody else. Moreover, it is not alleged even by the prosecution that accused took a deliberate aim or even raised his gun. I notice that the Magistrate, too, in his order, dated 14th January, refers to the possibility of accused having pointed his gun 'perhaps only to threaten.' I am of opinion that, under the circumstances, it would be unsafe to do more than find that accused interfered with the grass-cutters in a high-handed way, brandished his gun about and fired it, perhaps with a half-formed intention of frightening the grass-cutters by its discharge. Under this view I think that his offence can only be said to amount to causing death by a rash act, and that there will be no failure of justice by my only sentencing him to two years rigorous imprisonment under Section 304A., Indian Penal Code. It is to be noted that the Magistrate's original charge under Section 307 was amended to a charge of murder on Kajír's dying from the effect of his wound.*

No. 24.

CROWN *VERSUS* (1) NUR, (2) HASHIM.

CHARGE,—MURDER.

JUDGMENT.—11*th June* 1873.

The murder of Sher is supposed to have taken place on the night between Tuesday and Wednesday the 21st and 22nd January. Sher was a man between 40 and 50 years of age, a Gújar by caste, resident of the village of Kág. About two years ago he was betrothed to Mussammát Fazl Núr, a girl of about thirteen years of age, daughter of his relative Khairna, of the village of Banda Sahib Khán, distant some ten or twelve *kos* from Kág. It is admitted on all hands that Sher was in the habit of spending some time at Khairna's house. He was paying a visit there immediately before his death. According to the evidence, he was seen alive for the last time on Tuesday night, the 21st January. He is said to have gone out of Khairna's house about 9 or 10 p.m., after the evening meal. No report of his disappearance was made at the time. On the night of the 25th January, *i.e.*, the following Saturday, Muhammad Núr, the lam-

* The Chief Court took the same view on appeal, upholding the conviction and sentence.

bardár of the village, sent word to the Police station that the naked body of Sher had been found on a ledge of a precipice not far from the village, that it had been first seen by Háshim (accused 2), who had reported the fact to the chaukidár and lambardár.

The Deputy Inspector of Police proceeded to the spot next morning. Watchmen had been stationed on the top of the precipice during the night. The body was removed with considerable difficulty. A man was let down to the ledge by a rope. He attached another rope to the corpse which was let down to the bottom of the ravine. The body was perfectly naked. At a short distance from it, a pair of shoes and a sheet were found. The appearance of the body is described by the Civil Surgeon, who examined it on the 28th January at Abbottabad. He has stated that,—'with the exception of two scratches on the forearms there were no other injuries, unless on the head. The posterior part of the skull was fractured, and there were marks of contusion generally over the scalp.' The Civil Surgeon went on to say,—'It is impossible to state the exact cause of death. The appearance of the brain favours the idea of strangulation, but there were no marks on the neck. It is possible that death was caused by suffocation from the tying such a cloth as a *pagri* round deceased's mouth and nose, and the appearance of the brain was in conformity with such a supposition. * * * The injuries to the skull were likewise of themselves sufficient to account for death. If deceased had been thrown over a precipice it is utterly impossible that there would not have been other injuries.'

This evidence, together with that of the lambardár, Muhammad Núr (No. 1), who describes the finding of the body, leaves no manner of doubt that deceased was murdered and thereafter thrown down the precipice, by a ledge of which his fall was arrested. The committing Magistrate does not appear to have clearly understood that the body was found on an inaccessible ledge and not at the bottom of a precipice. He writes,—'It appears that the murderers first suffocated deceased, then deposited him at the foot of a precipice, having, in the meanwhile, inflicted injuries which broke his skull, probably to make it be believed that deceased had fallen over the precipice and broken his skull.'

But it is manifest that the body could not have been deliberately placed in the position where it was found. The spot where it lay was forty yards from the top of the precipice and seventy or seventy-five from the bottom. It was inaccessible even to animals. This fact is mentioned even in the early Police reports. A man could not reach it, unless he were lowered

down by a rope. Moreover, how could the murderers have supposed that it could be believed that their victim fell down a precipice accidentally, with no other clothes save a sheet and a pair of shoes? I dwell upon this point, because it is essential to a right understanding of the case that the idea that deceased met his death by accident should be entirely excluded. The Civil Surgeon's dictum that if deceased had been thrown over a precipice he must have received other injuries than those which were apparent, is clearly shown by Muhammad Núr's evidence to be fallacious. There can be no manner of doubt that the body *was* thrown over a precipice. It did not, however, reach the bottom, but fell on a ledge some forty yards from the top. The precipice is described as almost perpendicular. It is probable, therefore, that the body did not come into contact with an obstacle till it alighted on the ledge. This would account for the absence of greater injuries. None of the witnesses, nor the accused themselves, hint at the idea that Sher met his death accidentally. All admit that he was murdered. The questions for decision are,—how and by whom? It appears that suspicion at once fell upon the following four persons:—Khairna, the father of the betrothed girl; Núr, (accused 1), half brother to Khairna and husband of Mussammát Jeúni; Mehar Dín, brother of Mussammat Jeúni; and Háshim (accused 2), a relative of Khairna, a handsome young widower. The lambardár, Muhammad Núr (witness 1), appears at once to have placed these four under surveillance. He says he suspected Mehar Dín and Háshim, because they had been the first to mention the finding of the body, and because Háshim had afterwards tried to deny that he had seen it, and because they did not admit that they had recognized the corpse.

He says he suspected Khairna and Núr because deceased had been living with them, and although he had been missing four days, they had not attempted to find him and had raised no alarm.

The Police enquiry commenced on the 26th. On that day the girl, Mussammát Fazl Núr, appears to have admitted that she had been awoke on the night of the murder by hearing noises in Núr's house next door. She is said to have alleged that she inferred from the noises that Háshim and Núr were killing her betrothed. She is also said to have produced two silver rings, saying they were the property of Sher (deceased), and to have stated that a third ring belonging to Sher had been brought to her a day or two before by Háshim, who admitted that he had killed Sher. This third ring was with some difficulty obtained from Mussammát Ahmadi, the mother of Fazl Núr.

The following day, the 27th, further evidence was forthcoming. Háshim (accused 2), was induced to take the Police to a field, where, in a stack of grass, a bundle containing the clothes of deceased was found. The wrapper of the bundle was an old brown blanket, which was recognized as one which had been given to Háshim (accused) by Núr Ahmad, the owner of the field. Háshim alleged that he had sold the blanket to Núr (accused 1); and he also stated that he had obtained the clue to the hiding place from Núr, who had admitted to him privately that he found deceased intriguing with his wife, and had, together with the assistance of his brother Rashíd, chased him in the direction of the precipice, killed him and thrown him down.

Núr, from the first, firmly denied that he had admitted anything to Háshim; but his wife, Mussammát Jeúni, came forward as an actual eye-witness of the murder; saying that Háshim and Núr had brought deceased into the house where she was, and that Háshim had strangled him. Mussammát Fazl Núr then added a good deal of detail to her previous story; and Mussammát Ahmadi, her mother, admitted that she had been aroused by her daughter in the middle of the night, and had gone to the door in time to see Háshim carrying the dead body of Sher out of the enclosure, closely followed by Núr.

At this stage the case was sent in for trial by the Police, the accused being Khairna, Núr, Rashíd, Háshim, and Mehar Dín. The Magistrate's enquiry took place on the 30th and 31st January. All save Núr and Háshim were then placed on security. Finally, on the 18th March, Háshim and Núr were committed for trial, the others being discharged. It does not appear why the Magistrate allowed so long a delay to occur before passing a final order. It now remains to consider the evidence as presented to this Court :—

1*st.*—*The motive.* There seems to be no doubt that Núr (accused 1), either suspected or had good proof that the deceased had carried on an intrigue with his wife. The lambardár, Muhammad Núr, says that it was a matter of notoriety in the village. Mussammát Fazl Núr (No. 4) says that she was aware of it. The woman herself, Mussammát Jeúni, says that her husband suspected her, but wrongly. Núr himself admits that his wife is not on good terms with him, and that he could not get her to live with him.

Mehar Dín (No. 10), brother of Mussammát Jeúni, says that he remonstrated with Núr for beating his sister on account of her supposed infidelity. The assessors are of opinion that this motive has been

established. I think they are right. The motive of Háshim (accused 2), is said to be a desire to obtain the girl Mussammat Fazl Núr in marriage for himself. There is very little direct evidence before the Court on this point. The parents of the girl deny that they knew anything about it. The girl also professes ignorance. Mussammát Jeúni (No. 4) says she knew it to be a fact, and had heard her husband Núr (accused 1) and Háshim (accused 2) saying to each other that they would never permit the marriage with Sher. Then there is the alleged gift of a ring to Mussammát Fazl Núr a day or two after the murder. I am inclined to believe the evidence on this point, though it is not completely satisfactory. I will refer to it in greater detail further on. Altogether I am of opinion that there is sufficient evidence regarding the two motives. Nothing can be more probable than that Háshim (accused 2) should be anxious to marry the girl. She is fairly good-looking, of about 14 or 15 years of age. He is a handsome young fellow, and most probably his affection was returned. The fact of the girl's turning against him can only be accounted for by the supposition that strong pressure was put upon her when her father was under arrest.

2*nd.*—*The direct evidence to the murder.* This consists of the statements of the three women—Mussammát Fazl Núr (No. 4); Mussammat Jeúni (No. 5); Mussammát Ahmadi (No. 6). That nothing can be more unsatisfactory than evidence of this sort is manifest from its perusal. These women are doubtless fully aware, either personally or by hearsay, of all that occurred; yet it cannot for a moment be doubted that they have concealed much of the truth, and that they have probably said much that is false. They have not made the same statement steadily throughout. *One* only admitted knowledge at an early stage, and even she did not admit that she had actually seen anything.

The two others did not speak out till after the discovery of deceased's clothes. They say they were restrained by fear. I much suspect that two of them, Mussammát Fazl Núr and Ahmadi, were restrained by guilty knowledge, and that they were either cognizant of the intentions of the murderers, or well satisfied with their work when they heard of its accomplishment. In connection with this direct evidence, the account of the murder given by accused 2, which he alleges to have been received by him from accused 1, must be considered. He says that accused 1 finding deceased in his house with his wife, with the assistance of his brother, drove him out and killed him. If this story is anything like the truth, and that something of the sort did occur is highly consistent with

the probabilities of the case, then the evidence of the women is easily accounted for. Mussammát Jeúni must have seen what occurred in her own presence. The other women lived next door; their house opened into the same yard. The noise of the struggle may have awoke one or both of them, and they may have seen, as stated, Háshim and Núr carrying off the dead body. To suppose, however, that these women kept what they had seen a profound secret for some days is altogether unlikely.

The conclusion I arrive at in regard to this evidence is, that Mussammát Jeúni was an eye-witness as she describes, but that she has not told the whole truth in that she will not say that the deceased was caught in her company. The other women doubtless heard a noise and probably soon ascertained what had occurred, but, judging from their most unsatisfactory demeanour in describing what they saw, I refuse to believe that they were in any sense eye-witnesses.

3rd.- *The next point is the gift of the rings said to have been worn by Sher to Mussammat Fazl Núr.* Three silver rings with red stones have been produced in Court. Two of the rings have square stones. The third has an oval stone. The ring with the slightly-chipped square stone is said by Mussammát Fazl Núr to have been worn by Sher, and to have been given to her by accused 2. She admits that she recognized it as the property of deceased, but was afraid to refuse it through shame. This ring was passed on to her mother, who appears to have hid it in the wall of a house some distance off. She gives a very unsatisfactory account of the affair herself, but I am enabled to credit the story in the main by the belief that the mother and her daughter were consenting parties to the murder, at all events after the fact. Moreover, it is extremely improbable that an unusual piece of evidence like this should have been fabricated at such an early stage. At the same time, I must record my opinion that*—

4th.—The next and last piece of evidence is *the finding of the clothes of the deceased, at the indication of accused 2, wrapped in a blanket belonging to the latter.* Háshim (accused 2) admits that he gave the Police the information which led to the discovery of the clothes; he admits that the clothes are those of deceased, and that the blanket did belong to him. But he asserts that he obtained the information from Núr (accused 1) who confessed to having committed the murder and described the circumstances.

* Here I paused in writing and passed on to the next point, as the difficulty of believing that Háshim could have made such a gift as this presented itself to me with renewed force.

He also alleges that he had sold the blanket to accused 1 a short time previously. Of the truth of these assertions there is no proof whatever. Moreover, it is extremely improbable that if Háshim had been entirely innocent, Núr would have made a full confession to him and would have put him in possession of the clue to a most damning piece of evidence, The true solution probably is, that Háshim was induced by the Police or the witness Muhammad Bakhsh (No. 6) to tell what he knew, and that he was led to believe that it would be possible for him to implicate his fellow-prisoner and to screen himself.

The defence of the prisoners breaks down entirely. Accused 1 calls a witness to prove that he slept quietly at his house on the night of the murder. This witness, however, denies that he has been in the village for upwards of 1½ years. Accused 2 calls three witnesses to prove that he was absent from his home, and had been for some time when the murder occurred. These witnesses, however, do not support him, and say that the absence which he refers to, took place two months before Sher's disappearance.

The point which might be urged with some force in favour of accused 2 is that he was the first to give information regarding the body. If he is one of the murderers, why should he have done such a foolish act? Muhammad Núr, the lambardár, asserts that no sooner was the information volunteered, than it was withdrawn. Two explanations of this foolish act suggest themselves to me. Háshim may have believed that the body had been thrown down to the foot of the precipice, and when, subsequently, he happened to see it lying on a ledge, he may have felt that it would be discovered by others. He had no means of removing it, and may have thought it the wisest policy to avert suspicion by giving information. Or, his guilty conscience may have led him back to the scene of his crime, and he may not have been able to resist the temptation of drawing the attention of his companions to what interested him so intensely.

However that may be, believing as I do, in the main, the evidence of Mussammat Jeúni, and laying much stress upon the fact that Háshim alone gave the clue to the place where the clothes were concealed, I feel that there can be no reasonable doubt as to his complicity.

The clear proof of motive, and the direct evidence, appear to furnish ample grounds for the conviction of accused 1 —— ——— ———

14*th June* 1873.

Thus far I had written on the 11th instant, when some of the difficulties of the case pressed themselves upon me with fresh force, I resolved to reconsider the whole matter, and I offered a pardon to Núr, conditional on his making a full disclosure.

Next morning, the 12th, it was reported that the prisoner Núr wished to make a statement, and that he had agreed to accept the pardon which I had offered to him. He was brought before the Court, and his statement was recorded on solemn affirmation, and read out to the other accused person Háshim. This statement, if believed, clears up all the mystery of this extraordinary case, and that it does so is the strongest reason for crediting it in the main.

The prisoner Núr says that he alone caused the death of Sher. He says that he was absent at the *hujra* for some hours on the fatal night; that he returned home late and found a stranger with his wife; that the stranger turned out to be Sher; that he (accused) tried to prevent his escape, struck him on the head with a stick, thereby felling him to the ground; that the noise alarmed the neighbours; that Sher was carried into Khairna's house; that he appeared very ill, and finally expired early in the morning; that his rings were taken off his hands and his clothes from his body, and that all decided that his death should be kept a secret, and that the corpse should be thrown down the precipice; that the corpse was carried by Mehar Dín; that Háshim (accused 2) assisted; and that the clothes were hid in the stack, having been wrapped in Háshim's blanket.

Núr also states that the evidence of the witnesses who say that Háshim strangled deceased is utterly untrue, and that the story of the presentation of the rings to Mussammát Fazl Núr is a pure fabrication. He adds that it was understood that Háshim was to marry the girl; that a disagreement occurred which resulted in Háshim's giving information about the body. Háshim (accused 2) on hearing the statement of accused 1, admitted that it is true in all particulars save that in which his complicity is alleged.

Thus the medical evidence which gives such slight colour to the supposition that deceased was strangled is fully accounted for; my supposition that Mussammát Jeuni had really been an eye-witness is confirmed; the extraordinary statements of Mussammát Fazl Núr and Ahmadi, though founded on fact, are shown to be grossly untrue;

the mystery of the rings is explained; the share of Háshim in the transaction is defined in accordance with probability; the reason for his pointing out the body is suggested; and revenge for the betrayal of the secret set forth as the cause of Khairna's household determining to fasten the principal share of guilt upon Háshim.

I have little hesitation in accepting Núr's statement as true, in preference to the story of the prosecution, with all its improbable features and inconsistencies. Under this view, the offence of which Núr has been guilty is that of culpable homicide under greatly extenuating circumstances and not that of murder. He has been promised pardon, and, under any circumstances, it is too late to alter the charge.

Háshim, in the light of Núr's statement, is totally innocent of the murder, but is apparently guilty of concealing an offence of which he was bound to give information, and of assisting in the disposal of evidence of an offence committed—Section 201, I. P. C. Both of the accused will be acquitted of the offence charged, and the Magistrate of the district will be requested to institute fresh proceedings against Khairna, Mehar Dín, Shera, Mussammát Ahmadi, Mussammát Fazl Núr, Háshim, and any other persons concerned, under Sections 201, 202, 203, and 194, I. P. C.

PART V.

KILLING AND WOUNDING OF THIEVES AND OTHER WRONG-DOERS.

A class of cases in which questions of considerable difficulty are raised is that in which death or injuries are caused to thieves or other wrong-doers. The population on the frontier not having been disarmed, and being for the most part ready to use their arms on even slight provocation, are very apt to consider themselves perfectly justified in dealing death to a trespasser, without pausing to think whether such a course is permissible under the law relating to the defence of self or property. The Pathán kills robbers, thieves and adulterers on principle, and our Courts have often a somewhat delicate task to perform in awarding punishment to persons who, in acting in accordance with what they regard as the Afghán code of honour or retribution, have nevertheless flagrantly transgressed the law of British India. In passing sentence on such offenders I have always tried to make full allowance for the Pathán feelings, by which they were probably influenced, while at the same time I have not hesitated to punish with severity acts of barbarous and unnecessary cruelty even towards wrong-doers.

The following judgments illustrate some of the most common types of crime of the class under consideration.

No. 25.

CROWN *VERSUS* ZARIF.

CHARGE.—MURDER AND CULPABLE HOMICIDE.

JUDGMENT.—30*th October* 1873.

The facts of this case, as disclosed by the evidence for the prosecution, are, for the most part, admitted by the accused, who does not deny that he killed the deceased Fíroz.

It appears that Fíroz lived close by the houses of two brothers, Sharíf and Zarif (accused), and that of their cousin Latíf. On the night of

the 29th July last, a disturbance arose on the premises of Sharíf, and it seems to have become at once known that Fíroz was lying dead in the courtyard in front of Sharíf's door. The lambardár of the quarter immediately went to the spot, and found Fíroz lying dead, covered with wounds. Zaríf (accused), had a spear and a dagger in his hands. He at once admitted that he had killed Fíroz with the spear, but alleged that the dagger, which was blood-stained, belonged to the deceased, and had been used by him on Latíf.

Sharíf stated that he had been asleep in his courtyard, had woke up on hearing the rattling of vessels inside his house, had entered by the door and met a man with whom he struggled. The man broke from him and made towards the entrance. Meanwhile Zaríf (accused), who lived in the adjoining enclosure, hearing Sharíf's cries, hurried to his aid with a spear. He met the trespasser coming out of the door, and forthwith transfixed him. He found it necessary to inflict several blows, as the thief would not give in. Latíf then came up, and was wounded slightly in the hand by the thief. Finally the thief fell down and died, and when a light was brought, it was discovered that he was their neighbour Fíroz. Such was Sharíf's account of the affair, and it is in effect what the prisoner now alleges to be the truth.

The prosecution has sought to establish that the deceased's object in going to Sharíf's premises was to gain access to his (Sharíf's) step-mother, who lived in a room only separated by an imperfect partition from that inhabited by Sharíf. An attempt was also made in the Magistrate's Court to prove that the dagger belonged to Sharíf and not to deceased. Neither of these allegations could be satisfactorily made out, and the Magistrate, apparently believing the plea of accused, charged him with culpable homicide, holding that Fíroz had been killed when his assailant was exercising the right of private defence. Sharíf and Latíf were both discharged on the ground that they were not proved to have been armed, and that there was nothing to show that they had abetted the acts of Zaríf.

Before the prosecution began its case, I thought it necessary, under the circumstances, to charge the prisoner with murder, in addition to culpable homicide as charged by the Magistrate.

Very little further light has been thrown on the case by the enquiry in this Court. It would seem that the statements of the accused and his brother Sharíf must be accepted, save that it cannot be held that they

have proved that the bloody dagger found in accused's possession was the property of deceased and was actually used by him—

It remains, therefore, to be decided—

1*st*. Of what offence has the accused been guilty?

2*nd*. What should be his punishment?

It appears from the medical evidence that the deceased had thirteen punctured wounds on the body, nine on the front of the chest and abdomen, all of which penetrated into the cavity beneath, and three of which 'penetrated right through at the back.' There were also three flesh wounds on the right and one on the left arm. Any one of the abdominal or chest wounds was sufficient to cause death. The Civil Surgeon was of opinion that the wounds had been caused by a pointed weapon, such as the Pathán knife or dagger shown to him. He stated that the spear was blood-stained, but he did not say that he thought it had been used for all the wounds.

The spear has been produced in Court. It is a very clumsy, blunt weapon. I am unable to believe that the whole of the frightful wounds described by the Civil Surgeon could have been inflicted with it. The Pathán knife or dagger, which is literally covered with blood, is, *primâ facie*, the weapon which was used for the infliction of some of the worst wounds. It could not have become stained to such an extent by the infliction of the trifling wounds on Latif's hands. However this may be, it is quite possible that the knife did belong to deceased, and that it was snatched from him and used for his destruction. To my mind the medical evidence affords conclusive proof that the attack made upon deceased was of the most fierce and blood-thirsty description, and that his assailant determined, at a very early stage, that he should not escape with his life. Whatever may have been the intention when the first few blows were delivered, there can be no doubt as to what was intended when the twelfth and thirteenth were being inflicted. I am unable to satisfy myself that any of these wounds were inflicted in the exercise of the right of private defence of person or property. It is clear that deceased made no attempt to hurt Sharíf, even when they were struggling together inside the house; he did not carry off any property; nor did he make any attempt to continue the trespass after he was detected. Strictly speaking, it is very doubtful whether the right of defence of property justified accused, who had only been called in for assistance, in attacking with dangerous weapons a retreating thief, who had been foiled in his scheme. But even if it be conceded that there was a right of private defence of

property, it is clear that the property must have been successfully defended long before the end came, and there was nothing in the circumstances which justified a prolonged and most cruel attack. It is impossible to suppose that there was no intention of doing more harm than was necessary for the purpose of defence,—*vide* Exception 2, Section 300, Indian Penal Code.

But, the truth is, the accused does not plead that he was exercising the right of self-defence. He pleads that Fíroz was a thief, and that as such he was liable to be killed or at all events arrested at all hazards. Now the only law of which I am cognizant which gives colour to this plea is contained in Section 105, Criminal Procedure Code, which gives the right of arrest to any person who sees another commit a non-bailable and cognizable offence in his presence. It may be conceded therefore, that accused and his brother had a perfect right to arrest the deceased who was trespassing on their premises for the purpose of committing an offence; but can it for a moment be supposed that the amount of violence which they displayed was justified—or was necessary to effect the arrest? The medical evidence seems to me to exclude such a view, and I cannot bring myself to believe that the accused only desired to arrest Fíroz. Such may have been his intention at first, but that intention was undoubtedly followed by the determination to kill the intruder outright. I do not find any law defining with precision the degree of violence which may be used in order to make an arrest, but it seems clear that the ruling of the High Court, quoted at page 50 of Newbery's Criminal Procedure Code (2nd edition), does not apply to the present instance, where, undoubtedly, a great deal of unnecessary violence was employed. Indeed, it seems to me that had this case occurred in any other part of the Punjab, save amongst a Pathán community, the accused might possibly have been convicted on the evidence of the offence of murder. In this part of the country, however, it is a matter of notoriety, that house-trespass at night, whether for the sake of gaining access to women or for the sake of stealing property, rouses the most violent passions of the persons whose premises are invaded. It may, therefore, be held with fairness, that whatever may have been the object of the deceased, his nocturnal visit was calculated to give rise to grave and sudden provocation to the brothers Sharíf and Zaríf (accused), and that the acts of the latter may therefore come within the 1st Exception to Section 300, Indian Penal Code. The accused may, therefore, be convicted of culpable homicide without any undue straining of the

law, under the circumstances. Although there is no evidence to show that deceased came to visit a woman, there is little moral doubt that such was his object. The accused, like a true Pathán, will not, however, raise the plea which would at once have placed the case in a clear and intelligible light.

In regard to the punishment, it must, in my opinion, be a severe one. Although it is held that the offence is only culpable homicide not amounting to murder, the acts which resulted in the death of Firoz were of a most determined, savage, and cruel nature. The position of accused is entirely different from what it would have been had he killed Firoz by a pistol-shot, or by a single blow or even two of a sword. Here, though there was grave and sudden provocation, the intention was to kill outright, and that intention governed the mind of accused till some twelve or thirteen blows had been successively inflicted.*

No. 26.

CROWN *VERSUS* SAID AMIR.

CHARGE,—CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

JUDGMENT.—13*th January*, 1876.

In this case the accused has admitted all the facts which the prosecution is prepared to prove against him. He has done so from the very first. Considerable effort was made by the Police and the Magistrate to discover whether or not deceased was killed by accused and others in pursuance of a conspiracy. Nothing of the kind had been alleged in the first instance, even by the father of deceased, who was carefully questioned by the Magistrate on the day following the occurrence. Subsequently a charge was made by the father against three other men, but there was no evidence of anything like a reliable nature to support it. So that when the prosecution comes into this Court, it has nothing better than the medical evidence and the accused's own

* The sentence awarded was 10 years imprisonment, but it was reduced to two years by the Chief Court on appeal. My subsequent experience has led me to think my sentence was perhaps too severe; but, on the other hand, I have still difficulty in accepting the view that a sentence of only two years was adequate.

statement to go upon. It appears to me to be quite unnecessary to take the evidence of witnesses who are not prepared to prove anything more than the accused admits.

Accused has been charged, virtually on his own admission and the medical evidence, with having committed the offence of culpable homicide not amounting to murder. He adheres to his original story, and throws himself on the mercy of the Court. That story is that he, having on more than one occasion been much annoyed by thefts of cotton from his field, borrowed a sword and went off to watch his crops about 11 or 12 at night. Arrived near the field he heard the sound of the cotton plants being cut, and he saw a man crouching down and cutting them. Stealing up behind, accused dealt the thief a blow with his sword. The thief turning round sprang upon him, scratched him, and bit him on the shoulder and slightly wounded him with a sickle. The medical witness who examined accused's person says : 'There was a scratch on the left side of his neck, apparently caused by a human nail, and another on the left shoulder, which seemed to have been caused by human teeth ; another on his head, by what means caused cannot be said; another on the hand longer than the others, the cause of which cannot be certainly specified.'

Accused states that on being thus assailed, he managed to throw off the thief, whom he forthwith dispatched with several blows, raising the *chighah* (alarm) all the while.

Now, it appears to me that if all this is true—and I see no reason to disbelieve this version, for the prisoner speaks out in the most open and apparently truthful manner, and the prosecution is quite unable to carry the case a degree further,—no offence has been committed. Accused had a perfect right to defend his property and to arrest the thief. In this district it is notorious that thieves seldom go unarmed. Accused may well have supposed that unless he at once disabled the thief, he would be quite unable to effect his arrest and would very possibly be wounded himself. A case was tried in this Court last week in which it appeared that an unarmed man, who happened to disturb a burglar, had his head cut open in the most frightful manner, after which the offenders escaped.

It would, therefore, appear that the first blow was justified. What followed after? The thief turned and attacked accused with a sickle and bit him on the shoulder. The medical evidence may be taken as entirely corroborating this version, and a sickle was found close by, which

was recognized by deceased's father as the property of his son. Accused at this second stage then had to defend his person from a thief who might have had fire-arms about him, and in order to do so accused threw him off and rapidly delivered three or four cuts on his back and killed him. This action was, I think, justified, under all the circumstances, in the Peshâwar District.

Accused had a right to interfere with deceased in order to protect his property and to arrest the thief. It was only a reasonable apprehension that unless he used his sword he might himself have been killed or grievously hurt (*vide* Section 103, Indian Penal Code, 4th Clause). Then, when he was attacked by a midnight thief, in a manner which might reasonably cause apprehension that grievous hurt would be the consequence of such assault, he was justified, in my opinion, in repelling the attack as he did, even, although in doing so, he voluntarily caused death to his assailant (*vide* Section 100, Indian Penal Code) ; and nothing being an offence which is done in the exercise of the right of private defence, it follows that the accused must be acquitted. The prisoner Said Amír is forthwith to be set at liberty.

No. 27.

CROWN *VERSUS* (1) GHAZAN, (2) HAFIZULLA, (3) NAZAR MUHAMMAD.

CHARGES,—AGAINST { No. 1 AND 2 MURDER AND GRIEVOUS HURT. No. 3 CONCEALMENT OF EVIDENCE.

JUDGMENT.—*29th September* 1877.

In this case, Ghazan, accused 1, who is a man of about 50 years of age, has fully admitted, from the moment of his arrest, that he caused the death of Faiz Muhammad by stabbing him with a knife and hacking him with a sword. Deceased was the Imám of a mosque adjoining the enclosure in which Ghazan lived with his wife, Mussammát Said Nishán and his nephew, Hafizúlla (accused 2). The woman is of loose character and appears to have been suspected of adultery with several men, of whom deceased was one. A canal cut runs through Ghazan's enclosure passing out near the mosque under a rough arch in the wall. The short way from the mosque to Ghazan's house is through this opening, and Ghazan seems to have received information that

when he went out in the evening, the Imám used to go that way to visit Mussammát Said Nishán. Ghazan says that he determined to lie in wait for Faiz Muhammad ; that he armed himself with sword and knife, and some time before *khuftán* prayers took up his position at a place whence he commanded a view of the opening in the wall. Soon after, according to expectation, Ghazan says he saw Faiz Muhammad creep through. As to his own immediate action he is not quite precise, and has not been quite consistent. Before the Magistrate he said his first intention had been to delay until the act of adultery was taking place, but that fearing lest the adulterer should escape, he at once jumped over the wall; that deceased heard his footsteps and made for the opening ; that he, Ghazan, caught him up, stabbed him in the back, followed him through the opening and despatched him with his sword. This done, Ghazan says, he jumped over the wall, went up to his wife's bed and stabbed her ; that almost immediately after his nephew Hafízulla (accused 2) came from the mosque by way of the watercourse ; that a number of the neighbours followed from various directions and arrested him (Ghazan) and his nephew. In this Court Ghazan adheres almost in every particular to the same story, save that he asserts he saw the very act of adultery. He does not hesitate to admit, however, that he went to watch for Faiz Muhammad with the full determination to kill him if he found his suspicions correct. Such being the case, I think it is probable that Ghazan could not restrain himself when he saw his enemy pass through the opening, and that the description of the attack, as given to the Magistrate, must be correct in the main, as far as he himself (Ghazan) is concerned. I think, moreover, that whether Ghazan merely saw deceased trespassing in his enclosure with intent to commit adultery, or whether he saw the act of criminal intercourse, it must be held that his act of killing amounted to murder, and cannot be reduced to a lesser offence by the operation of the first Explanation to Section 300, Indian Penal Code. The provocation was undoubtedly most grave, but it was certainly not sudden in the sense of being unexpected. Ghazan had determined to kill Faiz Muhammad if he caught him going into his enclosure. He deliberately armed himself, lay in wait, and carried out his plan on receiving the expected provocation. I am therefore of opinion that Ghazan (accused 1) must be convicted of murder, but it is clearly not necessary to pass the extreme sentence.

The real difficulty in the case arises in respect to Hafizulla (accused 2), who is alleged by the prosecution to have joined his uncle

in the murder of Faiz Muhammad and in the wounding of Mussammát Said Nishán. The *sword* cuts are said to have been delivered by Hafízulla, of whom two witnesses say that they saw him pass through the mosque towards the opening in Ghazan's wall a minute or two before the alarm was raised.

Ghazan denies that he was in any way assisted by his nephew, and Hafízulla, while admitting that he hurried through the mosque on hearing the disturbance and entered his uncle's enclosure by the hole in the wall, has steadily denied from the first that he carried a sword, or had anything to do with the murder or wounding. * * * * *

But, on the other hand, it is admitted by all that several of the most serious wounds must have been inflicted by a sword, and although Ghazan says he used both sword and dagger, a certain amount of doubt arises as to whether he was likely to have done so. The sword, whoever may have used it, was smuggled out of notice, somehow or other. Ghazan says someone took it from him, and he knows not what became of it. His story may be true, for certain it is that in Pesháwar wounding cases, someone always seems to be at hand to hide the weapons. And thus again it may be argued, *per contra*, that nothing was more probable than that a young man like Hafízulla should have assisted his uncle, with whom he lived, in slaughtering a long-suspected trespasser, or, at all events, that if he merely ran up on hearing the alarm, he may have paused to hack the wounded man as he lay dying close to the stream.

The assessors, however, declare that they do not believe the evidence as to a sword being seen in the hands of Hafízulla, and, on the whole, I feel compelled to agree with the assessors that it would not be safe to hold that Hafízulla was concerned in the murder. But I cannot concur with them in finding that he was equally innocent in regard to the wounding of Mussammát Said Nishán. Both she and her daughter are positive that he urged his uncle to the second attack, saying that the dishonour could not be removed without the death of both the adulterer and the adulteress. I think this evidence may be accepted as being strictly in accordance with probabilities, and we know for certain that Hafízulla did enter the enclosure almost immediately after Ghazan. I hold, therefore, that Hafízulla may be rightly convicted of the charge of causing grievous hurt, in that he abetted the causing thereof, being himself present at the time (*vide* Section 114, Indian Penal Code), even though it may not be deemed proved that

he himself inflicted any blow. Under the supposition, however, that he was not armed, and the time was one of great excitement, I do not think it is necessary to pass a very heavy sentence.

In regard to accused 3, it follows that, if doubt is entertained about the evidence as to the disappearance of the sword, he must be acquitted.*

No. 28.

CROWN *VERSUS* SARFARAZ.

CHARGE,—CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

JUDGMENT.—29*th August*, 1876.

The homicides which have formed the subject of this trial, occurred in the night between the 21st and 22nd December last. It appears that accused returned home at a late hour, and finding a stranger in the house with his wife, attacked them both with a sword. The neighbours hearing the disturbance came with a light and found the man and woman lying grievously wounded on a bed. The man, who turned out to be an old servant, named Fázl Núr, was dead. The woman lived till the following day, and was able to make a dying declaration to the Tahsildár-Magistrate. The wounds received by both of the deceased persons were very severe, several being on the head. Accused said he had taken Fazl Núr for a thief, and had wounded his wife by mistake without knowing who she was. The case was originally investigated by Sardár Muhammad Akbar Khán, Magistrate, who, after consulting the Deputy Commissioner, discharged the accused as being innocent of any offence, the reasons being given in a vernacular order, of which I proceed to give a translation :—

'It appears from the investigation of the circumstances that Sarfaráz (accused) on the night of the occurrence went home from the sugar-mill. He had a sword. Having got to the village, he stayed for a time at a *hujra*. Then he went to his house. When he got to his court-yard, he saw the door of the hut half open. He entered. Fazl Núr (deceased) had previously entered by trespass. He (Fazl Núr) getting alarmed, ran towards the door. Accused in the darkness began to strike

* Ghazan was sentenced to transportation for life and Hafizulla to one year's rigorous imprisonment and fine. Their appeals were dismissed by the Chief Court.

blows with the sword. It is probable that Mussammát Said Khánam, wife of accused, was committing adultery with Fazl Núr. She, through shame and without speaking, ran to the door to get out. Accused, through fear of his life, steadily dealt blows. One or two severe blows were given to each. Meanwhile accused was crying out and giving the alarm. The witnesses came on hearing the '*chighah*.' It is clear from the statements that when they had brought a lamp, Fazl Núr was dead. The woman was still breathing. Mír Báz (coustable) who happened to come to the spot, spoke frequently to the woman, and eventually she, in presence of all the lambardárs, said that her husband had killed her by mistake. This statement seems trustworthy, and there is no doubt about Fazl Núr's having committed criminal trespass by night. So, under this view, Sarfaráz (accused) should not be detained. I, too, have inspected the spot. The hut is very narrow, and if any one goes in at the door he finds a great many household goods on the right hand, and you cannot pass along there ; on the left hand it is clear. It is, therefore, probable that, owing to the narrowness of the hut and to one side being blocked up, the accused having got into the hut, stood there and drew his sword. Fazl Núr then ran to the left, and accused wounded him with his sword, so that being severely wounded, he fell down on the bed, which is in front of the door. The woman, too, under the desire that she might make her escape, tried the door, and accused went on striking blows.

'Fazl Núr was killed because of his having committed criminal trespass, and Said Khánam was killed through mistake. From these circumstances, the innocence of the accused appears proved. Although Fazl Núr trespassed with the object of adultery, at midnight, from the circumstances it became of necessity a matter of killing, and this also appears that Said Khánam was concerned in the adultery. Yet the killing was by mistake, and she remained saying this till the next night. If she knew that her husband had done it intentionally, she would not have forgiven her murderer. It is probable she was killed by mistake. It is a clear case, but became suspicious in the Police, because of the adultery, for the statement of the woman which the Thánahdár and Tahsíldár took at separate times, accords with the evidence.

On this account the case is to be sent to the Deputy Commissioner with this opinion for enquiry.'

Order by Deputy Commissioner.

'Under Section 103, Exceptions,—my opinion accords with that of the Magistrate. There has been no crime on the part of accused. Deceased criminally trespassed at night, and on this account it happened. The Magistrate can himself give order for release.'

The prisoner was accordingly released on the 16th March. The proceedings having been called for by this Court, on a perusal of the Magistrate's monthly statement, I recorded the following order :—

'I much question whether it was right to discharge the accused in this case. He grievously wounded his wife and her paramour, and they were found by the neighbours lying on one bed almost naked. They both died from the effects of the wounds.

The natural inference from these facts is, that accused found them in bed together, and forthwith attacked them with his sword. If so, he was guilty of culpable homicide, to say the least.

He has been discharged, but apparently on the supposition that he killed the man in the exercise of the right of private defence, and that he killed his wife by accident. But, if so, how are we to account for the fact that the victims both fell on the bed, and that the woman received the numerous wounds on the head, as detailed in the Civil Surgeon's English report? I request that the Magistrate of the district will either take the case up as one of culpable homicide (Section 304, Indian Penal Code) and try it under the jurisdiction conferred by Section 36, Criminal Procedure Code, or make it over to Captain Conolly, Assistant Commissioner, for investigation and committal to the Sessions if necessary.'

On a fresh enquiry being made by Captain Conolly, Magistrate, the evidence, including that of the Civil Surgeon, was fully recorded, and with the result that accused was committed to this Court on a charge of culpable homicide not amounting to murder. The facts did not give rise to the same opinion in Captain Conolly's mind as in that of Akbár Khán. Captain Conolly says in his committing order : 'The features of the case are the same in both investigations, except that I have recorded the medical evidence at length, and consider that this evidence completely destroys the theory of the accused having acted in self-defence. The Civil Surgeon states that the principal wounds received by Fazl Núr are on the right side, and could hardly have been inflicted unless he had been lying on his left side. That the wounds on the woman's head and shoulders were probably inflicted whilst she was sitting down.

That in both cases the wounds appear to have been caused by deliberate blows and not by blows struck wildly in the dark. These facts, combined with the position and appearance of the bodies when found by the witnesses, seemed to me conclusive on the point that the accused struck the blows, whilst deprived of the power of self-control by the grave and sudden provocation of finding his wife and the deceased man in bed together.'

The medical evidence which has been transferred to the file of this Court, is of the highest importance, and must be quoted in full:—

'I recollect examining the body of Fazl Núr on 23rd December 1875. The body had numerous sword wounds. Three of these were on the head, all wounding the brain. The right shoulder joint was cut open. Both hands were nearly cut off. There were three cuts on the left thigh, two others on the legs, and the right little toe was cut off. Death had probably been caused by the injuries to the brain. Death must have been instantaneous or rapid. It is probable that the deceased was lying down when he received the cuts, as the principal cuts were all on the right side, and the three very severe parallel cuts on the head could hardly have been inflicted, unless the deceased had been lying on his left side. The wounds appeared to me to have been inflicted deliberately, and were more likely, from their nature, to have been given deliberately, than to have been caused by blows struck wildly in the dark. All the injuries I noticed were apparently inflicted by a sword. As far as I can remember now, the wounds were all cuts and not thrusts.

'I examined the body of Mussammát Said Khánan on the 24th December 1875. There were numerous sword-cuts. The lower jaw was divided in two places, by two of the wounds. There was a deep cut on the left shoulder, partly dividing the shoulder-blade. There was another deep flesh wound at the back of the head. There was a flesh wound on the right shoulder, also various severe wounds on both hands and wrists; some of the latter had, evidently, been caused by the woman grasping the sword of the person who attacked her. The hands had the appearance of the sword having been drawn through them. There was no one wound which must have been necessarily fatal, but the combined effect of the wounds was quite sufficient to cause death. As far as I can remember all the wounds appeared to have been inflicted by a sword. The wounds on the head and shoulders were probably inflicted whilst the woman was sitting or standing. Some of the wounds must have been given whilst the assailant was in front of her; others may

have been given from behind. The wounds appeared to me to have been caused by deliberate blows and not by blows struck wildly in the dark.'

In this Court the accused pleaded guilty of killing his wife and Fazl Núr, under the circumstances detailed in his various statements before the Magistrate ; the defence being practically that Fazl Núr was taken for a thief and killed, and that the woman was killed accidentally. This defence is, as might have been expected, supported generally by the dying declaration of the woman, but the prosecution, relying on the medical evidence, and the position of the wounded persons, argues that the presumption is irresistible, that accused finding his wife in bed with a paramour, did his best to kill them outright, thereby committing culpable homicide not amounting to murder. I am of opinion that the view of the prosecution must, under the circumstances, be adopted and acted upon. Indeed, even if the story of accused could be accepted, it would seem that the medical evidence shows that he exceeded the right of private defence. He himself admits that he had no certain ground for supposing the intruder to be armed, though, of course, in this part of the country such intruders generally do carry weapons ; he also admits that he expected to find his wife at home, and that he heard the sound of voices talking in low tones before he entered. He probably surmised, therefore, that one of the voices was that of his wife. But, however all this may be, it seems impossible to allow, even if accused's story were accepted, that a succession of such violent deadly blows about the heads and shoulders of both the victims, as the medical evidence shows to have been inflicted, could have been necessary for the purpose of defence. Whether, therefore, accused killed the pair because he knew they were together for the purpose of adultery, or because he thought one or both of them were thieves, he can only, in my opinion, have the benefit of the first or second Exceptions to Section 300, Indian Penal Code, and his act must be held to constitute culpable homicide not amounting to murder.

It is clear from what the assessors say that they think accused was justified in the killing, no matter which of the two views of the facts be accepted ; but it must not be forgotten that among Patháns the killing of thieves and adulterers is regarded, under all circumstances, as justifiable and not culpable homicide. But it is necessary that our Courts should show, by their orders and sentences, that it is but seldom that a clear determination to kill, followed by a succession of violent acts,

the object of which cannot be doubted, can be regarded as justifiable, even although the resolve may have been generated suddenly by grave provocation.

In the *Crown* versus *Naurang*, dated 7th April 1875, one of the Judges of the Chief Court remarked,—'In making allowance for the husband's feelings, we may, if we recognize Pathán or Biluch custom in this matter, act at cross purposes with law, unless the distinction is carefully marked. I would carefully guard against allowing Pathán or Biluch custom to take a place in our consideration as if it were law. It is not; and no husband has the right to claim the excuse of his wife's infidelity for killing her deliberately.'

In the present instance I am of opinion that the sentence must be substantial, regard being had to the great number of blows delivered, but that, bearing in mind the gravity of the provocation, and the fact that accused has been tried after having been discharged by a Magistrate, it need not be very severe. *

No. 29.

CROWN *VERSUS* DARAB KHAN.

CHARGES,—(UNDER SECTIONS 302—304, INDIAN PENAL CODE).

JUDGMENT.—*6th August* 1875.

It was perhaps unnecessary to record the evidence of witnesses in this case, as the accused admitted the facts relied on by the prosecution to support the charge of culpable homicide not amounting to murder; that is to say, he admitted and still admits that he killed the deceased woman Mussummát Gulái, his paramour, with a large Afrídi knife, having found her in the act of adultery with a man called Mír Muhammad. Inasmuch, however, as the woman had run away from her husband and was living in adultery with accused, it became a question whether the provocation could be regarded as grave enough to prevent the killing from amounting to murder. Moreover, the woman in her dying declaration did not admit that she had been caught in the manner alleged, and it seemed advisable to have the opinion of the assessors in regard to the quality of the offence. The charge of murder was therefore added to

* The accused was sentenced to two years rigorous imprisonment and Rs. 30 fine. The Chief Court confirmed the conviction and sentence.

that of culpable homicide in this Court, and the evidence of the lambardár and the principal witnesses recorded.

The result is that, as far as facts are concerned, there seems to be no sufficient ground for supposing them to be other than as stated by the accused, and it merely remains for me to decide whether accused can have the benefit of the *first* Exception to Section 300, Indian Penal Code. He appears to be a very simple, straight-forward man in his way, by no means a person given to unusual violence or brutality. He does not seem to regard his having run away with the woman as a particularly evil act, and he describes himself as having been anxious to make compensation to the injured husband, and so to induce him to give his wife a divorce. He freely admits that the injured husband would have been justified in killing him if he had got the opportunity. Such an act would be in accordance with the custom of the country ; and further, the accused says in justification of his own act,—'It is the custom to carry off women and then to kill them if they are unfaithful * * * I killed the woman thinking the Government would be pleased.'

The assessors have given their opinion at considerable length, and show clearly that they regard the act of accused in a very different light from that of a husband who kills his wife in the act of adultery. I have difficulty, however, in regarding their finding as a clear intimation that they think the prisoner guilty of murder and worthy of death. The assessors were, perhaps, somewhat below the usual standard in intelligence, and I doubt whether they thoroughly grasped the distinction between murder and culpable homicide.

On the whole, I am of opinion that the accused, under the peculiar circumstances of the case, and more particularly because he is a native of independent territory, cannot in fairness be convicted of murder, notwithstanding the matter-of-fact way in which he regards abduction, adultery and homicide. I think, admitting the facts to be as alleged by the prosecution, that accused was subjected to grave and sudden provocation, and that he regarded the woman who had been living with him and whom he hoped shortly to be able to marry, as one who was bound to be faithful to him, and that, having found her in the embrace of another man, he lost control over himself and readily yielded to an impulse which is regarded in this part of the world as an honourable one. At the same time, I think that the punishment to be awarded must be severe, and that a very clear distinction must be made between the act of accused and that of a husband. Accused, it must be remembered, had probably

taught the woman the immoral practices which have now resulted in her death. He was himself an adulterer, and worthy of condign punishment at the hands of the woman's husband. It is impossible to make the same allowance for his feelings, when the woman, tired of him, takes up with another lover, as might be made for the husband himself. I observe also, that the Deputy Commissioner has recorded a note on the case to the effect, that heinous crimes have been so frequent lately in the Kohat district, that a severe example would seem to be necessary.*

* Accused was sentenced to seven years rigorous imprisonment and Rs. 50 fine, and his appeal to the Chief Court was rejected.

PART VI.

MURDER OF THE "WRONG" MAN.

These selections would be incomplete did they not comprise an instance of a not uncommon occurrence, *viz.*, the murder by a midnight assassin of the *wrong* man—that is, of a person other than the one whom it was intended to kill. I have known several instances of the kind. The mistake generally arises from the fact that the intended victim sleeps in the open air, at a *hujra*, or such like place, in company with other men. He may change his bed or relative position in the night, or may wrap himself up so as to render it quite possible for the assassin or assassins to make a mistake. One of the initial difficulties attending the detection and punishment of the offender is that no motive whatever is found to exist for the murder of the person who has actually been killed. The following case affords a good example of the class referred to.

Here the prosecution alleged that the *wrong* man had been killed, and that the prisoner was the murderer. The defence, on the other hand, maintained that the right man had probably been killed, and that the prisoner was entirely innocent.

One assessor, the Sessions Judge, and one Judge of the Chief Court adopted the view of the prosecution ; the second assessor and two Judges of the Chief Court acquitted the prisoner, and their opinion very properly prevailed. It is not unlikely that the readers of these notes may also be pretty equally divided in opinion on the question whether Gul Zamír was proved to be guilty of the murder of Yáru.

THE CROWN *VERSUS* GUL ZAMIR.

CHARGE,—MURDER.

JUDGMENT,—19*th January* 1874.

On the night of the 20th October last, two brothers, Abbás and Yáru, with their friend Gul Muhammad, lay down to sleep under a tree, close by their cotton fields. When the night had nearly passed, Abbás and Gul Muhammad were awoke by a shot fired close to them. The

ball of a firearm had passed through Yáru's head and killed him. He never spoke. This happened a short distance from the village of Chársadá, in which there is a Thánah. In the early morning Abbás reported the manner of his brother's death, adding that he did not know who had killed him, and that they had no enemies.

The Deputy Inspector went to the spot, and with him went also the lambardár of the quarter to which deceased belonged. The Deputy Inspector turning to Abbás and Gul Muhammad, said it was impossible that they could be ignorant of the cause of the death of their companion. He searched their persons and found a black mark in the corner of one of the garments worn by Gul Muhammad. This appeared to have been caused by the presence of a small quantity of gunpowder which had some time or other been tied into a knot of the cloth. Pressure was then put upon Abbás and Gul Muhammad to tell all they knew. After they had been talked to by the lambardár, they charged the accused Gul Zamír with the murder, declaring that they had seen him run away from the spot immediately after the pistol had been fired. They also stated that accused had returned when the outcry was raised, and that they had charged him with the murder, on which he denied, and begged that his name might not be taken. They further stated that he had offered to compensate Abbás for the loss of his brother if he would drop the charge, and they added that Yáru had been killed in mistake for Gul Muhammad, against whom accused had a feud on account of his suspecting him of carrying on an intrigue with the wife of Pazír, accused's brother. Gul Muhammad declared that he had had a quarrel with accused about this matter the night before. Accused admitted to the Thánahdár *having come to the spot immediately after the murder and having been charged*, but he denied that he had in any way attempted to purchase Abbás, silence. Several men who had been in fields close by corroborated Abbás and Gul Muhammad in regard to the attempt at a compromise, while unusually clear evidence was forthcoming to the existence of the intrigue. Accused named three witnesses to prove that he had passed the night at a water-mill not far off and could not therefore have committed the murder. Two of his witnesses denied all knowledge ; the third could in no way clear him. Meanwhile the Tahsíldár reached the spot and made a Magisterial investigation, the report of which has been translated and used in this Court to corroborate the witnesses (Section 157, Indian Evidence Act).

The case as presented to this Court is precisely similar to that which was disclosed by the Police enquiry :—

I. The evidence in regard to the motive is clear and satisfactory. On this point the assessors and the Court are of one mind. Pazír, the husband of the woman, is a weak-minded man, not likely to take the law into his own hands. Pazír appeared before the Court, but not as a witness.

II. I am of opinion that there is no reason to doubt that accused and Gul Muhammad had a quarrel on the night before the murder, and that the latter was threatened.

III. I agree with the assessors in finding it impossible to accept the statements of Gul Muhammad and Abbás to the effect that they saw accused running off. It is unlikely that they did so, and they are not corroborated on this point. Moreover, the folly of Abbás in making a false statement to the Thánahdár, in the first instance, cannot but have the effect of necessitating the greatest caution in receiving his evidence.

IV. It is, however, satisfactorily established that Abbás did charge accused before he went to the Thánah himself. This point is clearly deposed to by several witnesses, and it was admitted by the accused before the Deputy Inspector and Tahsíldár. He denies it now *in toto*, but he has, of course, had plenty of time to learn what a fatal admission it was.

V. Accused still admits that he went up to the spot immediately after the shot was fired, and he has produced two witnesses in this Court to say that they were sitting outside the mill with him when the shot was heard; that they all went to the scene of the murder together, and that they all heard Abbás saying he did not know who had killed his brother. I discredit these witnesses entirely. It is impossible to suppose that if accused had such a complete answer to the charge he would not have named these witnesses to the Tahsíldár.

VI. There is nothing very extraordinary in the fact of Abbás agreeing to drop the charge. He knew that his brother had been killed by mistake; there was therefore no great dishonour involved, and he doubtless believed accused to be honest in his offer of compensation. It would have been much more difficult to believe this had there been any doubt as to the fact of accused having been at once charged. But that he was at once charged is clear from the Tahsíldár's report and the evidence of the Deputy Inspector.

VII. Gul Muhammad has satisfactorily accounted for the mark of powder on his coat, and a respectable witness (No. 8 for prosecution) has been called in this Court, who corroborates him in every particular.

The accused hints that deceased and Abbás both entertained unnatural lust for Gul Muhammad, and that this fact may have brought

about the murder. This defence was not attempted in the Magistrate's Court, and no evidence is forthcoming in regard to it. Accused mentioned to me two witnesses who he said would throw some light on it. I sent for them and ascertained that they could say nothing for him. One of the assessors finds the accused guilty of murder. The other does not think the evidence is sufficient for the proof of such a grave charge ; but he, nevertheless, thinks the prisoner should be punished.

I have considered the evidence to the best of my ability, and I am of opinion that, setting aside the direct evidence entirely, the circumstantial evidence is such as to exclude all reasonable doubt of the guilt of the accused.

He is shown to have had a motive amply adequate according to Pathán ideas to impel him to murder Gul Muhammad. He is shown to have threatened Gul Muhammad's life within a few hours of the murder. The deceased and Gul Muhammad were sleeping on the ground close together when the shot was fired. Accused came up shortly after ; he was charged with the murder, and then he successfully persuaded deceased's brother to drop the charge. Then when asked for an explanation by the Tahsildár, he named witnesses who decline to say anything for him. Before this Court he makes a defence which, viewed with his first story, is false on the face of it. The facts then which are clearly proved against accused are, in my opinion, when taken together, inconsistent with innocence. It is, moreover, impossible to account for the murder by any other definite supposition than that put forward by the prosecution, and there is no reason whatever for supposing that the witnesses would have joined in getting up a false charge against the prisoner.

Concurring with one of the assessors and differing from the other, the Court finds that Gul Zamír is guilty of the offence specified in the charge, namely, that he has committed murder, and has thereby committed an offence punishable under Section 302, Indian Penal Code, and the Court directs that the said Gul Zamír be hanged by the neck till he be dead.

Note by Mr. Justice Lindsay, *dated 17th February*, 1874.

The Judge disbelieves the statement of Abbás and Gul Muhammad that they saw Gul Zamír running away, but he considers it to be true that Gul Zamír did come up to them, ask them to be silent, offering compensation, and alleging the shot was intended to kill Gul Muhammad.

Now it seems strange, whatever Abbás may have thought and done, that Gul Muhammad would have not only remained silent, but sent a false report to the police, knowing that Gul Zamír had a grudge against him and had intended to kill him.

Is it likely that he would let off his enemy, let him go abroad, and so have the chance of aiming more correctly on another occasion? Is it not more likely that he would have at once proclaimed his enemy and so got rid of him? Is it likely, too, that Gul Zamír would come to Abbás and Gul Muhammad and say openly he had intended to kill Gul Muhammad? The Judge may send any explanation he pleases on these points. Notice will be served under Section 269, Act X of 1872.

In reply to Mr. Justice Lindsay's note, the following reply was submitted by me :—

With reference to the note of Mr. Justice Lindsay, I offer the following remarks, premising that as I have only my judgment to refer to, I must trust to my memory in regard to the evidence.

I. If the evidence is referred to, it will be found that it is nowhere alleged that Abbás actually agreed not to make a charge against accused. He is said to have received the offer and to have given no definite reply. He started for the Thánah in an undecided frame of mind, and then I suppose, when he had leisure for reflection, he thought he might as well make a good thing out of his brother's murder. I notice that in my judgment I wrote,—'There is nothing very extraordinary in the fact of Abbás agreeing to drop the charge,' but the use of the word 'agreeing,' if taken to refer to a definite contract, is not justified by the evidence. I should have said there is nothing very extraordinary in the fact of Abbás dropping the charge.

I do not consider that Gul Muhammad was in any way a party to the compromise. He did not send 'a false report to the police.' It was not for him to make a report at all of the murder, as no relative of his had been killed. When he saw the brother of the murdered man going off to report, he doubtless considered himself absolved from the necessity of any immediate action.

Moreover, when he found what a narrow escape he had had, it may well be supposed that he had not all his wits about him.

2. I do not think that Gul Muhammad's inaction at first need afford any cause for surprise. It must be remembered that, admitting the motive as proved, Gul Zamír was perfectly right according to Pathán ideas in shooting the seducer of his brother's wife. *Primâ facie*, Gul Muhammad on knowing this would be most unwilling to admit openly that the shot was intended for him, and that he had deserved it. Men in this part of the country are about as unwilling to confess to their illicit amours, as husbands are to proclaim their shame. It

was only when the lambardár told the Thánahdár that the intrigue was a matter of notoriety that Gul Muhammad saw that concealment was not only of no use, but that its consequences might be fatal to himself.

3. I do not for a moment suppose that Gul Zamír came to Abbás and Gul Muhammad, and said openly that he had intended to kill Gul Muhammad. The prosecution never alleged that such an admission was made. All that was alleged and proved to have taken place was that Gul Muhammad and Abbás *accused* Gul Zamír, and that he, without admitting his guilt, begged that his name might not be taken, and offered to compensate Abbás.

This in no way can be said to amount to a clear admission of guilt, but it was a course which a guilty man would have very likely adopted, and one which a perfectly innocent man would probably not have taken at such an early stage. I held, in concurrence with the assessors, that it would not be safe to believe the assertions of Gul Muhammad and Abbás, that they had actually seen and identified Gul Zamír running away. They merely felt sure in their hearts that Gul Zamír had done it, and he was the only person known to be in the neighbourhood, or elsewhere, who bore enmity towards any one of the three sleepers.

Had the shot taken the desired effect and killed Gul Muhammad, it is improbable that the two brothers would have troubled themselves to charge any one with the murder of their friend, though they might have guessed the murderer, and the cause, with accuracy. When, however, Abbás found that his brother had been killed, and that he must have been killed by mistake, he naturally took up the matter at once and denounced Gul Zamír, and then, what is more natural than that Gul Zamír finding what a hideous blunder he had committed, should feel a good deal of compunction, be thrown off his guard, and try to make the best of a truly bad business. I fully admit that the evidence against the accused does not at first sight appear very strong. But when it is taken together, the more it is considered, the more does it seem to exclude all reasonable doubt of guilt. Two brothers, A and B, who have no enemies, lie down to sleep close to their friend C, who has a mortal enemy D, who quarrelled with him and threatened his life an hour or two previously. While A, B and C are asleep, B is shot through the head. A and C immediately come to the conclusion that B must have been killed in mistake for C. In a few minutes D comes to the spot and unconcernedly asks what has happened. A and C say,—'You have shot B.' D denies, but instead of scouting the charge as preposterous

and unsupported by a single tittle of evidence, he at once does his utmost to purchase A's silence. Subsequently when the Police charge D with the murder, he names witnesses to prove an *alibi* who are quite unable to support his story.

Further, no other solution of the murder of B can be suggested, and there is no reason whatever why D should be falsely charged by A, for no enmity of any kind exists between them. With these facts before me, I concluded that I ought, as a prudent man, to act upon the supposition that D must have killed B (*vide* definition of "Proved," Section 3, Indian Evidence Act), and I am still of the same opinion.

IN THE CHIEF COURT OF THE PUNJAB.

Criminal Case No. 64 *of* 1874,—*Appellate side.*

Present:—C. BOULNOIS, C. R. LINDSAY, P. S. MELVILL, Esquires, *Judges.*

Appeal from the order of the Additional Commissioner, Peshâwar Division, dated 19*th January* 1874.

GUL ZAMIR (PRISONER),—APPELLANT,

VERSUS

THE CROWN,—PROSECUTOR.

CHARGE.—UNDER SECTION 302, INDIAN PENAL CODE,—SENTENCE: DEATH.

Mr. Spitta, for appellant.

Mr. Plowden, for prosecution.

JUDGMENT BY MELVILL, J.

It is clearly proved that Gul Muhammad had an intrigue with the wife of the prisoner's brother; and that brother being a poor-hearted man, it is not improbable that the prisoner would take on himself to vindicate the family honour. A motive for the murder of Gul Muhammad may, therefore, be said to have been established against the prisoner. Yâru was murdered by mistake for Gul Muhammad.

The evidence against the prisoner is briefly—(1) the allegations of Abbâs and Gul Muhammad that they saw him running away from the spot immediately after firing the fatal shot; (2) the promise stated to have been made by the prisoner to Abbâs, before Abbâs started to report the murder at the Thânah, to make compensation to Abbâs for the death of his brother; (3) the quarrel between the prisoner on one side and Gul Muhammad on the other, the evening previous to the murder; (4) the inability of the prisoner to give a correct account of himself.

In regard to the recognition of the prisoner by Abbás and Gul Muhammad as he was fleeing from the scene of the murder, both the assessors and the Commissioner discredit their evidence. It, therefore, cannot be held that they did recognize him.

With reference to the promise made by the prisoner to satisfy Abbás for the loss of his brother by pecuniary or other compensation, there is abundant evidence to shew that Abbás did at once after the murder accuse the prisoner of the crime and that the prisoner did make such a promise. The witnesses who depose to this fact are credited by the assessors and the Commissioner; and there seems to be no reason for doubting the veracity of the witnesses on this point. It then comes to this, that although Abbás and Gul Muhammad did not see the prisoner running away, yet that they, or at all events Abbás, suspected him, took his name to the witnesses who first arrived at the scene of the murder immediately after the firing of the fatal shot, and, when very shortly afterwards the prisoner came up, accused him to his face. It is here obvious to remark that the act of the prisoner in coming up to the place where the body was lying so soon after the murder, does not look like the act of a guilty man, though it is not incompatible with his guilt. There is no allegation that the prisoner betrayed any signs of guilty consciousness. Why, then, should he make an offer of compromise to Abbás? There are two answers to this question: The first is that he was guilty. The second is that he felt himself to be innocent, but wished to avoid the annoyance and risk of being charged, even though the charge were false. The latter supposition is not improbable, and it is strengthened by a consideration of the conduct of Abbás and Gul Muhammad. Nazar (4), one of the witnesses before whom the offer was made by the prisoner, states that Abbás agreed to it, but the other witnesses say that he made no response. Assuming that Abbás made no response, and that Gul Muhammad believed that Abbás was going to the Thánah to denounce the prisoner, there are two ways of regarding the conduct of Abbás in reporting at the Thánah that he did not know who had murdered his brother. He may have been actuated by covetous motives, being desirous to secure the compensation offered by the prisoner, or he may have thought that after all he had a mere suspicion against the prisoner, which he could not substantiate. The former may be considered as the most probable motive. But how can the conduct of Gul Muhammad be accounted for? He appears to have suspected that the shot was intended for him; he thought Abbás was going to denounce

the prisoner ; and yet when Abbás returned with the Deputy Inspector he remained silent, and it was only when pressure was brought to bear on Abbás and Gul Muhammad by the lambardar, Násir, that Gul Muhammad spoke up. Gul Muhammad was not interested in the matter of the compromise, as Abbás was the only person who had been injured by his brother's death ; but Gul Muhammad was interested in getting the prisoner denounced, as clearly the prisoner, if not arrested and convicted, would be able to have another attempt at his life. Then the fact that the prisoner was not at once arrested by the villagers, before the Deputy Inspector arrived, is a circumstance that tells in the prisoner's favour ; for there were influential persons standing by the body when the prisoner came up, and they were by no means disposed to favor the prisoner, as their subsequent conduct in giving evidence against him shows.

In regard to the alleged quarrel on the evening preceding the murder, the evidence is not satisfactory. The immediate cause of the quarrel as deposed to by Abbás before the Commissioner is somewhat absurd, and although the threat which the prisoner is stated by Abbás to have made to Gul Muhammad is mentioned by Gul Muhammad, yet it is to be remarked that Abbás said nothing in his evidence before the Tahsíldár as to the quarrel, and Gul Muhammad describes it as a dispute of 'disgraceful words,' whereas before the Commissioner he says that the prisoner hit him with his fists. However, the probability is that there was a quarrel between the prisoner and Gul Muhammad a few hours before the murder, but that no threat was made by the prisoner against the life of Gul Muhammad. Had there been such a threat, it would assuredly have been mentioned in the police and Tahsíldár's enquiries, but it was not mentioned.

Lastly, the prisoner's account of himself. He states that he was sleeping at the mill of Másaúd, 150 yards off the scene of the murder, and that he was awoke by the fatal shot and at once went up to where Yáru was lying dead. Before the Tahsíldár and Deputy Inspector he stated that, failing to get tobacco at the mill, he went to Abbás for some, and then found that Yáru had been murdered. He named *four* witnesses before the Táhsíldár, *viz.*, Záru, Arsalla, Rahmán and Másaúd, as having been with him at the mill. Three of these denied all knowledge on the subject, and the fourth, Másaúd, deposed, as he deposed before the Commissioner, that before dawn the prisoner, who had been sleeping at the mill, came to him for tobacco, and that he had none to give him.

Másaúd states that there were several people at the mill, and it is possible that the prisoner may have been there without the three witnesses above-named seeing him. Two other witnesses (Umrá and Hákim) were brought for the defence in the Commissioner's Court, and they corroborate the prisoner, but the Commissioner has rejected their evidence as unreliable. It is by no means clear that the prisoner was not at the mill during the night. Assuming, however, that he was there, there would be nothing to prevent his leaving the mill and firing the shot by which Yáru was killed. It is an unsatisfactory circumstance against the prisoner that he cannot conclusively show where he was at the time of the murder; but his failure to do so is not, under the circumstances, of so vital a character as to weigh very heavily against him.

We have then against the prisoner his offer to buy off Abbás, a probable quarrel with Gul Muhammad the previous evening, and a doubtful account of his own whereabouts at the time of the murder, combined with a probable motive for wishing to kill Gul Muhammad. I do not think that there is here sufficient proof to warrant the passing of a sentence of conviction against the prisoner. There is nothing improbable or unreasonable in the supposition that the prisoner is entirely innocent and that some other party may have murdered Yáru, though there is no suspicion against any other party. As Yáru was killed by mistake, supposing that the prisoner intended to kill Gul Muhammad, it is possible that some unknown person mistook the sleeping party for another party, and shot the person whom he supposed to be his enemy.

One of the assessors finds the prisoner not guilty; the other finds him guilty, but in a dubious way.

I would acquit the prisoner.

(Sd.) P. S. MELVILL,

23rd March 1874. *Judge.*

JUDGMENT BY LINDSAY, J.

Abbás, Yáru and Gul Muhammad were asleep close to each other. Yáru was in the middle. A shot killed Yáru. There was an outcry. The prisoner came up. There is evidence showing the prisoner was at once charged with the offence, and that he offered to compensate Abbás for the death of Yáru, the shot having been intended for Gul Muhammad, who had had an intrigue with the prisoner's brother's wife. Abbás went to the Police station. He did not accuse any one. He says he hoped to obtain the offered compensation. He was covetous. When the police arrived the truth from the Judge's view came out. Gul Muhammad, it is said, depended upon Abbás to make a true report. It was not his business to charge the prisoner, and it was repugnant to his feelings and the custom of his race to expose the fact of his intrigue with the prisoner's brother's wife, which would have been necessary had he taken action against the prisoner who had intended to kill him on account of that intrigue.

There is force in this view of the case.

There is no doubt that the shot, if fired by the prisoner, was intended for Gul Muhammad and not for Yáru.

It appears to me that if the prisoner did in fact, and I think he did, offer compensation to Abbás; the evidence on the point is strong—the offer could only have been made because the shot intended for Gul Muhammad had taken fatal effect on Yáru, who was not the prisoner's enemy.

I do not think it likely that the mere charge of an offence would have induced a man of the prisoner's character to offer compensation simply to prevent further trouble.

The prisoner must have felt he had inflicted upon Abbás involuntarily a great injury, and he naturally, as the custom is, agreed to compensate him for the injury. It is, to my mind, impossible to hold that the prisoner, had he not fired the fatal shot, would have offered compensation. Given the motive, given the fact of the offer of compensation, and the fact that the prisoner was not inimical to Yáru or Abbás, the reasonable presumption is that the shot was fired by the prisoner, and was intended for Gul Muhammad, against whom he had a grudge.

The circumstances appear to me to be inconsistent with the innocence of the prisoner.

Moreover, there is evidence of a quarrel between the prisoner and Gul Muhammad the night previous to the morning when Yáru was killed.

His defence, too, has failed in many points. It is curious that the prisoner should have appeared so quickly after the shot upon the scene, but in other cases I have known accused persons do exactly the same. Lastly, there is no other known person who is likely to have fired the shot.

I think the sentence should be confirmed. I was in doubt at first. It appeared to me most extraordinary that Abbás should have told an untruth at the Police station, and that Gul Muhammad should not have taken action against the prisoner, his enemy, and so prevent him, on some future occasion, taking a better aim and securing his object. It seemed strange that Gul Muhammad should have played into the hands of his enemy. After much consideration, I think the sentence is just and right.

(Sd.) C. R. LINDSAY,

27th March 1874. *Judge.*

JUDGMENT BY BOULNOIS, J.

In this case I concur in the opinion expressed by Mr. Justice Melvill, for which he has given good reasons; and it, perhaps, would be enough to end my remarks here, as the burden of showing that I ought to join in confirming the sentence of death, when one (if not both) of the assessors have considered the evidence insufficient, and one of my colleagues has come to the same conclusion, would be a heavy one.

But this case is, in some sort, a typical one: and my making some further observations on it may serve to shew how far I am prepared to go, and how far I am not prepared to go, in supporting convictions founded on the process of inference applied to the written record of facts. And I at once admit that to peruse the papers and act on recorded evidence (a task which occupies a comparatively short time) must give any one a sense of the facts far less comprehensive, and much less deeply felt, than hearing and seeing the witnesses and watching the case for, perhaps, days together (at all events for many hours), gradually unfold itself in its true bearings.

The facts of the case are as follows:—Abbás and Yáru, two brothers, with a friend, Gul Muhammad, were asleep close to each other. Yáru was in the middle. In the night a pistol shot killed Yáru dead. There was then a cry raised, and some people came to

the spot from a neighbouring water-mill. Hard by is the village of Chársadá, where there is a thánah.

It is quite clear that when the first people who came to the spot arrived, the two survivors were not in a position to say that they had seen any body running away. But to the spot came the prisoner, and the most important fact is the following :—

The prisoner (who had some acquaintance with them and had been watching his cotton field that same evening, and had had a quarrel with Gul Muhammad) had no sooner come to the spot than he was accused by Abbás of having committed the murder. He denied having done so, but tried hard not to get the charge made against himself, offering money and a betrothal. He was not supposed by Abbás and Gul Muhammad to have killed Yáru intentionally, but by mistake to have shot him, meaning to kill Gul Muhammad. And it is the fact that, setting aside the squabble of the previous evening, the prisoner had a grave cause for seeking revenge against Gul Muhammad ; as the latter had intrigued with his brother's wife, and his brother being poor-spirited, it would not be an unlikely occurrence that the prisoner should take the burden of avenging this insult to his family. Now, in answering the question—Did Gul Zamír fire the shot?—it is obvious that this last piece of evidence does not apply unless the point is set at rest that there was a mistake in the killing Yáru. If that fact is given, belief in Gul Zamír's guilt is rendered comparatively sure. But no steps must be passed over in deducing the result from a chain of circumstances, and it will be found on a close examination of this case that this important part of it has been slurred over in the judgment of the Additional Commissioner.

The only evidence that exists that a mistake did occur is to be found in the implied admission of Gul Zamír ; and, as to this part of the case, the fact that he was at enmity with Gul Muhammad, rendering it not unlikely that he would kill the latter, renders it the more probable that Gul Zamír did make the mistake in question. But it only strengthens the probability of the implied admission, and the result is that we are driven back to rely on that implied admission to such a degree that if it is not proved, the case cannot be said to be established against Gul Zamír.

To find out what statement was made, and how far Gul Zamír went in making the admission, was the key to this case at the trial.

Now, if a murderer (under such circumstances) goes to the spot, it must be because his so doing is more likely to avert suspicion than his

running away. The young men had been in conversation the night before; Gul Zamír was known to be sleeping at his cotton-field; and to have made off would most probably have led to the question, 'Where was he at the time?' 'Why did he leave his place?' and hence suspicion would at once be attracted to him. So that Gul Zamír's coming to the spot is not in his favor at all. On the other hand, it is nothing against him; for all the people from the mill came also.

Thus we are brought back to the implied admission alone. Many points have been alleged as throwing improbability on it, and all those points have been more or less explained away in the Sessions Judge's memo., dated 2nd March 1874, *e.g.* the improbability of Abbás actually agreeing not to make a charge against his brother's murderer. Nazar (witness 4) does go the length of alleging that he (Abbás) agreed not to make the charge, but, according to the evidence generally, it must be taken that Abbás received the offer, and gave no definite reply. His own action, however, shows that he was not unwilling to drop the charge, for he did drop the charge, and at the Thánah (to which place he soon afterwards went) he stated the fact of the murder, without charging Gul Zamír. And it is extremely difficult to explain away the conduct of Gul Muhammad. He made no charge, although, according to the theory of the prosecution, he it was for whom the shot was intended and no part of the offered compensation was to go to him. True, he was not the murdered man's brother, as Abbás was; but this hardly accounts for his letting the matter take its own course completely. Abbás not only reported the manner of his brother's death at the Thánah without charging Gul Zamír, but he reported that 'they did not know who had killed Yáru, and that they had no enemies.' Then to the spot goes the Deputy Inspector and with him also the lambardár of the quarter to which the deceased belonged, and (very reasonably) the Deputy Inspector told Abbás and Gul Muhammad that it was impossible that they could know nothing about the cause of the death of their companion; and on a search a gunpowder mark was found in the corner of the clothes worn by Gul Muhammad. Then, and not till then, and after being talked to by the lambardár, they charged Gul Zamír with the murder, declaring that they had seen him run away from the spot.

Now both assessors and Sessions Judge agree in finding it impossible to accept this last statement as true, *viz.*, that Gul Muhammad and Abbás saw Gul Zamír running away. Thus we are again brought

back to the implied admission as our only guide, and it will be just as well to clear away from the case the matter of Gul Muhammad's mark of gunpowder, and the defence made by Gul Zamír. Gul Muhammad satisfactorily accounts for the mark of the powder, and the defence of the prisoner breaks down. He called at the trial witnesses not named by him at a preliminary investigation held by the Tahsíldár magistrate, to prove that he was at the mill, sitting outside, when the shot was fired, with two others, and that they all went to the scene of the murder together, and heard Abbás saying that he did not know who had killed his brother. The Sessions Judge remarks that if he had had such a complete defence Gul Zamír would have named these witnesses to the Tahsíldár. Gul Zamír's further defence is only a suggestion that deceased and Abbás both had unnatural lust for Gul Muhammad, and that he may have been killed by both of them. The most that can be said is that the suspicion of this has not been altogether cleared up, but the establishment of it as a defence has not been made out.

Back then we come to the implied admission, and as to this the Sessions Judge reports,—'I do not for a moment suppose that Gul Zamír came to Abbás and Gul Muhammad, and said openly that he had intended to kill Gul Muhammad. The prosecution never alleged that such an admission was made. All that was alleged and proved to have taken place was that Gul Muhammad and Abbás accused Gul Zamír, and that he, without admitting his guilt, begged that his name might not be taken, and offered to compensate Abbás. This in no way can be said to amount to a clear admission of guilt; but it was a course which a guilty man would have very likely adopted, and one which a perfectly innocent man would probably not have taken at such an early stage. I held in concurrence with the assessors that it would not be safe to believe the assertions of Gul Muhammad and Abbás, that they had actually seen and identified Gul Zamír running away. They merely felt sure in their hearts that Gul Zamír had done it, and he was the only person known to be in the neighbourhood or elsewhere who bore enmity towards any one of the three sleepers.'

Now this is what the admission, the foundation of the whole case, when closly examined, is reduced to. That Gul Zamír would not have offered to pay compensation unless he had been the guilty man, the probability of this implied admission being true being

supported by the fact that Gul Zamír had a mortal enmity to Gul Muhammad.

The probability of this implied admission being true is, however, materially weakened by the immediate treatment of it both by Abbás and Gul Muhammad. The one goes to the Thánah and gives a statement to the contrary of it, and the other does not concern himself to see that the truth is established (though to him more than an ordinary inducement existed). Neither tell what, at the trial, they make out to be the truth, until much pressure has been put upon them, and then they tell it with a large exaggeration.

It is a good rule that in a case founded upon inference there must be some fact inconsistent with the prisoner's innocence. But if in this case that rule is applied, there is no fact here proved that is altogether inconsistent with the prisoner's not being the murderer. The offer of compromise may have been occasioned by the very circumstances that Gul Zamír knew that, looked upon as Gul Muhammad's mortal enemy, as he was, there was a strong case against him; couple this with it not being improbable that he knows more about the murder than he has stated, and the result is that the offer is not altogether inconsistent with the prisoner's innocence.

The result usually arrived at when a man in convictad is that every other hypothesis than that of his guilt is rendered so far improbable that for all practical purposes, the possibility that any one of them may be true may be disregarded. And the suggestion that a particular hypothesis may be the true state of the case is not enough to relieve a Court from facing the fact that it is not reasonably probable that such a possibility has any further existence than as a possible theory. But in this case every other hypothesis than that of guilt has not been rendered altogether improbable, or even much less probable than the prisoner's guilt.

And in this class of case, where the probabilities are at all evenly balanced, however soundly and well the reasons for holding the prisoner guilty may be put together, I am not prepared to say that conviction should follow. To convict in such a case as this we must be able to say it is not reasonably probable that a man having gone to the scene of a murder would offer to buy silence, unless he were the guilty man. But this we cannot say; all we can say is that a man's so doing might be consistent or inconsistent, according to circumstances,

with his innocence. And here, I think, the circumstances show the offer not to be inconsistent with innocence.

I am quite aware that the Additional Commissioner, Peshâwar, takes great pains about these cases, and that opinions must vary as to the degree of weight to be attached to particular matters of evidence. Also that his Court is better instructed in the facts than any Appellate Court can be; for instance, he knows what style of man Gul Zamír is, a fact of which I have not the faintest idea.

But the system requires that I should give judgment on the record, and adhering to that record, I am decidedly of opinion that the evidence is insufficient to convict Gul Zamír.* The implied admission is inherently weak, and no explanation of other matters serve to strengthen it. I cannot, it is true, divest my mind of the idea that Gul Zámír is in reality the guilty man, but this is an idea founded on the fact that so many well-judging people have pronounced him to be so. I only say that on the recorded evidence he has not been proved to be guilty.

For the above reasons I concur with Mr. Justice Melvill.

(Sd.) C. BOULNOIS,
Judge.

6th April 1884.

* As an *Appellate* Judge I might possibly have decided as Mr. Justice Boulnois did; as the Judge who tried the case, with the parties before me, I found myself quite unable to acquit the prisoner.

PART VII.

CONCLUSION.

The introductory notes and the preceding selections from Judgments are sufficient to give some idea of the character of crime on the Afghán frontier, and of the difficulties which beset our officers in their endeavours to reduce the number of heinous offences and to bring offenders to justice. In regard to the crime of murder, I fear it cannot be said that any very material progress has been made. The figures for the Pesháwar district for the last four years are as follows :—

		Murders.	Attempts to Murder.
Pesháwar	1880 ...	73	23
	1881 ...	55	18
	1882 ...	76	39
	1883 ...	77	43

and in his last annual report the Commissioner of Pesháwar makes, *inter alia*, the following remarks :—

> There is no public opinion to assist the Law * * * * Individual members of a Pathán community live separate lives for themselves alone. They have nothing in common with each other, but a personal pleasure in seeing their neighbours in any trouble. Their whole influence is used but for their own personal benefit; and for the Government, which enables them to lead lives of ease and affluence,—they do absolutely nothing. They protect themselves personally by coming to an understanding with, if not by protecting, the criminal classes.
>
> * * * * * *

In regard to robberies, dacoities, serious burglaries, arson, cattle poisoning and theft, I believe there has been some slight improvement, due probably to the unwearied perseverance with which the local officers have devoted themselves to the task of securing reports of all serious crimes on their occurrence, and of letting no case drop until every reasonable means has been tried to bring the criminal or criminals to justice. Moreover, there is every reason to believe that the judicious working of the Frontier Regulation which permits the trial of certain suspected persons by a Council of Elders or *Jirgáh*, has brought

about the punishment of many criminals who would have escaped altogether had they been tried by the ordinary Courts. I fear I am quite unable to suggest any satisfactory remedies for the evils which I have attempted to describe.' Such suggestions indeed would not come within the scope of my present purpose, which is to describe existing facts and to give some help as to the method by which legal remedies already available may be applied. Additional remedies might no doubt be devised with fair hope of tangible improvement, but meanwhile I can only say to the officers concerned—'Continue your labours with unremitting perseverance. The success hitherto attained, though small, is an earnest that further success will follow. Our steady rule and determination to preserve order, together with the increase of popular education, must in time have a softening and civilizing effect upon these savage people. There is probably no royal road to the desired end. Marked progress must be looked for as new generations come forward, and not at the end of each calendar year.'

A study of the illustrations which I have given may perhaps be of some use in assisting officers in dealing with similar or analogous cases. By way of further aid, I propose to conclude these notes by directing attention to several points which my experience has led me to regard as important, and which, though perhaps touched upon in some of the preceding judgments, seem to require more prominent notice :—

1. *First reports of crime at Police stations.*—The first reports made by chaukidárs and others are often most curtly and imperfectly recorded by the Police. The reporters should always be made to state all that they know to have transpired in regard to the offence reported, before they left the village. A carefully recorded first report often forms a very valuable check against the fabrication of false evidence, while it may also materially assist a Court in accepting evidence as true, which is shown to have been forthcoming immediately on the occurrence of the crime.

2. *Dying declarations.*—The Police when investigating cases on the spot, should always carefully record the statements of wounded or dying persons who have been the subject of the crimes, receiving the words from their mouths, and writing them down in the presence of respectable men and also of the accused if possible. This matter is probably now more attended to than formerly. When I first went to Pesháwar I found that the precaution of writing down dying declarations was very often neglected, and that the results of the omission were sometimes very serious.

3. *Medical evidence and reports of the Chemical Examiner.*—The strictest attention to the law and Circular Orders relating to medical evidence is necessary. Serious errors and omissions in this matter frequently take place. If much depends in any particular case upon the medical evidence, an officer unacquainted with the English language should not be allowed to investigate it, the danger of misunderstanding the Urdú equivalents of technical terms being very great.

4. *Frontier Rules—Trial by Jirgáh or Council of Elders.*—The principal Regulation, dated 10th July 1873, is as follows :—

> Whenever any person or persons shall be accused of any offence, if, in the opinion of the Deputy Commissioner, it is inexpedient that the question of the guilt or innocence of such person or persons, or of any of them, should be tried according to the ordinary procedure, the Deputy Commissioner may cause such question to be referred to the decision of Elders, convened according to the Pathán or Biluch usage, as he may in each case direct, and may cause their decision thereon to be carried into effect as if it were a sentence of a Court of law.
>
> Provided that no decision imposing any penalty other than a fine shall be carried into effect as aforesaid.
>
> The powers conferred by this section may be exercised notwithstanding any proceedings, short of actual conviction or acquittal of the accused person against whom they are exercised, taken, or recorded under the ordinary procedure, and as against some of the persons jointly accused of an offence, though the ordinary procedure is followed in the case of others.

Now in working this Regulation, which applies only to Frontier districts, it becomes a very important part of a District Magistrate's duty to decide whether prisoners charged with

offences should be tried by an ordinary Court or by a Council of Elders. It is difficult to lay down any very definite rules for the exercise of the Magistrate's discretion in this matter. It seems clear, however—

1*st.* That many cases may be referred to a *Jirgáh* in which convictions by ordinary Courts are from the first hopeless.

2*nd.* Many doubtful cases, in which the evidence, though meagre, might *perhaps* be sufficient for conviction in an ordinary Court should go to *Jirgáhs.*

3*rd.* Many cases, in which false accusations against innocent persons have apparently been added to true accusations against guilty ones, should be sent to *Jirgáhs*—

(*a*). because there is the danger of the false element proving fatal to the success of any part of the case in the regular Courts ;

(*b*). because *Jirgáhs* understand thoroughly the practice of false accusations against friends and relatives of real criminals, and can readily weed out the falsely accused ;

(*c*). because the *Jirgáh* procedure being rapid, innocent persons would be quickly discharged, and the mischief done by the false accusers be reduced to a minimum. I believe it constantly happens that false accusations against innocent persons are made, not in any real hope that the accused will be eventually convicted and sentenced, but simply in order that they may be committed to the Sessions and harrassed and dishonoured by detention in lock-up pending trial.†

5. *Delays.*—Every effort should be made at each stage of the case to avoid all unnecessary delay. On this subject I need only make a quotation from my report of 1873, to which I have previously referred—

> The delay involved by the present elaborate procedure often causes months to elapse between the occurrence of the crime and the final order of punishment. * * * * * * * * I am satisfied that under the new system of procedure the delays are greater in each stage of a case than before the introduction of the

†Our Courts are happy hunting-grounds where the Pathán loves to pursue his ancient enemies, either to injure or destroy them.

Codes: It is longer in the hands of the police, longer pending before the Magistrate, longer under trial in the Sessions Court, longer at Lahore. These delays cannot but tend to lessen the preventive effect of the punishment. The native mind must often be filled with astonishment when it sees the extraordinary amount of care and trouble which are involved in bringing offenders, even caught red-handed, regarding whose guilt no one has ever entertained the faintest doubt, to justice. What wonder is it then that in the clearest cases we find defences set up before Magistrates which had not been thought of while the police investigation was going on, and that we find witnesses, who were on the side of the prosecution when the Magistrate made his enquiry, transformed into witnesses for the defence in the Sessions Court. Even a prisoner who confesses at each stage of the enquiry cannot ordinarily be hanged within three months of the date of his crime.

6. *Credibility of oral testimony.*—Many of the judgments from which I have quoted, indicate the very great difficulty ordinarily experienced by an European Judge in this country in forming a satisfactory opinion upon the credibility of oral testimony. I sometimes doubt whether even native Judges and assessors are much better fitted for the task.

The judgments of native officers constantly proclaim the inability of the writers to distinguish between truth and falsehood in oral evidence. Assessors have often replied to me, when I have called upon them to say whether a witness may be believed or not,—'God only knows. Everything depends on whether he has a motive for speaking falsely or not.'

As a general rule it is rarely possible in this country to accept and act upon uncorroborated direct testimony. A witness may perhaps be believed, if he is corroborated by some circumstance that cannot lie. If there be no such circumstance, there must always be hesitation in accepting his statement.

The most common form of doubtful oral testimony with which we have to deal on the Frontier, is the direct evidence given by persons who profess themselves to have been the witnesses of midnight assassinations and such like crimes. Evidence of this kind can sometimes be subjected to what in the following extract from a judgment I have called the *chighah* or hue-and-cry test :—

One of the most common tests which it has been the practice of the Courts in this Division to apply to direct evidence of this nature, is to endeavour to ascertain whether the person alleging that he saw and identified the criminals in the very act immediately raised a *chighah* or hue-and-cry. Now, in this case, we find that the supposed eye-witness Hamídulla alleged that he at once cried aloud. Before the Magistrate he described the villagers as immediately responding to his cry, running up and asking who had done it. In the Sessions Court, however, Hamídulla was pressed to be more precise, and then he admitted that owing to the neighbours being relatives of accused, he only succeeded in arousing one Muhammad Said * * * *

It is a singular fact, however, that no witness, not even Muhammad Said, has been produced who actually heard Hamídulla spread the initial alarm * * * * * * * * * * I, therefore, strongly incline to the belief that no hue-and-cry, properly so called, was raised, and it will be presently seen that this opinion receives support from an analysis of the evidence of Umr (witness No. 6), called by the prosecution to prove that accused 1 was seen leaving the village just after the murder. Therefore, under the circumstances of the present case, I am of opinion that the hue-and-cry or *chighah* test is a good one, and that the unsatisfactory and conflicting nature of Hamídulla's three stories to Police, Magistrate and Sessions Judge, together with the absence of proof that he immediately raised an outcry on seeing the murderers, compel the Court to decline to believe in the asserted recognition of the murderer.

7. *Corroboration of Approvers.*—Connected with the last subject is the corroboration of approvers, a matter regarding which officers of considerable experience are apt to err. The following extract from a judgment in a serious murder and robbery case, will illustrate what I mean :—

It comes to this that Hazrat Sháh's story does not corroborate the statements of Záríf, Said Abbás and Mukarab, and we are thrown back on those statements alone for proof that Said Amír is guilty of the murder.

Now these statements are the statements of accomplices, and although if believed in respect to Said Amír they are legally sufficient for his conviction, they must, I presume, according to the practice of the Courts, be subjected to the strictest tests, and not acted upon unless corroborated. The case in hand is (I suppose the prosecution would urge) akin to that referred to in illustration (*b.*), Section 114, Evidence Act.

'An accomplice is unworthy of credit unless he is corroborated in all material particulars,—but the Court shall have regard to such facts as the following.

A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other.

Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable.'

But in the present instance, we find that the very points on which the three accomplices varied most was the number and identity of their accomplices. They each started by giving different numbers, while in many other matters their statements were essentially identical, *e. g.*, the general features of the crime, and the nature of the booty. If the question is asked whether there is any part of the general story which depends on the identity of the fourth man being Said Amír, I think it must be answered, no; that the principal features would be unaltered if we supposed the place now assigned to him to be filled by another man.

In short it is unnecessary to do more than refer generally to the authorities quoted on this subject in Newbery's last edition of the Procedure Code, and to apply the dictum of Lord Abinger to the present case, *viz.*, that the 'corroboration ought to consist of some circumstance that affects the identity of the person accused,' and without such identification it matters not whether the evidence is that of one accomplice or more than one.

8. *Assessors.*—On this important subject I quote from an old judgment, delivered in 1873, an opinion which I have never seen reason to alter :—

The conclusion therefore at which I arrive from the consideration of these seven pieces of evidence, is that the accused must be guilty and that every other reasonable supposition is excluded. I am perfectly aware that the case is not one which, at first sight, would be called strong. On the contrary, a perusal of the Magistrate's proceedings is calculated to raise a doubt whether there were reasonable grounds for a commitment even. I could not, in the first instance, resist the feeling that the case was eminently one for treatment under the Frontier Rules. But as the enquiry proceeded, I have become convinced contrary to my first impressions. The evidence for the prosecution, indirect as it is, has by its intrinsic force produced a degree of certainty in my mind in regard to the guilt of the accused, which is seldom attainable in trials in this part of the Province.

I do not hesitate to say that the verdict of the assessors has had, as I hold it should have, great weight in enabling me to come to a conclusion. I am aware that many Judges place but little trust in the opinion of assessors, and deny that valuable aid is often to be obtained from them. My experience does not warrant me in holding such a view. I make a point of trying to treat assessors with consideration, and of letting them see that I rely much upon them for help. I always invite them to put any questions to the witnesses which may suggest themselves, and I do not conceal from them, that their opinion is by no means a matter of indifference to me. At the same time, I may say that I am unconscious of allowing them to see what my own view of a case

is till I have heard theirs. In the present instance, the verdict surprised me. The father of the murdered boy came into Court with a protest against the assessors, saying they had been bribed. The prosecution had no eye-witnesses to bring forward; a charge of murder had been advanced by a man of low caste against a well-to-do Pathán. If it be true, as the Commissioner of this Division holds (*vide* many of his judgments), that assessors are always ready to acquit if they can do so with any show of propriety, then here surely was a case in which they might plausibly have given a verdict of 'not proven.' I think it is right to discuss the verdict of the assessors as I have done, because I feel that had it not been against the prisoners and had the assessors not given clear views in regard to certain parts of the evidence, it would hardly have been possible for me to assume the responsibility of condemning the accused on my own unsupported opinion.

Nothing is more difficult than for an European Judge to judge of the credibility of native witnesses, and the more experience I obtain, the greater the difficulty appears. It is natural therefore that one should be willing to rely much on the opinion of respectable natives, specially selected for the task of aiding in the investigation of important criminal trials. It would, of course, be absurd to suppose that the majority of assessors enter Court free from bias of any sort. The contrary, in the nature of things, must be the case. They undoubtedly very often come into Court fully aware of the general opinion of the country-side as to the guilt or innocence of the prisoners, and I daresay their verdicts are often due, far more to that opinion, than to the evidence they hear in Court. But even on the supposition that assessors do nothing more than import the outside verdict into the Court, I would still recognize their usefulness, and I would not shrink from giving weight to their opinion. If an offence has been proved against a prisoner by a chain of evidence which is legally sufficient to establish his guilt and the truth of which there is apparently no reason to doubt, I fail to see why a Judge should refuse to be confirmed in his belief by the verdict of the country-side. I believe it will be admitted that there is but little risk here of assessors giving an unjust verdict of guilty, though, unfortunately, the converse cannot be affirmed.

9. *Mode of recording evidence.*—In India, where nearly all decisions of original Criminal Courts are open to appeal on the facts, it is pre-eminently necessary that the record of the evidence should be sufficiently full, and that if possible the witnesses should be made to tell their stories on paper in a natural manner. If this precaution be neglected, how can a Court of Appeal hope to deal with the question of the credibility of witnesses, when it has only the record before it ?*

* The task is eminently unsatisfactory and difficult under any circumstances.

The Allahabad High Court in a recent judgment (Indian Law Reports, IV Allahabad, page 259) referred to this subject in the following terms :—

> Taking and recording evidence is a Judicial duty which in these Provinces is performed in a manner which, to say the least, is most perfunctory; so much so as to make the so-called depositions in many, if not in most, cases utterly useless for the purposes of justice. The want of skill in this respect is specially and sadly observable in native Judges, who seem altogether unacquainted with the manner in which witnesses should be examined. A witness's cause of knowledge of the facts to which he deposes is scarcely ever shown.

These observations are well worthy of attention in the Punjab generally. I remember when passing through Lahore on my way to Pesháwar in 1872, that Mr. Boulnois, a Judge of the Chief Court, who was well acquainted with the difficulties I was likely to meet with, said to me by way of advice,—'Recollect, what we require in the Chief Court from Sessions Judges, much more than elaborate judgments, is *evidence*. Give us *evidence* properly recorded, and we shall have little fault to find.'

10. *Punishments.*—Certainty of punishment is, in my opinion, a far more effective deterrent of crime amongst Patháns than severity. This has been proved by the working and result of the Frontier Rules, under which fine is the only punishment allowable. Death sentences must of course be awarded in the worst cases, but I am very far from believing that the number of serious crimes rises and falls in proportion to the number of executions carried out. The severity of our punishments for murder is, I believe, not unfrequently a cause of witnesses declining to give evidence, and of unjust acquittals by assessors. I am inclined to believe that if 75 per cent. of the Pesháwar murders were followed by sentences of seven or ten years transportation, the deterrent effect would be greater than if convictions were obtained in 50 per cent. and were all followed by death sentences. Patháns can, I believe, be deterred from crime if warnings, not necessarily very severe, are brought home

to them. I believe that every Frontier officer of experience will admit that even the judicious working of the Security Sections of the Criminal Procedure Code frequently has a most real preventive effect. Patháns are sometimes not unwilling to be provided with a plausible excuse for not acting in accordance with their code of revenge. A man who has been bound down to keep the peace often thinks that he may honourably abstain from killing his enemy, and so avoid causing loss to his sureties. Indeed, it is a matter for consideration whether, bearing in mind the really preventive effect of taking security from suspected persons, a Frontier Regulation should not be framed extending the scope of the law on this subject and making it legal to demand security on more slender evidence and for longer periods than can now be done under the Code of Criminal Procedure.