

THE
Searchlight
CONTEMPT CASE

FOREWORD

The widespread interest provoked by the *Searchlight* Contempt Case and the issues that were involved in it has justified us in putting before the reading public in a book form the entire proceedings together with other relevant papers bearing on the trial. From more than one point of view it was a memorable trial and was so regarded by the country. We have as a matter of fact been inundated by requisitions from far and wide for the publication that we are now able to present before the interested public. The arrangement of the book is simple. First come the articles that formed the subject matter of the trial with the exception however of the article reproduced from the *Forward* which will be found as Appendix IV towards the end. Then come the judgments of the Chief Justice referred to in the articles. Then follows a full report of the trial with the arguments of Pandit Motilal Nehru and Sir Tej Bahadur Sapru on behalf of the Editor, Babu Murali Manohar Prasad, and of Sir Sultan Ahmad, the Crown Counsel. The judgment of the Full Bench in the case together with other subsidiary documents in the form of appendices conclude the book.

Patna

1st Nov. 1928.

In the High Court of Judicature at Patna

—○—
(Criminal Jurisdiction)
—

ORIGINAL MISCELLANEOUS CASE No. 1 OF 1928

—
King Emperor

versus

Murli Manohar Prasad, Editor, the Searchlight.

Behar Journals Ltd., Publishers and Printers.

A. Sinha, Manager, the Searchlight.

Rajendra Prasad, Vakil, High Court, Sadāqat Ashram,

Shambhu Sharan, Vakil, High Court,

Baldeva Sahay, Vakil, High Court,

Nirsu Narayan Singh, Vakil, High Court,

Khan Bahadur Sharfaraz Hussain Khan M. L. A.,

Rai Brijraj Krishna, B. A., B. L., M. L. C.,

H. L. Nandkeolyar, Bar-at-law,

Mazharul Haq,

Deep Narayan Singh,

Braj Kishore Prasad,
Anugrah Narayan Sinha,
Baranashi Prasad Jhunjhunwala,
Anant Prasad,
Bhubaneshwar Missir,
Sri Krishna Sinha,

Directors.

Whereas the attention of the Court has been called to certain articles appearing in the newspaper called the "Searchlight". You are hereby called upon to show cause on Monday, the 13th August 1928, at 10-30 A. M. why you should not be committed or otherwise dealt with according to law for contempt of Court committed by you by unlawfully publishing articles in the issues of a newspaper entitled the "Searchlight" dated June 24th, July 18th, July 20th, July 22nd, July 29th, and August 5th, concerning the High Court and the Chief Justice and his administration of Justice in the said Court.

Take notice that in default of your appearance, the said Court will proceed to consider the matter and pronounce judgment your absence notwithstanding.

Dated Patna the 8th August, 1928.

By Order of the High Court
(Illegible)
Assistant Registrar.

THE SATI CASE

Sunday, June 24, 1928.

One cannot rise from a perusal of the judgment in the Sati case, which we reproduced in our last issue, without a feeling of profound depression. The judgment consists of a series of impressions which the learned Chief Justice formed in his mind and is conspicuously devoid of any reasons for his findings or of any reference to the evidence in respect of those findings. And his lordship's impressions, it is quite obvious, were influenced by a wholly misconceived notion about the institution of Sati. Not only is his lordship yet a stranger in the country and, therefore, naturally not able to appreciate the psychology behind this institution, but it seems, if the statement in the judgment be correct, he was influenced to a certain extent by the remarks of the counsel appearing for some of the accused. One of them is said to have described it "as a relic of brutal barbarism" and another appears to have said "that Sati has long been discarded by all pious Hindus with any pretence to the respect of his fellows". Knowing as we do these learned gentlemen, we believe such statements were probably made under the exigency of the cases of their respective clients, but these statements are, we have no doubt, but half-truths. None who even pretends to know the culture and tradition of the Hindus

can accuse a Hindu, pious or not, of cannibalistic tendency revelling in human sacrifice for supposed religious merit. Sati is essentially a human institution and not divine. It represents the acme of moral perfection, and its whole merit is based upon its pure *voluntariness*. This is the only reason why it has received the homage of Hindus, cultured and uncultured pious or otherwise, throughout ages. It is a typically oriental institution which regards life as but a step or a means in realisation of an ideal. Even during the Mahammadan period it was the great Mahammadan poet Faizi who sang.

“Hamchu hinduzan kase dar ashqi mardane neest;
Sokhtan bar shama kushta kar har parwane neest;”
(There is none so brave in love as a Hindu woman. It is not every moth that can burn on an extinguished flame.)

In course of time, however, under demoralizing political conditions, corruption crept in and “voluntariness” disappeared to a very large extent. Against such abuse Raja Ram Mohan Ray raised his voice of protest, and under his inspiration Lord Bentinck passed his famous regulation interdicting the institution. But with all this, a pure Sati—pure in the sense of voluntariness—yet invokes the profound reverence of all Hindus who have not divested themselves of their age-long culture. We have emphasised this aspect of the case because it is impossible not to hold that his lordship’s conception of Sati, his horror of what he regards as a brutal crime, had a very great deal to do not merely with the impressions he formed from the facts of the case but with the sentences passed by him on the accused persons. We should like once again to emphasise that Sati in the

sense of a woman being forcibly sacrificed with the body of the husband was and has always been regarded as a crime. It is not Sati—but a brutal murder. But Sati, in the sense of a woman immolating herself on the funeral pyre with her dead husband, under an irresistible impulse of devotion, must be a different affair and, as a matter of fact, does invoke, as we have said, the admiration and respect of all Hindus. We very much wish his lordship had kept this in mind when he chose to declaim against the institution as a “belief of savages”—an observation which, we respectfully think, was clearly unwarranted. As a matter of fact, his lordship went beyond his province in indulging in this sweeping generalization which his lordship failed to see involved an attack on one of the most cherished sentiments of Hindus.

But apart from this aspect of the question, it seems to us that the Hon'ble the Chief Justice has approached the case from an erroneous standpoint which has led him into a perspective not warranted by common sense appreciation of the trend of events and facts of the case. Not being able to conceive the possibility of a purely voluntary Sati, instances of which are daily sung in every Hindu home and belief about which is ingrained in every fibre of a Hindu woman, it is scarcely surprising that His Lordship should form the idea that the girl Sampati was deliberately victimized by her relations and some others who were complete strangers to her, except that they belonged to villages with which she was connected. These relations, both from her father's and husband's sides, have been lumped together as the Pandey's and there is frequent suggestion to the effect that it is they who had together planned to encompass

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the death of Sampati. This is the basic standpoint from which the Chief Justice has surveyed the case—a fatal mistake which has, we suggest, effected the conclusions at which he has arrived. It is evident that the theory of some people profiting by the death of Sampati was uppermost in his lordship's mind. At the very outset, referring to the defenceless condition of the girl after the death of her husband, His Lordship asks "what a victim she presented to those who were to profit by her death"? That he was obviously referring to the Pandeys is the impression indelibly left on the mind by subsequent references to them. Referring to the progress of the two parties, one with the corpse heading towards the ghat and the other with Sampati towards Berhna he says:—"At this point the ekka should have turned down towards Berhna. *But this would have spoiled the Pandey's plan. So leaving the corpse to pursue its unresisting way to the ghat along the bund road, carried by the docile kahars, they came down by the cross road further north and joined the crowd and recaptured their victim. (Italics ours.)* Later on he refers to them as being "present in the crowd and close to the ekka conveying the lady." Later still he says: "here the Pandeys intervened and forced the driver to lead it (the ekka) up to the fork". Next there is the distinct suggestion that these self-same Pandeys hoodwinked the police who were surrounding the pyre by planting a trick for ignition of Sampati's body. These suggestions have a purpose there is no mistaking—that the Pandeys were out to encompass her death.

Now, the question is, with what end? Motive, we are told, guides all human actions and yet curiously

enough there is no suggestion anywhere, either inferential or as a deduction from a single piece of evidence, to explain what inspired this murderous instinct in the Pandey's. Nor is there an iota of evidence to show that the Pandey's were persons with any abnormal criminal propensities. What is more, anyone familiar with Indian life, could have enlightened the Chief Justice that joint action with a murderous intent, developed so suddenly between members of the husband's family and that of the father's, is as improbable a possibility as anything could be. Moreover, the fact that these Pandey's comprised both the groups is likewise a clear repudiation of the suggestion that there could be any conspiracy between them for material gain as anyone familiar with Indian social life could easily enlighten the Chief Justice. As for spiritual merit, even the veriest school boy in the village is aware that forced victimization of a widow with her husband is murder pure and simple and the end of it is damnation. It is obvious therefore that there is no explanation whatever of the motive that could have inspired the Pandey's in intriguing the brutal crime imputed to them. More than this, the fact is significant that the very first place to which the party resorted to in the night after their arrival at Barh was the Magistrate's court. If this is so, can it be seriously suggested that persons with the fixed determination of the Pandey's, out to manipulate the sacrifice of a lady, would do anything of the kind? Indeed clever men such as the Pandey's are suggested to be, would put as much distance between themselves and the thana or the court as they could possibly do and hasten to

the ghat by some circuitous route avoiding as far as possible the danger of detection. But they go straight to and rest for the night in the Magistrate's court. In the light of these, the utter absence of any common motive and the behaviour of the Pandeys, the theory about the Pandeys' machination and determination is unsustainable even if there be any basis for it in the evidence. His Lordship relying on the circumstance that the Pandeys kept surrounding the lady and supervised her toilet has deduced the finding that Sampati's body was ignited by a "trick simpler than any seen at a country fair". This is obviously an assumption, and it is unfortunate that we have not been told what the trick was that these unsophisticated rustics from the interior of Barh successfully resorted to despite the vigilant watch kept by a whole army of police officers and constables who upon oath told the court that they kept a careful look-out to see that no outside agency helped Sampati with means of ignition. But the learned Chief Justice after coming to a finding which should convict them not of mere abetment of suicide but of cold-blooded murder comes to another finding which, we respectfully suggest, involves him in an obvious contradiction. Let us examine the point.

After the woman jumped into the river tortured evidently by the flames, his lordship says; "the Pandeys were in very serious difficulty. If the woman were rescued, the trick was revealed and the hangman's rope again dangled in front of them. They could not start the fire again; they could not repeat the trick. The apparatus was gone and therefore Sampati must drown. They threw her corpse etc."

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Obviously according to his lordship, they were determined that the woman should die. And yet, the learned Chief Justice proceeds, "however with the help of the police she was ultimately helped ashore in a shocking condition. She went to lie down under a tree by a temple 60 paces away and *then began that which was the first fruit for which the Pandeys had been waiting—a stream of coins began to flow which they greedily picked up*" (Italics ours). We confess we find it difficult to reconcile the two theories—the one of Pandey's encompassing the death of Sampati and the other of their waiting for the coins they had calculated would pour in in case Sampati came out of the water half burnt, exciting the sympathy, pity or piety of the audience. Either the Pandeys were out to consume her by fire or they were out to earn the coins that they hoped would pour in in case the girl shook herself out of the river after jumping into it under the stress of agony. Both, we respectfully suggest, cannot be possible, for if the former was the truth the latter eventuality could not have been foreseen and awaited with the diabolical fiendishness displayed by the Pandeys according to the Chief Justice. Evidently in his lordship's view the Pandeys were not only conjurors but also astrologers who knew accurately what would happen and had made their calculations accordingly.

Now we know that as the law stands at present "Sati", whether voluntary, or involuntary, is a crime, and the abetment of the same is equally criminal. But we do apprehend that the judging of the case from a wrong perspective may have led to grave injustice being

done to individual accused. That this seems to have been very probably the case is more than apparent from the nature and the terms of the finding in respect of the accused Lakhia, Ramautar and also Jagdeo. We propose to deal with this aspect of the case in a subsequent issue. The police, upon the finding of His Lordship have come out with flying colours in the case. Yet, people of Barh, who witnessed the tragic sight, have a different story to tell. It is true, and to us it seems to have been a grievous misfortune, that they did not come to give evidence in the case. No one can condemn their lack of public spirit in this matter more than we do. Yet it is but right to say that promiscuous issue of notices under section 144 Cr. P. C. by the S. D. O. of Barh upon a very large number of people, who exhibited even in the slight degree any sympathy with the Sati, was responsible to a great deal for general demoralization in that Sub-division. And the record itself is more than eloquent of the fact that the police themselves deliberately avoided collecting evidence from the general public upon the specious plea that none would come forward to give evidence. His Lordship has thought it fit to condemn the jurors who brought in a verdict of "not guilty" in very severe terms. Knowing as we do Professors Ashutosh Chatterji, Hazari and Ganguli, no one in this province will believe that they were such moral cowards as to sacrifice their conscience at the altar of popular applause or religious prejudice. They know the true character of the Sati, and the value of Police evidence. To say the least, their experience of Police and knowledge of local conditions

are certainly greater than those of his lordship. So far as their integrity, character, and intellectual equipment are concerned, they can bear comparison with any. But whatever it be, the pious exhortation with which the learned Chief Justice eloquently concludes his judgment is not only out of place in a judicial pronouncement but must further lose its force because of the wrong view-point from which the case has been adjudged. However unpleasant it be, we feel it our duty to point it out to His Lordship that the severe sentence which he has passed is absolutely unprecedented in such cases and has sent a thrill of horror throughout the province and will have a tendency to defeat the very object which His Lordship has been anxious to serve. We understand steps are being taken to take the case to the Privy Council. This, however, should not deter the members of the Council to take such steps as they can to move the Local Government for a proper mitigation of the sentences.

THE BARH SATI CASE--1

Wednesday, July 18, 1928.

We need offer no apology for reverting to the judgment of his Lordship the Chief Justice in the Barh Sati case. Admittedly the judgment has created a sensation in the Hindu public of the province and very considerable feeling has been aroused over the subject. The facts of the case are simple enough, and will bear recapitulation. Briefly stated they are as follows:— A Brahmin lady of gentle birth, Sampati Koer by name, made up her mind to die on the funeral pyre of her husband. She believed that a miraculous fire would appear to destroy her and the body of her husband on the pyre. Accordingly she accompanied the dead body of her husband with many of her relatives from Sartha, twenty miles south-west of Barh. The police interfered and reasoned with her but to no purpose. On the bank of the Ganges, the funeral pyre was prepared. The widow bathed in the river, changed her clothes, and ascended the funeral pyre, which was surrounded on all sides by the police. She took her husband's head on her lap, asked for a copy of the Gita and began to read that sacred book aloud. Suddenly a fire appeared from the lower part of the body and ultimately she died from the effect of the fire.

There are two points which we must make clear at this stage: first, that the police were watching the situation carefully, and secondly, they are quite clear in their evidence that no one from the spectators lit the fire. On these facts sixteen persons were charged with being members of an unlawful assembly to abet the suicide of Sampati. These sixteen persons were tried by the Sessions Judge of Patna with the aid of a Jury, composed of some men of well-known character and culture living in Patna. The Sessions Judge directed the Jury to acquit six of the accused and with reference to them no question arises. With regard to the remaining ten, the Jury passed an unanymous verdict of not guilty. The Sessions Judge declined to accept the verdict of the Jury, and made a reference to the High Court.

Now, the most curious part of the judgment of the High Court is that it has convicted the accused persons of an offence with which they were not charged. They were charged with abetting the suicide of Sampati Koer. In charging the Jury, the Sessions Judge said as follows:—"You cannot find that the accused set fire to it because that is not proved or even alleged against them. You can find that the widow set fire to it. It would be perfectly easy for her to secrete a box of matches on her person and to strike a match with one hand under her clothing at the auspicious moment." Now, this theory was not accepted by the High Court. This is clear from the following passages in the judgment of the Chief Justice:—"Moreover the poor girl herself expected the fire to be miraculous and the Pandeys were prepared for the emergency....."

Did the poor girl know what was to happen? She only expected the divine fire to appear. A moment later flame burst from her clothing, and the cause of these flames is no matter of surmise as we are asked to believe. We are not fools. The trick was simpler than any conjurer's trick at a country fair, *and it was the Pandey's who performed it*. (The italics are ours.)

It is somewhat unfortunate that the Chief Justice does not explain what the trick was. He speaks vaguely of "an apparatus" which must have been used by the Pandey's, but there is no evidence on this point as the summing up of the trial Judge shows, and no clue is to be found in the judgment of the Chief Justice as to how the Pandey's "performed the trick". But the serious part of the judgment is that, in the view of the Chief Justice, the widow was murdered by the Pandey's and that they have been convicted of an offence with which they were not charged.

But there are graver matters still in the judgment of the Chief Justice. One of the accused was Jagdeo. With reference to him the Chief Justice says as follows: "We believe, but we are not certain, that he was in this; but we consider that the justice of his case will be met by sentencing him to rigorous imprisonment for seven years." We are not lawyers but we have always understood that it is part of the British system of criminal jurisprudence to base conviction not on mere belief but on reasonable certainty.

Then there was another accused person, Ramautar the Ekka driver, a Dusadh, in respect of whom the Chief Justice has made the following observation:—"The main object perhaps, I can only speculate, of those

who were responsible for financing the defence was to provide for the safety of these Pandeys. This man was a Dusadh and perhaps of no particular account". We may be pardoned for observing in passing that this cheap sarcasm at the expense of the Brahmin accused does not fit in with the dignity of a judicial pronouncement. However, let us see how the learned Chief Justice has dealt with the Ekka driver. His finding with regard to him is as follows: "In our view Ramautar Dusadh believed that he was going to drive the Ekka to Berhna and he was compelled by the Pandeys to drive to the ghat." Having regard to this finding, one would expect that acquittal would follow as a matter of course. But mark what happens—"one year's rigorous imprisonment." "He should be convicted" says the Chief Justice, "because he should have refused when he learned the real nature of the trick". His lordship concedes in an earlier passage that "his defence was gravely hampered". He should have been separately defended", he adds, but it was not so done because "a separate defence for him would have involved serious difficulty for the other accused". Now, in the light of these admissions and the clear and unequivocal finding that the man "believed he was going to drive the Ekka to Berhna but that "he was *compelled* to drive to the ghat", obviously the sentence of one year's rigorous imprisonment is too much for the public to be regarded as in any sense justified in law and equity.

Then there was another accused person, Raghu Singh, a Babhan by caste. He was a complete stranger to the Pandeys, and the only evidence against him was

that he was asked to burn the body of the deceased before the widow appeared on the scene and he refused to do so. With regard to him, the Chief Justice says as follows: "The corpse arrived an hour before the Ekka and the Pandeys, and the Inspector, and the Town Jamadar Kedar Nath tried to get Raghu Singh to burn the corpse before the rest of the party arrived. It is clear that he was in the plot because he refused to do anything of the kind." If the two Judges were not apparently unfamiliar with the basic principle of Hindu system which would prevent anyone, not belonging to the caste of the deceased, to burn the body of the deceased, it is inconceivable that they would come to the above finding. But if there is excuse for their unfamiliarity with the Hindu system, what excuse is there for ignoring the Police evidence to the effect that Raghu Singh was incompetent to burn the body of a Pandey. A police constable, Sukh Nandan Singh by name, giving evidence on behalf of the prosecution, said as follows: "Raghu said he could not burn a Brahmin's body; a Brahman would burn it. He who burns a body has to perform ceremonies for days afterwards, and to spend some money on it." Brijnandan Singh, another police constable, definitely admitted that "Raghu could not burn a Brahman's body as he was a Babhan". And yet Raghu Singh has been sentenced to ten years' rigorous imprisonment.

We do not expect a Judge, fresh from Europe, to understand or appreciate the grand conception underlying the martyrdom of Hindu widows; but it is at least expected that he should apply the principles of British criminal jurisprudence with which he is acquainted. A

persual of the judgment leaves no doubt in ones mind that it was a real pity his lordship the Chief Justice did not seek the advantage of the assistance of one of his Indian colleagues in trying the case, for that at least would have saved him from findings and observations which no one familiar with Hindu social life and sentiment would come to for a moment. We have already referred to the cheap sarcasm of the Dusadh being of no particular account to his Brahmin co-accused. We have also referred to other portions of his judgment in which he refers to the belief in Sati on the part of the Hindus, as "the belief of savages". All that we can say is that we are not surprized that the Hindu society refuses to reconcile itself to judgment of this nature. We must return to this extraordinary judgment again in view of the serious issues at stake.

THE BARH SATI CASE II

Friday, July 20th, 1928

We have already dealt with the case at some length to show that the conviction of the accused persons and the exceptionally heavy sentences passed on them by the Hon'ble the Chief Justice of the Patna High Court rest on very slender foundation. It is apparent that even on his own findings some of the accused persons at least were entitled to complete acquittal. These findings may again be set out in the language of the Chief Justice himself so that there may be no doubt as to how the case has been tried by the Chief Justice.

The Accused Persons	Findings of the Chief Justice	Sentence
Ramautar Dusadh	"In our view Ramautar Dusadh believed that he was going to drive the Ekka to Berhna and he was compelled by the Pandeys to drive to the ghat".	... 1 year.
Jagdeo	"We believe, but we are not certain, that he was in this plot".	... 7 years

R a g h u “ The town.Jamadar Kedar Nath
 Singh Pande tried to get Raghu Singh
 to burn the corpse before the rest
 of the party arrived. It is clear
 that he was in the plot because
 he refused to do anything of the
 kind.” ... 10 years

(Note—R a g h u Singh was a
 Babhan, and the deceased was a
 Brahmin, and one of the prosecu-
 tion witnesses had admitted ...

“Raghu could not burn a Brah-
 man's body as he was a Babhan”).

In order to avoid any charge of misrepresentation against us, we should point out that with reference to Ramantar, the Ekka driver, his lordship proceeded to say as follows: “It is right that he should be convicted because he should have refused, when he learned the real nature of the trick, to conduct the Ekka further.” In coming to this conclusion his lordship evidently forgot, with disastrous results to Ramantar, the Ekka driver, that if it was in the power of this unfortunate man to refuse to conduct the Ekka further; it was in the power of the Police to prevent the occurrence. In charging the jury, the Sessions judge said as follows; “You will probably agree that the officials of Barh made a very poor show. The Police (according to their own version) had three distinct opportunities of saving the widow, but failed to do anything decisive.” This is as serious an indictment as any that we remember against the Police, but how does his Lordship deal with the point. “However lacking in judgment,” says

his Lordship, "the Police may have been in neglecting to take steps at an earlier stage which might have stopped this deplorable incident, not one word can be said against the evidence which they have given, which, in our opinion, was given with conspicuous honesty and courage and reflects credit on their service". Now, the evidence of the Police is that they were overawed by thousands of people who had gathered to see the miracle. If this be so, and if they have given their evidence with conspicuous honesty, what justification is there for convicting Ramautar who, according to the finding of his Lordship, "was compelled by the Pandeys to drive to the ghat" but "should have refused to conduct the Ekka further". The Police may plead the threatening attitude of the crowd and get a certificate of honesty. But poor Ramautar must go to prison for one year.

We now turn to the question whether there is the slightest justification for the conviction of the remaining accused. At the very outset, we must draw the attention of our readers to the procedure adopted by the Chief Justice to ascertain the ages of some of the accused persons. Two of the accused persons—Murlidhar, the brother of the widow and Vidyasager, the brother-in-law of the widow,—were mere boys, and a question obviously arose as to their ages. We read in his judgment the following extraordinary account of a novel procedure adopted by him to ascertain the ages of the accused persons. "I may say" says the Chief Justice, "that yesterday I took advantage of a visit of inspection to the jail to see these accused persons. I had them examined by the Medical Superintendent who gave me his views upon their ages, and my inspection

of the prisoners confirms the opinion which has been arrived at by him." This is undoubtedly, to put it most mildly, a novel way of doing things. But we may be pardoned for saying that it is opposed to all modern notions of justice for a judge to hold an *ex parte* enquiry of this nature without giving adequate notice of his intention to do so, so that the prisoners might be represented by counsel at such enquiry.

We now propose to examine the theory propounded by the Chief Justice to explain the conduct of the accused persons. Now the question had to be faced, what was the motive of the accused persons in abetting a crime? The theory of his lordship is this: that the Pandeys deliberately schemed the whole thing in order to profit by the death of the widow. Our readers would naturally assume that in some way there was involved some question of succession to the estate which was of her husband and that the Pandeys stood to gain by her death. But nothing of the sort. There is some evidence that "some people were throwing pice on the place where the widow was lying"; and his lordship has evidently built up the theory that it was to gain these pices that the Pandeys devised her death. If the facts fit in with the theory well and good; if not, so much the worse for the facts.

We will first quote one or two passages from the judgment to make good our point as to the theory built up in regard to the question. After drawing in pathetic language the picture of the widow on the death of her husband, the Chief Justice exclaims: "What a victim she presented to those who were to profit by her death". Then he describes the actual profit made by the Pandeys

in these words: "She went to lie down under a tree by a temple sixty paces away, and then began that which was the first fruit for which the Pandey's had been waiting—a stream of coins began to flow which they greedily picked up". His Lordship did not apparently see the confusion in his judgment on this point. If the widow had died on the pyre, no offering would obviously be made. Did the Pandey's have the ingenuity and the foresight to realise that the widow would jump into the river, that she would be rescued by the Police, that she would lie down by a temple, and that a stream of coins would begin to flow? And it is on the soundness of this theory that the judgment largely rests.

It may be asked, what is the evidence on this point? Mr. S. N. Mazumdar, the Sub-divisional Officer at Barh, in his evidence said as follows: "Some people were throwing pice on the place where the woman was lying, and some men were picking up the pice; I remember one man (Asked to look at the accused). I do not see that man who was picking up the pice. But I saw this old man (Lachman Pande) and this boy (Vidyasagar) there" Now, it is obvious that the conclusion of the Chief Justice is not supported by the evidence of the Sub-divisional Officer. What the Chief Justice describes as "a stream of coins" becomes in plain prose "throwing of pice"; and it is clear from the evidence of the Sub-divisional Officer that although the Pandey's were there they were not picking up the pice greedily or otherwise or at all. After this our readers will not require to be told that in his charge to the Jury the Sessions Judge did not refer to this incident and the jury were not even invited to consider whether the Pandey's compassed the death of the widow to make a profit for themselves. Comment would be superfluous.

THE BARH SATI CASE—III

Sunday, July 22nd 1928.

The late Sir Ashutosh Chaudhari once declared that a subject nation has no politics. If by that he intended to convey the utter helplessness of a subject nation in every aspect of life, then we entirely agree with him. The Barh Sati case is a case in point. The case was tried by two judges who were unfamiliar with the Indian social life and outlook, and who belonged to another civilisation. This is, however, inevitable in a system which allows one nation to govern another. But what we should have expected was that two distinguished judges would not fail to see that the judgment which they have delivered offends against the first principles of criminal jurisprudence.

Now, we take it that it is a settled law that in a reference under section 307 Criminal Procedure Code the High Court has no business to throw aside the verdict of the jury which cannot be said to be unreasonable. This view has been reaffirmed only the other day by Chief Justice Rankin in *The Emperor V. Nagarali* (32 C. W. N., page 952), but it would appear that this wholesome principle has been ignored by his Lordship the Chief Justice. That, in expressing this view, we

are on firm grounds may be proved beyond reasonable doubt by referring to the judgment which we have been considering for some days with such anxiety. The jury were asked to consider whether the accused persons abetted the suicide of Sampati Kuer. In charging the jury, the Sessions Judge was careful to point out that "it was not proved or even alleged against the accused persons that they set fire to the pyre". Therefore the only question left to the jury was did the accused person abet the suicide of Sampati Kuer? The jury answered the question in the negative. Now, the High Court had to consider whether the verdict of the jury was an unreasonable one. We maintain that the High Court has in effect found that the verdict of the jury was not an unreasonable one, since the High Court has come to the conclusion that Sampati Kuer did not commit suicide but was, practically speaking, murdered by the accused persons. It is quite true that the High Court does not say how the murder was committed, and we know that the Sessions Judge warned the jury that there was not even an allegation that the accused persons set fire to the pyre. But apart from these difficulties, and the difficulties created by the Police evidence that they "were on all sides of the pyre" and "were watching to see that they", namely the Pandyes, "did not set fire to the widow", it is surely an extraordinary thing to convict persons in a jury reference of offences with which they were not charged and which consequently they had no opportunity to meet. In what way has the High Court shown that the verdict of the jury was an unreasonable one? In fact, it has accepted that verdict, but convicted the accused persons of another offence altogether.

The question raised by the judgment of the Chief Justice is as grave as any that has ever been raised in the course of a criminal trial. Take the case of the three accused persons whose cases we have already discussed. Is Jagdeo guilty? The jury says, "No". Is the verdict of the jury an unreasonable one? The Chief Justice says, "we believe, but we are not certain, that he", namely Jagdeo, "was in this plot also, but we consider that the justice of his case will be met by sentencing him to rigorous imprisonment for seven years". Has the High Court found that the verdict of that jury was an unreasonable one? One need not be a lawyer to say that it has not; and it is amazing how any judge could convict a person against the verdict of the jury when he is not certain that he committed the offence. The same reasoning will show how impossible it is to support the judgment of the Chief Justice so far as the other accused persons are concerned.

The question now is, what is our duty in the peculiar circumstances of the case. A serious issue has been raised and it must go forward to a solution. We would be failing in our duty if we failed to give expression to the feelings in the minds of the people over this conviction. It would be idle to conceal the fact that the judgment is being canvassed in every street corner. There is no doubt whatever that it is incumbent on the public to take such steps as are commensurate with the gravity of the situation. The accused cannot be left to their fate. We look up to the educated people, particularly the members of the Bar, whose proud privilege it has been to stand up for the weak and the helpless, to take such steps as the exigencies of the situation may require. We trust that Sir Basanta Kumar Mullick will interest himself in the matter and not allow the wrong to remain unredressed.

THE "SILLY NOISY LITTLE MAN"

Sunday, July 29, 1928

We published in our last issue the amazing judgment pronounced by the Chief Justice in Babu Jagat Narain Lal's case. We have described the production of the Chief Justice as a judgment; but it seems it is nothing of the sort. It is more a rhetorical outburst of an angry mind than the cool, considered pronouncement of a judicial mind. We say nothing as to the conviction of and the sentence passed on Babu Jagat Narayan Lal; for such conviction must be expected as a matter of course in the system under which we live. But the tone and the temper of the judgment call for serious attention, and we would be failing in our duty if we did not enter our emphatic protest against a form of judgment which is becoming standardized on the criminal side of the Patna High Court.

For the thing speaks for itself. A long and learned argument was advanced by the learned counsel for Babu Jagat Narain Lal as to the proper interpretation to be placed on the subject matter of the charge. But the learned Chief Justice does not appear to have given even a cursory consideration to the arguments and disposed of the whole case practically in a single sentence. Now, the Law of Sedition is so framed as to

bring within its scope any person who may venture to criticise any action of the Government. But the safety of the subject lies in the prudence which ought to be exercised by the tribunal trying a case of sedition which should recognise that, under present conditions, the subject has far greater liberty of speech than he had twenty years ago. Where no such prudence is shown by the tribunal, the form of law becomes an engine of oppression and it is our clear duty to speak out. There is no clue in the judgment of the Chief Justice that he realised that India is a different proposition in the year of grace 1928 than it was in 1908. In fact there is no clue in the judgment that the Chief Justice considered any of the arguments of counsel of the eminence of Mr. S. Sinha. What we find in the judgment, however, is a string of superlatives betraying a lack of that dignity which should always inhere in a judicial mind.

The judgment begins with a string of abuses, "The subject of the charge", said the Chief Justice, "is a silly little article in an insignificant little paper written by a silly noisy littleman". Now, to say the least of it, the mind of the Chief Justice does not seem to be very logical. It did not seem to have struck the Chief Justice that a sentence of a year's imprisonment is far too severe, since the subject matter of the charge was, as he says, "a silly little article in an insignificant little paper written by a silly noisy little man" and since in his opinion "the matter is quite trifling". But an enormity of this kind from a judge, who does not feel the horror of sentencing a man to seven years' rigorous imprisonment, though he is "not certain" of his guilt is not at all surprizing. A judge, who does not observe

the elementary principle of criminal jurisprudence that the presumption of innocence is fundamental to the British system of criminal law and that that presumption is in no way rebutted by a finding that the tribunal "believes" but is "not certain" of the guilt of the accused person, may of course be excused if he does not know that the measure of punishment in a case of sedition is the measure of importance which can be attached to the subject matter of the charge for sedition. But it is indeed lamentable that the Chief Justice of the Patna High Court should have ignored these elementary principles of law.

We must guard ourselves, however, against it being supposed that we accept the view of the Chief Justice as to the position which Babu Jagat Narain Lal occupies in the public life of Behar. Babu Jagat Narain Lal is a Master of Arts, a Bachelor of Law and was a Vakil; he sacrificed his practice at the call of country during those spacious days when Mahatma Gandhi was weaving India's destiny. He is an elected Member of the Behar Legislative Council and has devoted his matchless industry and ability in organizing the Hindu Mahasabha movement in Behar and is the general Secretary of the All-India Hindu Mahasabha and a member of the All-India Congress Committee. This is the man who has been described by the Chief Justice as "a silly noisy little man". The expression has not the dignity of judicial pronouncement but we will let that pass. But we cannot pass by the insult which the Chief Justice has offered to the entire community. The Chief Justice is protected by the High office to which Providence and the Right Hon'ble the Earl of Birkenhead

have called him. He is also protected by statute and has chartered freedom to say whatever he likes.

If the judgment which we are considering had been pronounced by a junior Deputy Magistrate, then we have no doubt that the High Court would have severely censured him. As we have already pointed out, the arguments of Mr. Sinha have not been referred to; and in fact the real part of the judgment consists of not more than one or two sentences. Even Babu Jagat Narain Lal, "a silly noisy little man" though he may be, was entitled to ask the High Court to consider the points urged on his behalf. How are we to say that those points have been considered, since there is no indication in the judgment that the Chief Justice was even aware of those points. It is our deliberate conviction that the life and the liberty of the subject must necessarily be in grave peril when the Chief Justice of the highest judicial tribunal in the land ignores the arguments, refuses to consider the authorities that may be cited, and, in the end, produces a judgment full of sound and fury but signifying nothing, except imprisonment so far as the parties are concerned. The Chief Justice of the Patna High Court has introduced a novel method of rendering judgments. Under this method all that he has to do is to state the facts and pass the order. What guarantee has the subject then that his case has been fully considered by the tribunal? We doubt if there is a single judgment in existence of any Judge of any Court where a person has been convicted of so serious an offence as sedition in a judgment so perfunctory as the one we have before us.

It is obvious, then, that the life and liberty of the subject are in danger under the present administration of the Criminal Law; and, unless we wish to perish, we must protect ourselves against this new menace. Since somebody must say that which is in the mind of most of the people to-day, we take the liberty of saying that in the short time that has elapsed since the departure of Sir Dawson Miller—who, by common consent, filled his office with dignity and left the High Court a greater thing than he found it—and, may we add, of Sir Basanta Kumar Mullick—public confidence in the administration of criminal justice has been disappearing and the High Court losing its rightful position as a palladium of people's rights and liberties. Cheap journalism cannot pass for judgment nor abuse and ridicule take the place of reasons thereof. It is necessary therefore that the people of the province should offer unbending opposition to any departure from the cherished traditions of the Indian High Courts.

PRESS COMMENTS ON THE CHIEF JUSTICE

We reproduced in the last issue a few of the comments in the Indian press on the doings of our Chief Justice and in this issue we are reproducing some more, testifying to the large field his reputation has traversed. From the *Forward* and *Patrika* at Calcutta to the *Hindustan Times* at Delhi and the *Tribune* and *Hindu Herald* at Lahore, is a far cry indeed and covers the whole of Northern India. It will not be long before the South will echo with his deeds—we hope his lordship is satisfied that whatever be the “habits of the people” “in this part of the world,” it is scarcely possible for a man of note to keep his light hidden under a bushel for long in this land. Seriously speaking, these comments in the press call for serious notice. We also publish elsewhere the text of a question which Babu Gaya Prasad Singh proposes to ask in the Legislative Assembly suggesting the removal of the Chief Justice. It is the first time since its creation that the High Court has been brought into this none too wholesome light of publicity and made an occasion for serious strictures on its head and it cannot, therefore, be pretended, with any show of decency, that the prevailing outcry has nothing deeper behind it than the abnormality of hyper criticism. As a matter of fact the

outry is nothing more than the expression of the outraged feelings of the people over observations and convictions that are exercising the minds of the public at large. It cannot but be otherwise in an official ridden country like India which presents the amazing spectacle of being the only civilized country where judicial and executive functions are deliberately kept combined by a system of Government whose promises for separation have been broken as often as they have been made. It is a truism there is no gainsaying that the one silver lining in an utterly dark and dismal horizon has been a lurking belief on the part of the people that the High Court with its great traditions of judicial independence stood, at any rate in some measure, as the protector of the life and the liberties of the people. The High Court has been regarded as the one bulwark against executive wantonness and judicial vagaries and throughout the period of office of Sir Edward Chamier and Sir Dawson Miller, despite occasional mistakes, public confidence in the High Court remained unshaken. It would be doing violence to truth to suggest that the same confidence is a fact of to-day. It is not and the press comments we have quoted elsewhere are nothing if not an eloquent testimony to the fact. Whatever their other limitations may be, Indian press as a whole seldom, if ever, countenance any running down of the High Court. But there are occasions when forbearance can be carried too far and may become a crime to the country on the part of the enlightened conscience of the community that the press represents. We cannot possibly permit either deterioration in the tone of the administration of justice or the maligning of our people.

His lordship started with introducing far-reaching changes in the rules without as much as a pretence at consultation with the Bar who were one fine morning done the courtesy of being presented with a *fait accompli*. Then came the Sati case judgment with its bad law, angry rhetoric and, in the circumstance, monstrous sentences. Sati, of which his lordship knew nothing, was described as a "belief of savages." The conviction of a man on the uncorroborated testimony of an approver followed and soon after came the amazing judgment in the case of Babu Jagat Narain Lal. We hope the Chief Justice is now a wiser man and realizes the enormity of which he made himself responsible when he indulged in the language he did at the expense of a publicist who is respected by the public but of course execrated by the executive. In a country like India the one test by which the public must judge of the standard of judicial administration is the measure in which justice is administered between the subject and the State. The law of sedition is so framed that practically any criticism of the Government may be brought within its comprehensive purview and the High Court alone has been depended upon to mitigate, if not to undo, the severity of a law designed by our alien rulers to perpetuate their domination over this country. But the fact remains that the more or less summary disposal of the case has left behind the most disquieting feeling that if the judgment of the Chief Justice were to set the tone of the judiciary in respect of the offence of sedition, the right of free speech will labour under a deadly menace at the hands of the bureaucracy ever

ready to run amock but kept under some measure of restraint only by the fear of the High Court. What Babu Jagat Narayan Lal had said represents a view that is held universally, has been repeated by many Englishmen and which, to some extent, must be true of foreign rule over any country. The whole purpose of the article was indeed an appeal to Lord Irwin but instead of a well-considered judicial examination of these and other aspects of the case, we had a string of abuses of Babu Jagat Narayan Lal indulged in from behind the protection accorded by law.

But by far the most amazing feat was the insult levelled at our people "in this part of the world" by one who is not a globe-trotter out to earn cheap notoriety, nor an executive official, carrying the White Man's Burden on his shoulders, but the Chief Justice of a High Court of Judicature. Whatever his lordship may have meant, the public at large must take him at his word and they refuse to tolerate their being characterized practically as habitual liars. Mind you the judgment, in which this flight of imagination occurs, is dated the 16th of May, well within two months of his lordship's advent into this country. There could not have been anything in the evidence to support this silly proposition and yet Mr. Courteny Terrel had no hesitation in presuming to pass judgment on the "habits of the people" in "this part of the world". Where, we ask, did his lordship get that from? Is that the kind of schooling he has been receiving; who are the people who have taken upon themselves the mission of dinning this vile and wicked nonsense into his lordship in respect of the people who have to look up to him for justice.

These are questions that must inevitably exercise the minds of the people. And naturally too, for however exalted the person from whom such observations may emanate, they constitute a language of such signal impertinence that they cannot be tolerated by a people who must resent this wanton insult by one who is here in this country to serve them. It is time really the people recorded their protest in an organized manner and we hope they will do it. We know protests in this country are treated with scorn and they may be so treated in the present case. But the authorities will do so at their peril. Shake the people's faith in the justice of the High Court and you give a shock to the already tottering foundations of British rule in this country.

Be that as it may, will it be too much to hope that Sir Basant Kumar Mullick, who happens to-day to be the Judicial Member, and who for long adorned the Bench of the High Court, will at any rate do his best to stem the tide of growing public distemper against the High Court. Throughout the period of his office as a judge he commanded the respect and the confidence of the people and we can but look up to him alone to undo, as far as he can the evil that has been set in motion. We desire most respectfully but solemnly to sound a note of warning. If this state of things were to continue, public temper, already sorely exercised, will find expression in an agitation that might be unseemly and unwholesome but for which there will be no help.

JUDGMENTS

JAGAT BABU'S CASE

The following is the full text of the judgment of the Hon'ble Mr. Courtney Terrell, Chief Justice of the Patna High Court—Mr. Justice Allanson concurring—in the case against Babu Jagat Narain Lal, M. A., LL. B., M. L. C. under Section 124 A. I. P. C.:—

Courtney Terrel, C. J.—The accused Jagat Narayan Lal has been charged and convicted under section 124A of the Indian Penal Code for sedition. The subject of the charge is a silly little article in an insignificant little paper written by a silly noisy little man and were it not for the fact that the paper even of this description has some readers amongst excitable people one would be inclined to treat the offence with contempt because the logic and tone of the article are such as to make no appeal to any one with any degree of common sense. But the type of mind exemplified by the author of this article is one which will arise and has arisen in all times under any form of Government whether the most tyrannical or the most benign. It is, in short, a biological product and is not the result of political conditions. It may appear under the most ideal administration in any country, but nevertheless it is a nuisance which involves the community in expense and trouble, and its activities have to be checked. The meaning of the article is clear and obvious. It is an attack upon the Government and also upon the personnel which constitute the Government, because Government cannot be carried through any agency other than human beings; and it attributes to the Government and to the personnel of the Government a deliberate policy of fomenting the communal strifes which are so marked a feature of this country at the present moment. It is unnecessary to go into details of the article with a view to justify that opinion. The conclusion of the learned Magistrate is clearly right. This case cannot for one moment be argued on the lofty level of a consideration of the right of comment by a journalist (if this man can be considered as a journalist) upon matters of public

importance. Of course it is obvious that every one has a right to comment upon the action of any particular individual or set of individuals. The only point is as to the way in which the comment must be put forward, and as Mr. Sinha himself points out, the article must be read as a whole to see if it is likely to bring the Government into hatred or contempt or is liable to excite disaffection. Now persons of the class of mind who read this paper and pay any attention to it will undoubtedly be led to believe by this article that such a policy on the part of the Government actually exists and any body coming to the conclusion that such a policy does exist would naturally both hate the Government and hold it in contempt and be disaffected towards it, and I have no doubt myself from the tone of the article that that was the intention of this foolish writer. Well, as I have said, the matter is quite trifling but it is a nuisance and must be put a stop to. The sentence of twelve months' simple imprisonment is not in the least severe and will give him time to make up his mind, perhaps to improve such journalistic talents as he possesses and apply them to some useful form of literature. Also the fine of Rs. 1,000 which I, should imagine, will for a considerable time deprive this paper of its profits, is a proper one. The appeal is dismissed.

Sd. Courtney Terrell.

Allanson J.—

I agree.

Patna: the 19th July, 1928.

Sd. H. Allanson.

THE BARH SATI CASE

The following is the full text of the judgment delivered by Courtney Terrell, C. J., and Adami J. in the sensational Barh Sati case, sentencing the accused to undergo heavy terms of imprisonment ranging from one to ten years:—

Courtney Terrell C. J. and Adami J.: This is the Judgment of the Court in a reference under section 307 of the Code of Criminal Procedure by the Sessions Judge of Patna. There are ten persons accused to which the reference relates and there were in trial with them six others. They were all charged under section 149 and 306 of the Indian Penal Code with being members of an unlawful assembly whose common object was to abet the suicide of Sampati Kuer at Barh and with abetting the woman's suicide. Six of the accused were acquitted by the Jury and the Session Judge sees no reason to dissent from their view. As to the others the Judge dissents from the verdict of the Jury and refers the case to the High Court.

The accused persons, to which the reference applies, consists of two separate groups and I may say that yesterday I took advantage of a visit of inspection to the jail to see these accused persons. I had them examined by the Medical Superintendent who gave me his views upon their ages and my inspection of the prisoners confirms the opinion which has been arrived at by him.

The first group is that which comes from Behna, a village two miles south of Barh. It consists of one Muralidhar Pande, a Brahmin who is the brother of the deceased girl. His age is 17 years. Then there is one Jagdeo Pande who is also a Brahmin and a distant relative of the deceased woman. His age is 20 years. Then there is one Raghu Singh, who is a Bhumihar Brahmin, who is no relation to the others. He is a religious enthusiast and is aged 40. There was also a Brahmin named Gaya Pande who was acquitted with the concurrence of the Judge.

The next group is that which comes from a village named Sartha twenty miles south-west of Barh, which consists of Vidya-sagar Pande, a Brahmin who is the brother of the deceased woman's deceased husband, whose age is 16, Lichman Pande whose age is 48, Sahdeo Pande whose age is 25 and Herdeo Pande aged 26 (these last two Sahdeo and Herdeo, are relatives). There is also Kesho Pande who is a Brahmin aged 42. Then there is a woman Mosst. Lakhia, a Kaharin who was the deceased woman's servant. Her age is 35.

There are thus 7 Pandey Brahmins, a Bhumihar Brahmin, a woman Kahar and a Dusadh and there were also a Brahmin and 4 Kahars or bearers who were acquitted by the Jury with the approval of the Judge.

The deceased woman Sampati Kuer was the daughter of one Kesho Pandey of Berhna who died ten or twelve years ago. At the time of her death in November last she was aged about twenty years. Ten or twelve years ago she was married to one Sidheshwar Pande of Sartha but she continued to live at her father's house. In August last Sidheshwar fell ill. Sampati went to his house to nurse him and she nursed him until his death on the 21st November last. It would appear that the marriage was never consummated. The young widow was a pious, gentle Hindu girl of high caste. She was pardanashin and was possessed of such rudiments of education as that condition permits. She had no father, she had no efficient male protection. Her only male relative, who was of age, was a man named Kuldip, her uncle, who has not appeared in these proceedings at all and would appear to take no interest in them, and she was left therefore with only the weak minded superstitious boy brother. What a victim she presented to those who were to profit by her death!

The story of the crime we are now investigating begins on the early morning of November 22nd when a party of persons who arrived late the night before were found resting in a shed in the compound of the Sub-divisional Officers's Court at Barh. This party carried with them a Khatoli on which rested the body of the deceased Sidheshwar. They were taking it to the burning ghat on the banks of the Ganges, about two miles further to the north. At 5 o'clock in the morning on the 22nd a Rajput constable Ramayan Singh found the party consisting of about 15 or 16 persons in all. He identified all the accused, save Raghu Singh, and the driver Ramautar, among

them. The corpse was lying on the Khatoli and sitting by the side of the corpse was the widow Sampati. The constable was told of the intention that the woman would become Sati. Knowing that this was contrary to law he went to the Police station about a mile away and half way on the journey to the ghat, and there he told the Writer Head Constable Nurul Haq of what he had seen. He and the Writer Head Constable and constable Mukh Lal Singh returned to the shed to expostulate with the woman and her companions. By that time it was getting light. The persons were all there and they were all identified and their names were taken. The woman was still sitting on the Khatoli and the three constables reasoned with them. They pointed out that the proposed Sati was unlawful but these men declined to listen. Then the Writer Head Constable fetched the treasury Jamadar, Mahabir Tewari, who was a Brahmin and the constable Lachmi Singh and they also further reasoned with the party, but the party refused to listen to reason. Then the head Daroga, Lalbehari Lal arrived. He joined in the attempts at persuasion and the police threatened to detain the body and prosecute the party. They said they would detain the body until it was putrid. Thereupon the poor, brave, weak-minded lady was convinced of the foolishness of the whole proceeding and got off the Khatoli and the corpse was sent off to the Ghat carried by the four Kahars and accompanied by all the Pandes, save Sampati's brother, Murlidhar, the youthful relation Jagdeo, and it appears also the man who was acquitted, Gaya Pande. The funeral party vanished along the bund road towards the Ghat. The lady was now left alone with her maid, her feeble-minded brother, Murlidhar and the youth Jagdeo and she was willing to go to Berhna. The men called an Ekka and the Ekka was conducted by the accused Ramautar Dusadh whose position in this case is peculiar and I shall have further occasion to refer to it. She thought, we have no doubt, that she was going back to her dead father's house and the police thought that they have saved the situation. They did not reckon on the malignant ingenuity of the Pandey's who had gone off with the body.

In a few minutes back came the miserable boy Vidyasagar, undoubtedly sent by the elder members of the party. The three youths got Sampati and her maid into the Ekka ostensibly to take her to Berhna. The Police followed with a gradually increasing crowd and crowd was shouting the familiar cry of 'Sati-mata-ki-jai'. Some 900 yards north-east from the shed in which the body had rested the

Bakhtiarpur Road is crossed by a road which leads from the bund road south-east to Berhna and at this point the Ekka should have turned down towards Berhna. But this would have spoiled the Pande's plan. So, leaving the corpse to pursue its unresisting way to the Ghat along the bund road, carried by the docile Kahar, they came down by the cross roads further north and joined the crowd and recaptured their victim. About a mile from the shed the bund road and the Bakhtiarpur road converge at the thana and here the crowd had increased until it numbered about four or five thousand persons and all the Pandes were present and close to the Ekka. Again the police endeavoured to reason with them. They consisted now of the Inspector, Harnaundan Singh, two Jamadars and 15 constables and they tried for half an hour to persuade Sampati to return to her home and the Pandes to allow her to return to her home. Sampati said she was about to become a true Sati, that is to say, she believed that when she reached the funeral pyre miraculous fire would appear to destroy her and the body of her husband on the pyre. That she believed in or had been told of the physical agony she was to endure, we not merely doubt but we disbelieve. However, the Pandes in pursuance of their scheme said that they would take her to Berhna and they succeeded in deceiving the police into the idea that it was their intention and Ramayan Singh and Mukhlal were told to escort the Ekka on to Berhna. Sampati, the maid and Sampati's brother Murlidhar were on the Ekka; Vidyasagar and the other six Pandes followed on foot. The driver led the Ekka, and the party now went south again retracing the steps. At about 400 or 500 yards from the thana it came to where the road has a fork back to the north-east to Gulab Bagh and the ghat, and here the Pandes intervened and forced the driver to lead it up the fork. The police were pushed aside. They felt that they were helpless against the Pandes and fanatical mob and the two policemen went back to the thana and informed the Inspector. The alarm bell was rung and the Inspector and the Writer Head Constable and 16 and 17 constables were hurriedly mobilised and they went to the ghat whither the scene now changes.

The body had arrived before the Pandes and the girl who was to be sacrificed. It was carried by the four Kahars and accompanied by the Bhumihar Brahmin, Raghu Singh, who was doubtless deferentially obeying his revered masters, the Pandes, and the Inspector and the town Jamadar Kedar Nath Pande tried to get Raghu Singh to burn the corpse before the rest of the party arrived. It was clear that he

was in the plot because he refused to do anything of the kind. When the Ekka arrived the widow alighted. She bathed in the Ganges and made her pathetic toilet with the assistance of the maid, supervised by Murlidhar and the old Pande Lachman. They held up the screen for her. Lachman took her ornaments, Lachman supervised the cutting of her nails and the dyeing of her feet. She seated herself on the pyre prepared by the three boys and by Lachman. Then Raghu and the young Pande Hardeo performed the easy and relatively unimportant duty of putting the corpse upon the pyre.

Now, note the situation. If the Pandes themselves set fire to the pyre they were under the observation of the police and they knew perfectly well that their necks would be in the hangmen's noose. Moreover, if they themselves set fire to the pyre there would have been no miracle of heaven-sent fire. All the merits would have belonged to Sampati alone and not to her religious assistance at the supernatural phenomenon. To satisfy the Pandes and their dupes, the crowd, fire must appear as though by magic. Moreover, the poor girl herself expected the fire to be miraculous and the Pandes were prepared for the emergency. It is true that her toilet was performed by Lakhia but it was supervised by Lachman and the boy Murlidhar or under his directions. When she took her seat her left hand was concealed in her draperies. She took the corpse on her lap and its head lay on her left thigh near that concealed hand. Did the poor girl know what was to happen? She only expected the divine fire to appear. A moment later flames burst from her clothing and the cause of those flames is no matter of surmise as we are asked to believe. We are not fools. Not for one moment at the ghat had she been left alone. She had been closely surrounded. The trick was simpler than any conjurer's trick at a country fair and it was the Pandes who performed it. At the torture of the flames the poor creature leapt from the fires and rushed into the river. Now the Pandes were in a very serious difficulty. If the woman were rescued the trick was revealed and the hangman's rope again dangled in front of them. They could not start the fire again; they could not repeat the trick. The apparatus was gone and therefore Sampati must drown. They threw her the corpse which slipped out of her grasp and went to the Ganges crocodiles but no such merciful fate attended Sampati. They shouted to her to drown herself. Some police put out in a boat and tried to rescue her. They were then threatened and told that they were not to stop her. She was told to drown herself.

However, with the assistance of the police she was ultimately helped ashore in a shocking condition. She went to lie down under a tree by a temple 60 paces away and then began that which was the first fruits for which the Pandes had been waiting.—a stream of coins began to flow which they greedily picked up. After some hours a doctor came. He tried to give the poor suffering woman an injection to relieve her agony; he was driven away. The police endeavoured to take her away to the hospital; they were driven away. For two days and two nights she lay there in agony. On the 24th the Sub-divisional Officer, who had been away on tour, arrived with his armed police and swept the rabble aside and took the poor girl to the jail. On the 25th her sufferings came to an end. We are told that on the banks of the Ganges there is a little shrine to perpetuate her memory.

What are the defences of these people? First, it is said that we should respect the verdict of the Jury because they were learned men. Learning connotes neither wisdom nor courage and, in our opinion, these jury men were deficient in both these qualities, the qualities, which are necessary to a jury, the qualities which are necessary to citizenship. We now turn to certain matters of law. Mr. Pugh rightly quoted from the judgment of Mr. Justice Macpherson in *Queen V. Sham Bagdi* (1873;—13. B. L. R. App. 19) which was quoted and followed in *Emperor V. Swarnamoyee Biswas* (L. L. R. 41 Cal. 621) and it is true that the verdict of a jury has more weight than the opinion of assessors and should not be set aside unless no sensible man could have arrived at their verdict, particularly in the case of a verdict of acquittal. In the light of this principle we approach the defences as offered. The first defence offered is a general defence of law, it is said that these people were expecting a miracle and there is no evidence to show that any one in particular fired the pyre, and with that state of mind the pyre having caught fire and the woman having been burned they cannot be convicted under section 107. It is difficult to treat this defence seriously, but the answer is that they are charged with assisting the woman in her acts to meet a voluntary death. The method of destruction resolved on by the suicide was fire and the method of ignition of the fire, whether miraculous, whether self-applied or whether applied by others is totally immaterial. The contention is not worthy of further consideration and we follow the judgment in the case of *Emperor Vs. Ram Dayal* (L. L. R. 36 All. 26) which is conclusive on this point.

On the facts, and the identity of the accused Mr. Pugh, on behalf of Vidyasagar, Lachman and Hardeo, all of the Sartha party, could offer no defence beyond the general observations above. Mr. Manohar Lal, on behalf of Kesho Pande and Sahdeo Pande, urged some points on the identification. Of these two, Sahdeo is an agnate of Hardeo as he himself admits and he comes from Sartha. The denial of his presence is supported by no evidence whatsoever. Kesho, says he, arrived after the burning of the body. Mr. Manohar Lal did not attempt to deny that both were at the ghat; indeed he says because they were there they were accused. On the question of mere probability they come from the same village of Sartha twenty miles away and there is no satisfactory reason except this incident to account for their presence. The constable Ramayan Singh (P. W. 5) indentified them at the shed as also did Mahabir Tewari (P. W. 14), the head constable of the treasury guard. Numerous witnesses identified them at the thana. Then followed some weak criticism to the effect that no mention is made of their names in the station diary on the 22nd. But it mentions none of the accused. Then it is said that there were discrepancies in the evidence of the Writer Head Constable as to whether he followed the Ekka from the shed the whole way to the thana. It is said that as these two men had been sent with the corpse they could not have joined the party with the Ekka which they undoubtedly did accompany to the thana. The answer is that there was a huge crowd and they had plenty of opportunity to join up by the two cross roads and the Writer Head Constable undoubtedly accompanied the Ekka in the final part of its journey to the thana. Sub-Inspector, Lal Behari Lal (P. W. 20) identified all of them and took their names at the ghat.

Then a whole list of observations was made to show that the entire story up to the incidents at the ghat was invented by the police. That is not worthy of one moment's attention. However lacking in judgment the police may have been in neglecting to take steps at an earlier stage which might have stopped this deplorable incident, not one word can be said against the evidence which they have given, which, in our opinion, was given with conspicuous honesty and courage and reflects credit on their service.

By the learned, moving and interesting address of Mr. Jayaswal, whose knowledge of Hinduism is unrivalled in this province and is acknowledged all over the world, we were reassured in our view that Sati has long been discarded by all pious Hindus with any pretence

to the respect of their fellows, and Mr. Nandkeolyar frankly described it as relic of brutal barbarism. We must now consider what punishment should be awarded to these people. I will first deal with the driver Ramautar Dushadh. His case requires special attention because his defence was gravely hampered. The main object perhaps—I can only speculate—of those who were responsible for financing the defence was to provide for the safety of those Pandes. This man was a Dusadh and perhaps of no particular account. He should have been separately defended but the provisions of a separate defence for him would have involved serious difficulty for the other accused persons, because his defence, if properly put—as, I shall indicate by the evidence—is that he was under the impression that he was called upon to drive the Ekka back to Berhna. The actual owner of the Ekka distinctly states in his evidence that he was approached by a party of Hindus, including Ramautar Dusadh, who said that they wished him to conduct a party to Berhna. For some reason he did not wish to do that and so he was thrust off his vehicle. Ramautar Dusadh seized his whip and he took the Ekka to the shed and we know that it was the intention of the party at that stage, the intention at any rate of the poor woman, to go to Berhna. He says himself in his examination that in the crowd a constable seized him, and told him to drive up to ghat. The last part of his story is not true but such part as is believable is entirely consistent with the evidence of one of the men who really owned Ekka. In our view Ramautar Dusadh believed that he was going to drive the Ekka to Berhna and he was compelled by the Pandes to drive to the ghat. It would have been difficult, and it was difficult, as I pointed out to Mr. Nandkeolyer, to set up that defence in view of the fact that his defence was conducted jointly with those who said that there was no plan to go to Berhna at all. As I say he should have been defended separately. It is right that he should be convicted because he should have refused, when he learned the real nature of the trick, to conduct the Ekka further. The justice of the case will be met by sentencing him to rigorous imprisonment for one year. The period of imprisonment already undergone by Ramautar will be included in this period of one year. As to the woman Lakhia her condition mentally is hopeless. She was entirely dominated by the situation, by her superstition, by her ignorance and it is conceivable that she believed and had been made to believe in this lie about the miraculous fire. The justice of her case will be met by sentencing her to rigorous imprisonment for one year. The period of imprisonment already undergone by Lakhia will be included in this period

of one year. As to the boys, Murlidhar and Vidyasagar, they are of an age when it is still possible that in better surrounding they may be freed from the grossness of the superstitions in which they were reared. We intend to protect them for a considerable period so that at the time when they arrive at an age when they can think for themselves they may become men and may discard these beliefs of savages. They will be sentenced to rigorous imprisonment for five years. As to Jagdeo he is an older youth and he should have exercised more intelligence. We believe, but we are not certain that he was in the plot also, but we consider that the justice of his case will be met by sentencing him to rigorous imprisonment for seven years. As to the Pandes, Lachuman, Hardeo, Sahdeo and Kesho and the Bhumihar Raghu Singh they are sentenced to rigorous imprisonment for ten years.

This is our judgment, firstly that such evil doers may be punished, secondly, that "an innocent girl may be avenged so far as we can avenge her, and, thirdly in order that those who will not learn by reason may be taught by fear. We can only punish the body. I do not pretend to know if there be any survival after this life is finished, but if so and if God be just and merciful in the sense that we very imperfectly understand Justice and mercy, then such of these men as survive their earthly punishment may well go on humble pilgrimage to Sampati's flower-decked shrine and with ashes on their heads cast themselves down and invoke her gentle spirit to intercede with the Almighty to save their guilty souls from everlasting damnation."

Patna,

Sd. Courteny Terrell,

The 13th June, 1928.

Sd. L. C. Adami

“UNCORROBORATED EVIDENCE OF AN APPROVER”

The following is the full text of the Judgment of the hon'ble the Chief Justice of the Patna High Court—the hon'ble Mr. Justice Macpherson concurring—in criminal Appeal No. 42 of 1928 (Ratan Dhanuk, Gobind Potdar and others versus King Emperor) against the decision of Mr. J. G. Shearer Additional Sessions Judge of Bbagalpur:—

Courtney Terrel Chief Justice :—This is a jail appeal and the eleven accused persons are not represented. We have, however, carefully scrutinised the judgment and we find that there is a point of law to be considered on behalf of six of the accused.

The eleven persons were tried before the Additional Sessions Judge at Bbagalpur and Assessors under section 396 of the Indian Penal Code. The dacoity in which they are said to have taken part was committed at the house of one Bachi Mandal on the evening of the 28th January 1927. The principal evidence against the accused persons and the only evidence as regards six of them is the testimony of an approver, one Lachmi Banter, who made a lengthy confession and gave evidence before the Court. As to five of the accused persons the evidence of the approver has been amply corroborated and the question arises whether the Sessions Judge rightly convicted the remaining six on the uncorroborated evidence of the approver. Section 134 of the Evidence Act lays down that no particular number of witnesses shall in any case be required for the proof of any fact and section 133 provides that “an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.” With the aid of the learned Government Advocate we have considered the effect of these sections which merely state in codified form the English Common Law rule of evidence and have examined numerous cases, English and Indian, with a view to ascertain the principles upon

which the Court applies these rules. In my opinion the principles may be stated as follows:—

- (a) The evidence of an approver does not differ from the evidence of any other witness save in one particular respect, namely,
- (b) that the evidence of an accomplice is regarded *ab initio* as open to grave suspicion. Accordingly,
- (c) if the suspicion which attaches to the evidence of an accomplice be not removed that evidence should not be acted upon unless corroborated in some material particular, and,
- (d) if the suspicion attaching to the accomplice's evidence be removed then that evidence may be acted upon even though uncorroborated and the guilt of the accused may be established upon that evidence alone.

In view of the rule according to which the evidence of an accomplice must be regarded with grave suspicion it is the practice, amounting almost to a rule of law, that a jury must be warned expressly of the danger in accepting the uncorroborated evidence of an accomplice and if the warning is omitted a conviction based upon such uncorroborated evidence must be set aside. And in the case where there are several accused corroboration is required with respect to the guilt of each individual accused, that is to say the fact that the evidence of the accomplice is corroborated as to certain of the accused does not amount to corroboration of that evidence as regards the guilt of the other accused. It must be remembered, however, that in dealing with the requirement as to corroboration one is *ex hypothesi* dealing with the case in which the presumption of suspicion attaching to the accomplice's evidence has not been removed. In cases where the tribunal is satisfied for good reason that the evidence of the accomplice is truthful the tribunal is under no obligation to demand corroboration.

Now in order to ascertain whether the evidence of the accomplice is truthful and therefore exempt from the requirement of corroboration the tribunal should apply intrinsic as well as extrinsic tests, but, if having applied these tests, it comes to the conclusion that the accomplice is a truthful person the accomplice then becomes an ordinary witness, section 134 becomes operative and the tribunal may proceed to convict upon his evidence alone. In any circumstance it

will be seen that the acceptance of the uncorroborated testimony of an accomplice must be an exceptional even and in India where special care is needed in scrutinising the evidence of witnesses in general and of accomplices in particular such a case will be even more exceptional.

To hold as a general principle that the evidence of an accomplice cannot be accepted without corroboration would be to ignore not only the precise words of section 133 but the whole course of established practice of which that section is a summarised statement. There is a tendency on the part of tribunals to imagine that the rules of evidence are of a transcendental character with some ulterior sanction other than the practical exigencies of the administration of justice. The rules of evidence are really nothing more than rules of practical convenience. It is true that there are some rules which have their origin in question of policy and in such cases the rule takes the form of a specific enactment by the legislature forbidding the Court to take into consideration certain specified matters but the uncorroborated evidence of an approver does not fall in these class and indeed in this country by section 133 is expressly excluded from that class. This question may be again viewed from another standpoint. Courts of Justice being concerned with practical decisions demand proof in conformity with practical standards. There is no such thing as an absolute proof of the existence of any past event. The standard of proof is fixed by the requirements of practical safety in the light of common experience, of action founded upon the state of belief induced by the evidence. To require invariable corroboration of an approver would create a standard of proof which might plunge the work of the Court and the detection of crime into futility especially in the case of the crime of dacoity where detection of the individuals concerned is a matter of great difficulty and the crime itself is very common and very grave.

The learned Sessions Judge, whose judgment we have carefully studied, together with the confession of the accomplice and his evidence given in open court, appears to have been fully aware of the principles I have stated above and to have applied them with special care. He examines the intrinsic character of the evidence in order to ascertain whether it exhibits any discrepancies. The story as told by the approver has an air of inherent probability. His account of the dacoity is told in great detail and is consistent throughout. The description of the site is accurate as is also the description of the

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house and rooms entered and is such as would be difficult for a person who had not seen them to acquire from others. Where the story is in conflict with the accounts given by other witnesses there are excellent reasons stated by the learned Judge for believing in every case of discrepancy that it is the other witness who is making a mistake or telling an untruth rather than the approver. There is no evidence of any enmity between the approver and other accused and his story was not in the least shaken by cross examination. There is moreover the fact of the corroboration of the approver's story with regard to the guilt of the five accused first mentioned. This fact while not amounting to corroboration of the approver's evidence as to the remaining six accused may nevertheless be properly taken into account as one of the considerations pointing to the conclusion that he is a witness of truth. There is a further confirmatory element of great importance. Until the approver was apprehended and gave his account the police had in mind a theory of the series of events which had taken place and of the persons concerned which the evidence of the approver failed to support. Had the approver been tutored by the police it is unlikely that the differences and omissions would not have been supplied by the police. Finally it must be remembered that the defence called no evidence to contradict the story told by the approver. The learned Additional Sessions Judge moreover saw the approver and heard him give evidence and obtained the impression from his demeanour that he ought to be believed. In my opinion the learned Sessions Judge in applying these intrinsic and extrinsic tests to the evidence of the approver was acting with that degree of caution required by the general practice of all British Courts and moreover observed with care the special conditions presented by Indian conditions and by the circumstances of this case. He has rightly accepted the evidence of the approver and the convictions and sentences should not be disturbed. The appeal must be dismissed.

Sd. Courtney Terrell.

Patna, the 17th July, 1928.

Macpherson. J.—I agree. No doubt in actual practice the uncorroborated testimony of an accomplice will generally be insufficient to bring home an offence to an accused person. The law on the point, however, as laid down in sections 4, 114, 133 and 134 of the Indian Evidence Act gives no countenance to the contention that the uncorroborated testimony of an accomplice is necessarily insufficient to

establish a charge against an accused. The high artificial value accorded by English law to the doctrine that an accomplice is unworthy of credit unless he be corroborated in material particulars, is not reproduced in that enactment. On the contrary, it is in section 114 to which it is appended as illustration (b) definitely designated a maxim, so that the Courts are subject to no technical rule on the subject. Indeed the Court is there enjoined in considering the applicability of such maxims to the particular case under decision to have regard to such facts as "are set out in examples cited in each of which it is at least suggested that the maxim is inapplicable. Of the nine presumptions of English law set out as illustrations and designated maxims illustration (b) is the only one to which more than one such example is appended. Manifestly therefore there is no conclusive presumption against the testimony of an accomplice even when uncorroborated in material particulars. Indeed so far from being enjoined to make such a presumption in all cases the Court is not even empowered to do so. In considering whether to apply or not to apply the maxim it is incumbent on the Court to exercise a judicial discretion and to have regard to the fact of the particular case.

Thereafter if it declines to make the presumption it will call for proof. If it makes the presumption then under section 4 it is a rebuttable presumption, that is, the Court will regard the 'fact' as proved unless and until it is disproved.

It is in practice that the difficulty arises. It is often met by simply treating the rebuttable presumption which it is discretionary to make, as conclusive and restricting the further enquiry to considering whether the testimony of the approver or other accomplice is corroborated in material particulars as to the occurrence and as to the participation therein of each individual accused. Such a course has not infrequently received approval in judicial expressions of opinion evoked by the peculiar circumstances of the case in which they arose and it doubtless secures the 'safety' at which it aims but it does so only by jettison of the statutory provisions of law and even by tilting the scales of Justice. And of course the discretion of the Judge cannot be fettered by such dicta. As was well said by Jenkins, C. J. in *An Attorney. In re* (41 Cal. 446)

"Not one jot or one tittle can be taken away from or added to the plain and express provisions of the Legislature by any decision of the Court; nor can this discretion vested by the section

in the Court by crystallized or restricted by any series of cases: it remains free untrammelled to be fairly exercised according to the exigencies of each case"

And again as was pointed out in *Gardner V Jay*, when a tribunal is invested by statute with a discretion without any indication of the grounds upon which the discretion is to be exercised, it is a mistake for a superior tribunal to lay down any rules with a view to indicating the particular grooves in which the discretion should run. Here the dicta would actually defeat the intention of the Legislature as definitely laid down in the provision cited. In fact not only is there no conclusive presumption but it is not even imperative to make a rebuttable presumption. There is only a maxim which the Court is authorised in its discretion to apply or not to apply. If the maxim is not applied by the Court the defence has the right to prove that it should be applied; if the maxim is applied the prosecution has the right to disprove its applicability in the circumstances of the particular case.

No doubt the same result will often be reached in a case by following the course mentioned as by following the terms of the statute. For instance, in the latter case the Court may demand rebutting evidence of great cogency, before regarding as 'disproved' the 'fact' which in its discretion it judges it right to 'presume' that is to say, to regard as proved subject to rebuttal or disproof by the prosecution. But there are certainly cases, as the qualifications, to illustration (b) to section 144 abundantly demonstrate, exceptional cases perhaps—in which the Court is warranted in declining to apply the maxim and will thereupon call for proof of the 'fact' embodied therein. The considerations to which the Court must have regard in determining whether to apply or not to apply the maxim certainly include the intrinsic character of the deposition of the accomplice as well as extrinsic circumstances which tend to establish that in important particulars where his testimony can be satisfactorily tested, he has shown himself a witness of truth. In such a case the Court clearly does not err in law in declining to apply the maxim.

On a perusal of the record and judgment before us I am satisfied that in this particular instance the learned Additional Sessions Judge was right in holding that the approver was a witness of truth in respect of all he stated, including his testimony as to the

complicity of the six appellants in respect of whom he is not corroborated in material particulars, in declining in the circumstances to apply the maxim in illustration (b) to section 114 and in the absence of any proof of the 'fact' set out in the maxim, in convicting the said appellants on the testimony of the approver. At the same time I desire to add that in a long experience of criminal cases in India I have found only a few other instances in which I inclined to convict or to maintain a conviction depending on such uncorroborated testimony.

Sd. T. S. Macpherson.

Patna the 17th July, 1928.

“HABITS OF THE PEOPLE”

The following is the judgment of Courtney Terrell, C. J.,—Adami, J., concurring,—in Criminal Appeal No. 23 of 1928 (Bhagwat Singh and Rup Narayan Singh, Appellants, versus King Emperor, Respondent):—

Courtney Terrell C. J.—The accused Bhagwat Singh and Rup Narain Singh have been convicted of culpable homicide under section 304 of the Indian Penal Code in respect of the death of a man Bikan Singh who appears to have died from drowning. They have been sentenced respectively to three years' rigorous imprisonment and a fine of Rs. 100 and to one year's rigorous imprisonment and fine of Rs. 100.

It appears that on the 1st August last year Bikau took his mare to graze in a field not far from his house. He hobbled her and returned home. He received news that she had been seen straying and he went out to look for her. His daughter Mussamat Piaria anticipated that some trouble might arise by reason of the mere grazing on the fields of neighbours and she went out and spoke to her kinsman Deo Singh and requested him to go out and see that no trouble occurred over the staying of this mare and she mentioned the fact that her father had gone out to look for the mare. The witness Deo Singh and another person named Kapil Singh are the principal witnesses for the prosecution and it is upon the reliability of their evidence that the conviction has been based.

In the first information report Deo Singh gave the following account of what he said he had observed:—He related first of all the incident of the deceased having left his mare for grazing in a field at a little distance from the village and he said that Bikau Singh's daughter came and said that some one had seized the mare and taken it away and that her father had run after it. He went on to say that he went in search of the mare and he met an individual who has given evidence, Ramdayal Ahir, and enquired if he had seen the mare and Ramdayal Ahir pointed it out in the distance. When he got at distance of about one rassi from where the mare was standing on or very close to a bandh

which runs on the margin of a ditch, on the further side of the ditch from the field he said he saw the two accused Bhagwat Singh whom he knew by name and his brother, whose name he did not know but could identify him, kicking and punching the deceased and that he cried out "what are you doing" and that Bhagwat Singh said that if he interfered he would be treated in the same way and that his entire field had been grazed by the straying mare. On reaching the place he said he found Bikan Singh lying unconscious and tried to bring him to his senses; that he hiccoughed twice and died. Thereupon he raised an alarm and the two accused ran away and left in the field their ploughs and bullocks. Then he went back to the village mounted on the mare and met the witness Kapil Singh and told him that he had seen Bhagwat Singh and his brother, the two accused, assaulting the deceased and Kapil Singh told him that he had seen the two accused taking the mare away. Kapil Singh went to the corpse and witness Deo Singh went to give information to the village. That was the account given by Deo Singh in the first information report. Ramdayal Ahir, who also gave evidence said before the Sessions Judge that on the morning in question he was ploughing and Deo came up to him and asked if he had seen the mare and Ramdayal pointed it out, in the distance and that Deo then turned away and went after the mare, so that the story up to that point is amply confirmed. In his evidence before the Sessions Judge Deo gave a somewhat different account of the matter which is really a more elaborated account and in that account he again repeats the story which I have related about the straying of the mare, his information of the fact from the deceased's daughter and he gives this account of what he saw of the assault by the accused upon the deceased. He said that he saw the accused beating the deceased with their fists and then he saw Bhagwat Singh push the deceased's head under water. He arrived upon the scene and Bhagwat Singh and he lifted the body out of the water and made attempts to restore the injured man but without success. He repeats again the story that the deceased hiccoughed and died and he says that the other accused Rup Narain was standing by and trembling. He then goes on to say that the two accused also ran away and left their ploughs and bullocks in the khaf close to the bank and he repeats again the story that on his way back on the back of mare he met Kapil Singh to whom he told all that had happened.

It is true that between the first information and the account that he gave in evidence he has elaborated the story but in my view the elaborations do not differ in material respects nor in any important respect. It is true that in his evidence before the Sessions Judge he relates the incident of the pushing of the head under water and he omits that statement in his first information report and on that discrepancy between the two statements Mr. Varma has placed great reliance as indicating that the witness was unworthy of credence. Deo accompanied the body to the thana and also identified the body at the postmortem examination but he does not appear to have been actually present at the dissection of the body and he seems to have had no means of learning as a result of the postmortem examination of the discovery that the deceased actually died from drowning until a very considerable time afterwards and before he had time to ascertain the result of the postmortem examination he had already related the fact that the deceased died from drowning to many people. It is not surprising in my view that this man should merely have in his mind at the time when he gave the first information that the important part of the physical violence done to the deceased was in the blows with the fists. He was necessarily in a somewhat agitated frame of mind but the story he gives of the pushing of the head under water, holding the deceased down and then the attempts to restore him, ring true. It is perfectly clear that the mere blows which were given with fists on the body of the deceased could not have brought about his death by themselves because they were blows of a character which apparently left no serious trace upon the body as appeared on examination after death.

The conduct of the accused in leaving their bullocks and ploughs in the field at the time of the occurrence, making no attempt to recover them and running away and not yielding to custody until a considerable time after the occurrence to my mind indicates clearly that these men knew that Bikan was dead as the result of their attack and they could not have believed that his death was due to merely striking him with their fists. To my mind the evidence clearly shows that in as much as he undoubtedly met his death by drowning they must have known that fact and must have known that it was no motive for leaving their ploughs and bullocks and running away and keeping out of custody for some days.

The point made by Mr. Varma in his very careful address to us were first of all that the evidence of the eye witnesses and of Deo in

particular was unreliable first on account of the discrepancies between the story told in his first information report and the deposition before the committing magistrate and in his evidence before the Sessions Judge, and further he stated that the witness's evidence should be regarded with great suspicion because on a former occasion some five and twenty years ago this witness had been convicted of giving false evidence but it appears from what we know of that former case that it was not a case of any great magnitude and having regard to the habits of the people in this particular part of the world where the giving of false evidence, however, deplorable it may be, is not considered an offence which is fatal to a man's reputation to say the least of it, I do not think that much importance need be placed on that fact.

Then Mr. Varma said that the deceased may have met his death in this way. He says that there is some evidence that the deceased suffered from epilepsy and that being the case he may have fallen into the water in an epileptic fit and got drowned. The evidence of the deceased having suffered from epilepsy is minute to a degree. It naturally of course would not be revealed by the postmortem examination and one cannot exclude it altogether as a remote possibility although the probabilities are strongly against it but in our view the evidence that the deceased met his death in the way described by the prosecution outweighs probability to an almost conclusive degree, the possibility that he met his death in the way suggested by Mr. Varma.

As to the second accused Rup Narain Mr. Varma contends that this particular man cannot be held to be guilty under section 304 read by the light of section 34 because he merely was present, that he merely had the intention of indulging in a relatively harmless assault upon the deceased and that there is no evidence to show that he actually took part in holding the deceased under water. The answer to that contention is, to my mind, first of all, that to drown a man takes an appreciable period of time. It may not be long; it may not even exceed one minute but at any rate it takes quite an appreciable period of time and there was ample time for Rup Narain to interfere with his companion in carrying out the attack in the way in which it developed by pushing him under water. By section 33 of the Indian Penal Code an act includes an omission and that consideration was pointed out by Lord Sumner in the famous case of Barendra Kumar Ghosh versus Emperor (I. L. R. 52 Cal. 197). If a man joins with another to assault a third even though the original intention may

be merely to inflict relatively harmless injuries and he sees his companion in a course of action which may reasonably be expected to bring about the death of the deceased and takes no steps to interfere with that action or to assist the deceased such an act is an act of omission which to my mind renders him liable under the section. Therefore, in my view, both the accused have been rightly convicted and having regard to the grave results the sentences do not seem to me to be excessive. After all, it should be apparent to any person of however low a grade of intelligence that to hold an elderly man's head under water for any time longer than is required to inflict a mere ducking is liable to bring about the death of the man. The sentence therefore seems to me to be proper in the circumstances and in my view the convictions and the sentence should be upheld.

Sd. Courtney Terrell.

Adami J.— I agree.

Sd. L. C. Adami.

16th May 1928.

THE TRIAL

PROCEEDINGS IN COURT

Never perhaps had such a unique spectacle been witnessed in the Patna High Court ever since its establishment as the one on the occasion of the memorable trial that opened on Monday last the 13th August 1928, before a Full Bench, consisting of the Hon'ble the Chief Justice, Mr. Courteny Terrel, and Justices Adami, Ross, Kulwant Sahay and Fazl Ali. Mr. Murli Manohar Prasad, Editor, the "Searchlight,"; the Behar Journals Ltd., Mr. Ambikakanta Sinha, Manager of the Searchlight and Maulana Mazharul Haque, Babu Rajendra Prasad, Babu Braj Kishore Prasad, Babu Anant Prasad, the hon'ble Babu Anugrah Narayan Sinha, Babu Nirsu Narayan Sinha, M. L. C., Babu Baldeva Sahay, M. L. C., Babu Shambhu Saran Varma, Advocate, Patna High Court, Khan Bahadur Sharfaraz Hussain Khan, M. L. A., Sjt. Deep Narain Sinha, Babu Banarsi Prasad Jhunjhunwala, Rai Brajraj Krishna, Mr. H. L. Nandkeolyar, Barrister-at-law, Pandit Bhuvaneshwar Misra, Vakil, Darbhanga, and Babu Srikrishna Singh, M. L. C., Leader, Congress Party in the local Council were called upon to show cause why they should not be committed or otherwise dealt with for contempt of court for publishing certain articles in the issue of the "Searchlight" dated June 24th, July 18th, July 20th, July 22nd, July 29th and August 5th criticising judgments of the Chief Justice in Barh Sati Case and "Mahabir" Sedition case. (for which see pages 1 to 33). Long before the proceedings of the Court commenced people had begun to pour in large numbers from all quarters with the result that by 9-30 a. m. the spacious Court Room of the Chief Justice was literally packed to suffocation. Special Police arrangement had been made to control the crowd and a very large number of people had either to go away or had to keep waiting outside for sheer want of room. In fact, the

case created such a great sensation throughout the province, that a considerable number of people had come from the neighbouring districts and towns with the sole purpose of witnessing this sensational trial. Some of the best legal talents from Allahabad and Calcutta, were arrayed on the occasion. Pandit Motilal Nehru and Sir Tej Bahadur Sapru appeared for the Editor and Printer—Mr. Murli Manohar Prasad; Mr. Sarat Chandra Bose of Calcutta represented Mr. H. L. Nandkeolyar, Babu Shambhu Saran Varma, Babu Nirsu Narayan Sinha, Babu Anugrah Narain Sinha, and others while Mr. P. K. Sen appeared for Mr. Ambikakanta Sinha, Manager. They were assisted by a host of lawyers of the local Bar, some of whom were Messrs. C. C. Das, A. Sen, S. A. Aziz, S. N. Basu, Mehdi Imam, S. P. Varma, S. A. Sami, Shah Neamatullah, S. A. Manzar, Sushil Madhav Mallick, Khurshaid Hasnain, Shiveshwar Dayal, D. L. Nandkeolyar, S. N. Bose, Ragho Saran Lal, Satyadeo Sahay, Aditya Nārain Lal, Rai T. N. Sahay, J. C. Sinha, S. R. Sen Gupta, B. K. Prasad, Navadip Chandra Ghosh, K. N. Lal, Kameshwar Dayal, Jadubans Sahay, P. P. Varma, Bindhyachal Prasad Varma, A. K. Roy, N. C. Roy, M. Prasad G. P. Sahi, B. P. Sinha, C. P. Sinha D. N. Sarkar, Nitai Chandra Ghosh, K. N. Varma, B. N. Lal, B. P. Jamuar, S. N. Sahay, Bepin Behari Saran and others. Sir Sultan Ahmad appeared for the Crown. At about quarter to eleven the Chief Justice followed by Justices Adami, Ross, Kulwant Sahay and Fazle Ali entered the Court, and took their seats and the proceedings commenced.

Sir S. Ahmad—I appear on behalf of the Crown.

C. J.—Sir Sultan Ahmad, I shall ask you to present the case shortly in support of the rule and then it will be open to those who appear for the other parties to make out their cases. We shall hear the case of Murli Manohar Prasad who is described as Editor and Printer first.

Pandit Motilal Nehru—I and my friend Sir Tej Bahadur Sapru and Mr. Mehdi Imam appear for Murli Manohar Prasad.

Mr. Bose—I appear for Messrs. Sambhu Saran, Baldeva Sabai, Anugrah Narain Sinha, Nirsu Narain Sinha, Brijraj Krishna, Bhubaneshwar Misra, H. L. Nandkeolyar, Sri Krishna Sinha and Sarfraz Hussain Khan.

Mr. P. K. Sen—I appear for Ambikakanta Sinha Manager of the office of the Behar Journals Ltd. with Messers C. C. Das, A. T. Sen. and S. N. Basu,

Pandit Motilal Nehru—My Lords, before my friend opens the case under your directions, I should, with your permission, like to raise a point of a preliminary character—a point which concerns the jurisdiction of this Hon'ble Bench. Stated briefly, the point is this that the rule was issued by you the Chief Justice and Mr. Justice Fazl Ali. My point is that the rule should have been issued after a meeting of the full Court. This is a case of contempt of the Hon'ble the High Court. The High Court is constituted under the Letters Patent and under the Letters Patent it consists of the Chief Justice and a certain number of Judges. So far as the Letters Patent and the Government of India Act are concerned, they give the power to the Court to make its own rules as to the distribution of work and as to what cases should be triable by a single Judge and what cases by Divisional Benches and so on. In fact the constitution of the Benches, under the Government of India Act, lies entirely in the hands of the Chief Justice. The business of the several jurisdictions of the Court can be thus managed according to rules, but apart from those rules, if no rules have been made, the High Court can only act as one, namely, all the Judges doing the business, whether it is criminal or civil. But for the business and the discharge of the duties of the Court the law has given you the right to make rules and under these rules you can make arrangements for the disposal of the work. I find that there is nothing in any of the rules that have been framed in this Court to give jurisdiction to a Bench of two judges to issue a rule of this character.

Chief Justice—It has always been done. It was done in Calcutta in Taylor's case and in fact in nearly every case it has been done. A single judge has this power.

Pandit Motilal Nehru—My submission is this. The point was raised only in one case and that is the case of the 'Amrita Bazar Patrika.' It was raised by Mr. Jackson in a rather peculiar way in the argument and not at the commencement of the proceedings. There the Chief Justice intimated to Mr. Jackson that the rule had actually been issued in consultation with all the Judges of the Court and of course nothing further was done. Apart from that, I am not aware that the point was definitely taken in any special case and definitely made the subject of a ruling. What I submit is that it is not a mere technical objection. It is a very serious matter for my client and for the public and even for the High Court, because I cannot, in a proceeding like this, draw

any distinction. On the one hand the honour and dignity of the Court is in your keeping, so also is the right of the public in your keeping.

Chief Justice—Do you disagree with the view that the rule, having been issued, it may be brought before any Bench appointed by the Chief Justice.

Pandit Motilal—That may be because under the Act the Chief Justice has the power to constitute Benches for disposal of business but I submit the rule could not have been issued by you and Mr. Justice Fazl Ali alone or the Chief Justice alone.

Chief Justice—What is the difference then between the practice here and the practice in the Court of King's Bench. I am very familiar with the practice in the Court of King's Bench and invariably the rule is applied for in Chambers before a single judge under the inherent jurisdiction of the court.

Pandit Motilal—I am extremely doubtful if this Court stands on the same footing as King's Bench. I submit that you will look at the consequences, if my submission is true that this rule should have been issued by the whole Court.

Chief Justice—Supposing one judge dissented, what happens?

Pandit Motilal—The majority would carry the day, I suppose. But you will see that it is one thing for two learned Judges of the Court to make up their minds that this is a case in which a rule should be issued and it is quite a different thing for all the judges to apply their judicial minds in the question whether it is a proper case to issue a rule.

Chief Justice—Apparently you mean that it requires the whole Court to issue the rule but only one Judge to hear it.

Pandit Motilal—We are landed into that, but that is because the Court has framed no rules on the subject.

Chief Justice—There are no rules that I know of dealing with contempt at all.

Pandit Motilal—But there should be. It is a question of jurisdiction. For every jurisdiction must be derived by some Act of Parliament or.....

Chief Justice—Do you know of any case in any of the Presidency High Courts or Provincial High Courts, such as Allahabad or Lahore,

where the rule has been issued by the entire Court or any of the Colonial Courts.

Pandit Motilal—I do not know. The difficulty is that we have not got the rules of those Courts before us.

Chief Justice—There are no rules dealing with this matter in the Court of King's Bench.

Pandit Motilal—That may be. But there it is an old established jurisdiction. The same thing cannot be said of the High Courts in India. They have come into existence by special Letters Patent constituting them as Courts of Record. As Courts of Record they certainly have certain inherent powers, but when it comes to the question of exercising those inherent powers then the law leaves it, no doubt, in your hands to make your own rules and if there had been a rule in the rules of the Court to the effect that a rule of this kind may be issued by a Division Bench then I have nothing to say. But I trace the jurisdiction from the fountain head, that is the Letters Patent.

Chief Justice:—Supposing two Judges are away on circuit, is it necessary to await their return? Supposing there is nothing in the rules, but two of the judges are away on circuit. Must the judge to whom the application is made await for the return of those judges before he deals with the issue of the rule.

Pandit Motilal—Yes, if he has no jurisdiction.

Chief Justice—In the absence of the entire strength of the judiciary, your argument is that he has no jurisdiction.

Pandit Motilal—The Letters Patent permits you to make your own rules and in these rules you have provided for different classes of business, civil and criminal.

Chief Justice—Supposing this rule had been applied for on the application of any person and supposing the application had been made to me, could I have directed that application to be heard by a Court constituted of myself and Mr. Justice Fazl Ali. It is necessary for your argument to say that.

Fazal Ali J.—It has been held that contempt is in the nature of criminal proceedings. If that is so, and the Chief Justice and myself constituted the Criminal Bench of this Court, could we not take cognizance of this matter and issue a rule sitting as a Criminal Bench.

Pandit Motilal—The whole point is this. Is it a matter which even a Criminal Bench could take cognizance of? This omission results in a great deal of inconvenience to my client.

Chief Justice—What is the inconvenience?

Pandit Motilal—It is quite possible that he may not have been here, at all, if all the judges had been consulted. The Criminal Bench has to do a certain class of work. Your rules specify that it shall deal with criminal appeals, criminal revisions and so on. You do not say there is any rule which will give jurisdiction to any particular bench and when there is no such rule I submit the residuary jurisdiction still vests in the whole Court.

Chief Justice—As far as bringing a person before the Court, is concerned, that power can be exercised by any single judge and it has invariably been exercised. I am not aware of any decision or of any case where this point has even been raised before.

Pandit Motilal—That does not preclude me from doing so. I am entitled to have your ruling. The whole jurisdiction of this Court is derived from the Letters Patent. The Letters Patent gives power to the Court to frame its own rules and so does the Government of India Act as regards the actual business of the Court, and as to what class of business it should do. Where you have provided for a thing like this in your rules, it is completely covered, but where there is an omission or it is deliberately done, you have to make some rule before you can act. before a part of the Court can act for what the whole Court is required to do under the Letters Patent. I submit, it makes a great deal of difference because this rule may never have been issued, if the matter had been considered by the full court.

MR. S. C. BOSE.

Mr. S. C. Bose.—On behalf of the respondents, I desire to add a few words. I take the same preliminary objection. The point was in fact taken in the "Amrita Bazar Patrika" case and that point was disposed of by the Chief Justice in his judgment who said that the rule had been issued with the concurrence of the Full Court. I desire to draw your attention to just one passage in that judgment—26 C. L. J. 459. Before I place that case, may I ask you to approach the matter from this point of view. It is not a matter of mere form but of vital importance and I submit, it concerns at least one question which the accused have the right to know, i. e., who their accusers are?

Chief Justice—That point has been completely overruled.

Mr. Bose—So far as the Indian Courts are concerned, I submit, it is, a good law. I submit on the authority of 26 Cal. L. J. that though the prosecutors are the Judges of the Court, still they are prosecutors nonetheless. At p. 466 you will find the argument of Mr. Jackson who appeared for one of the respondents in this matter. (Reads). The question raised in that Court by Mr. Jackson was whether it was a civil matter or a criminal matter. Here it is taken as a criminal matter. (Reads) The learned Chief Justice did answer the question.

Chief Justice—Did he state that he consulted every judge.

Mr. Bose—Yes and that is stated not only by the Chief Justice but by Mr. Justice Mukherji. In the judgment of Mr. Justices Mukherji at p. 532 the point is clearly made out. This point was considered in a previous case to which I would draw your attention next. The case is in 41. Cal. at p. 234. There the reasons why the names of the prosecutors should be disclosed have been stated by Mr. Justice Mukharji with great clearness. May I remind you of the facts. The Advocate General of the Calcutta High Court had applied for a rule appearing, as he said, for the Legal Remembrancer. The Court before whom he applied for the rule said that the Legal Remembrancer has no jurisdiction in the matter. Thereupon the learned Advocate General said: "Well I appear for the Governor-in-Council and I apply for a rule. It was a question of *locus standi* and not jurisdiction. The learned Judges gave him leave to amend his petition, but at the time when the matter came up before the Full Court the amendment had not been made and the point was taken that the Legal Remembrancer had no authority to apply for the rule at all. If I may remind you, in the case of Surendra Nath Banerjee it was the Chief Justice and the Judges and not the Chief Justice and another judge.

Chief Justice—Here, too, it is the Chief Justice and the judges of this Court.

Mr. Bose—That is what I am asking—whether it is a rule issued by a Division Bench or by the whole Court. Appearing on behalf of the accused, I want to know my position.

Chief Justice:—There are no applicants in this matter. There are no prosecutors. It is the inherent jurisdiction of the Court as a Court of Record which the Court is exercising as regards the issue of a rule by a single judge. As regards the hearing of the rule, it should be by such judges as the Chief Justice appoints to hear it.

Mr. Bose—It is too late in the day, I submit, to say that there are no prosecutors in this case. Following certain decisions on the point, the Indian Courts have all along held that the Court acts both as prosecutors and judges. If that be so, I should like to know whether the Full Court are my prosecutors.

Chief Justice—That question was addressed to the Chief Justice in the case you mentioned who disallowed the question.

Mr. Bose—No doubt the Chief Justice insisted on his rights, but he did answer the question and the judgment answers that question. If the question had not been answered, the point of jurisdiction would not have been raised.

Chief Justice: You can take it that I issued the rule in consultation with some of the other judges of the Court.

Mr. Bose—In that case, I submit, this Court has no jurisdiction to proceed. I do not think that this Court has inherited any of the common Law jurisdictions of the Courts of England. Under the Letters Patent, there is no jurisdiction by which one of the members of the Court can issue a rule affecting the honour and dignity of the Court. It is a proceeding to be taken by Full Court. It is the honour and dignity of the whole Court which is concerned and therefore, I submit, if any proceedings can be taken at all, it must be by the full court or not at all. In the case possibly of which you are thinking,—Tayler's case,—the point was not taken but in the "Amrita Bazar Patrika" case the point was taken.

Chief Justice—Every case has been dealt with in this way.

Mr. Bose—I do not doubt that you have gone through all the cases but I submit with confidence that so far as the Indian Courts are concerned you will not be able to find one uniform practice.

Chief Justice—What is the difference between Indian Courts of Record and any other Court of Record?

Mr. Bose—This court derives its authority from the Letters Patent. I submit with respect that you cannot say on the cases that there is any procedure in this Court by which one judge or two judges can issue a Rule in a matter like this. If that had been the procedure, it would not have been necessary for Mr. Justice Mukherji to say that the rule had been issued in consultation with the other judges.

C. J.—It was not necessary.

Mr. Bose—Lastly, under the Letters Patent I find no authority given to any judge or two judges or three judges to take proceedings

of this nature and therefore we must, if at all, fall back on the inherent jurisdiction of the court and in a matter like this in the course of my argument on another branch of the subject, I will discuss as to whether articles written after the trial of a case amount to contempt. The cases of which you are thinking are cases where the libel or contempt is committed while the case is pending.

Chief Justice—That practice has been followed uniformly whether in the case of libels after the termination of the litigation or before. The practice has always been for an application to be made for a rule or for the rule to be issued by the court itself and the rule is issued by one or two or three Judges of that court. I remember the case of *Q. Vs. Gray* quite well, that jurisdiction does exist.

Mr. Bose—As regards Gray's case, I should like to say something later.

Chief Justice—That has been followed by all the Indian courts.

Mr. Bose—That has been referred to only for the purpose of showing what is or what is not contempt. It has never been referred to on a point of procedure.

Chief Justice—Your point is this, that if there are sixteen judges of the Court or twenty judges the rule cannot be issued until they have all been consulted. Your argument also involves this anomalous consideration that although all the judges must be consulted yet the rule may be heard by a single judge.

Mr. Bose—It is because of an express power. But for that clause I would not have raised that point.

Chief Justice—I think we understand your point.

SIR SULTAN AHMAD ON POINT OF JURISDICTION

Sir S. Ahmad—Objection has been taken that two judges of this Court cannot legally issue a rule for contempt. The argument, as I understand it, is that unless the Full Court considered the articles in question no rule could have been issued. I submit with great respect that there seems to be some confusion on the part of my learned friends on the other side with respect to the meaning of the word "Court". My friends seem to be under the impression that unless the nine judges sat together and considered the point it would not be a point considered by the court. It is my submission that under the law of the Letters Patent you have been constituted a Court of Record. Every single judge therefore sitting in Court is a Court of Record. Therefore if

the power to issue a rule for contempt is conferred upon a Court of Record, then I submit, that that power has certainly been conferred upon every single judge of this Court. It is, I submit, with great respect, futile to contend for a point which did not strike anybody before. Your powers whether sitting singly or as a Division Bench are those of a Court of Record. They have nothing to do with the rules framed by you. You have got inherent powers to issue a rule of this character. Now, what has happened in this particular case? Your attention was drawn to certain articles. You sitting as a Court of Record considered that the articles in question were such as required explanation from those who either wrote them or were responsible for their publication. That opportunity has been given to the Editor and the other persons concerned and my friends are now showing cause. I submit you were perfectly entitled to issue the rule. You will find no other case in India without exception where the point was ever seriously taken. As a matter of fact, in every single case you will find that either the rule was issued by a single judge or by a bench of two judges.

Chief Justice—That is my impression on reading all the cases.

Sir S. Ahmad—In every single case from 1867 up to 1927 we find that the rule was issued either by a single judge or by a Division Bench and I submit it can not be otherwise, unless you hold that under the Letters Patent, when you have been declared a Court of Record that a Division Bench or a single judge of this Court is not to exercise the powers of a Court of Record. There is, however, no authority for such a proposition. I, therefore, submit that the ground taken by my learned friend will not appeal to you.

SIR TEJ BAHADUR SAPRU

Sir T. B. Sapru—I will give a very brief reply to the argument raised by the other side. Nobody denies that you are a Court of Record. So far as that fact is concerned, that is concluded by a provision in the Government of India Act and therefore it would be useless for me to raise any point with regard to that. Now, as a High Court, your jurisdiction may be divided into certain branches. That is to be found in the Letters Patent. You have got civil jurisdiction, criminal jurisdiction, miscellaneous jurisdiction etc. The Letters Patent themselves and the Government of India Act give you the power to frame certain rules regulating your own work and procedure. It is entirely

open to you to provide that the matter which is at the present moment cognizable by a single judge should be tried by two or three judges. In fact, you will find that so far as the rules, practice and procedure of the various High Courts are concerned, they vary on certain important matters. Therefore, unless you provide for the exercise of jurisdiction according to the rules, which are to be framed under the Letters Patent or the Government of India Act, I submit that the jurisdiction would have to be exercised by the whole court. That might paralyse the work of the whole court, and it is for that reason that the Government of India Act says that the High Court will frame rules. Similarly, the Letters Patent says you may frame rules. In order to obviate difficulties of that character the High Courts have framed rules. Your rules provide for the class of cases which will be heard by a single judge and by a Division Bench. If you will look at the rules of your Court you will find in Chapter II Rule I that it provides for the jurisdiction of a single judge. Similarly there are rules providing for the jurisdiction of the two judges. But you have not provided for the manner in which the jurisdiction which is now said to be inherent jurisdiction is to be exercised.

Chief Justice—Has any Court done that?

Sir T. B. Sapru—So far as other Courts are concerned, we have not, in the first place, got before us the rules of other Courts.

Chief Justice—Do you know of any rules?

Sir T. B. Sapru—So far as the Allahabad High Court is concerned, I took out a writ for contempt in a case in which a particular individual libelled the Chief Justice and Mr. Justice Lindsay... What I do submit is this that if the Court has not laid down any rules to guide itself in regard to the manner in which that jurisdiction is to be exercised, then the residuary jurisdiction can be exercised by the entire Court and not by any Court. I can understand part of the objection that this may lead to disastrous results. But I say that if there is contempt committed in the presence of a judge he can punish him then and there under the Code of Criminal Procedure.

Chief Justice—Can he not fall back on his powers as a Court of Record.

Sir Tej Bahadur Sapru—If he does then he must exercise those powers according to the rules framed and if there are no rules framed...

Chief Justice—There is no express obligation to frame rules. We may frame them. There is nothing in this point at all.

Sir Tej Bahadur Sapru—If you have not framed a rule, then I submit you can exercise your jurisdiction as a corporate body, because that jurisdiction belongs to the Court and not to an individual judge or a Division Bench sitting by itself. Merely providing for the trial of certain classes of cases specified there by a single judge or division bench will not necessarily include the issuing of a rule or the trial of a case in contempt. I appeal to your experience. You have not got anything like the provisions of the Government of India Act or the Letters Patent regulating the practice of the King's Bench. That is grounded in history. I submit it is not correct to say that the Patna High Court, or for the matter of that, any other High Court has inherited jurisdiction from the King's Bench.

Chief Justice—That point does not arise at all.

Sir Tej Bahadur Sapru—There is the statutory provision which says the High Court is a Court of Record. It does not go on to say that being a Court of Record it must exercise its jurisdiction in the same manner in which the King's Bench does. The machinery may be different, the procedure may be different, and all that may be prescribed by rules. The analogy, I submit, of the King's Bench will not help us in solving this question. If there are no rules, however, inconvenient it is to the Court, whatever may be the consequences, I submit the question, being one of jurisdiction and one of substance and not of form, the entire Court must assemble and consider the question and must apply its mind as to whether a man should be brought up before it to answer a charge. I submit, so far as the rules are concerned, there are none and so far as the inherent jurisdiction is concerned, while we concede its existence it does not necessarily imply or carry with it an admission that that inherent jurisdiction can be exercised by one or more judges sitting singly or in a division bench, unless there are any rules on that particular point.

C. J.—This point will be dealt with in our final judgment. (To Pandit Motilal Nehru) I thought it would be convenient to you and your friends and the people you represent that the learned Government Advocate should indicate to you the gravamen of the charge quite shortly and then you will have the opportunity first of all on behalf of the Editor and Printer to furnish your observations. Then after you have finished your observations, it will be for the Government Advocate to make such observations as he wishes to make in extenso and, if necessary, you will be called upon to reply.

GRAVAMEN OF THE CHARGE

SIR SULTAN AHMAD

Sir S. Ahmad—I will take the articles in chronological order. I will take the issue of the 24th June. The article in question there is headed "The Sati case". I may tell you that so far as this particular article is concerned there is nothing in it which by itself may be termed as leading to contempt of court. But there are certain passages in it which may lead to the correct appreciation of the articles which follow and in view of that alone I shall just draw your attention to the last paragraph of that article and give an indication to my friends that I shall make use of this passage later on in order to show that the subsequent articles were written not in haste but after full consideration.

"Now, we know that as the law stands at present *sati*, whether voluntary, or involuntary, is a crime"

Then again "That this seems to have been very probably the case is more than apparent from the nature and the terms of the finding in respect of the accused Lakhia, Ramautar and also Jagdeo. We propose to deal with this aspect of the case in a subsequent issue." This shows that the judgment given by you in that case had been fully considered and we are promised a review of the same in subsequent issues.

Then we come to the next article dated the 18th July.

"Now, the most curious part of the judgment of the High Court is that it has convicted the accused persons of an offence with which they were not charged." It will be my endeavour to prove that this statement is not only false but is a mischievous sentence calculated to bring the Court into contempt. Again the same thing is repeated: "But the serious part of the judgment is that, in the view of the Chief Justice, the widow was murdered by the Pandey's, and that they have been convicted of an offence with which they were not charged.

"But there are graver matters still in the judgment of the Chief Justice. One of the accused was Jagdeo. With reference to him the Chief Justice says as follows: 'We believe, but we are not certain, that he was in this plot; but we consider that the Justice of this case will be met by sentencing him to rigorous imprisonment for seven years.' We are not lawyers but we have always understood that it is

part of the British system of criminal jurisprudence to base conviction not on mere belief but on reasonable certainty." Here the article suggests that you convicted this accused person, though you, were not certain of his guilt. The words used here were "in this plot" but this has been taken away from the whole context which has got nothing to do with the offence of abetment of Sati but has got to do with another aspect of the case which follows. The next passage is in the next paragraph. "Having regard to this finding, one would expect that acquittal would follow as a matter of course".

Kulwant Sahay J.—What do you say about the last passage that you read? Is that a misrepresentation or what?

Sir S. Ahmad—I submit that you will have to read the article in question with the judgment and I will show that it has been taken away just from the middle only to discredit the judgment.

Chief Justice—I may just tell you about that case. A certain number of persons were accused of abetting the suicide of this woman. We found that a certain number of them were undoubtedly guilty although they were not charged with conspiracy to murder. With regard to one of the persons we held that we were not sure that he was in the conspiracy but that he was undoubtedly guilty of the abetment of the suicide. There was not a doubt as to whether he was guilty of the offence charged but we doubted whether he was in the plot to murder this woman. The direct implication there is that this man was convicted although we were not certain of his guilt.

Sir S. Ahmad—Yes. It is made clearer later on. We come to the next article dated the 22nd July. It reads: "The case was tried by two judges who were unfamiliar with Indian social life" etc. This is false. At least one of the judges has been in this country for 30 years.

"But what we should have expected was that these two distinguished judges would not fail to see that the judgment which they have delivered offends against the first principle of jurisprudence. We maintain that the High Court has in effect found that the verdict of the Jury was not unreasonable one, since the High Court has come to the conclusion that Sampati Kuer did not commit suicide but was, practically speaking, murdered by the accused persons."

This is not correct. Then the next paragraph reads as follows:—

'The question raised by the judgment of the Chief Justice is as grave as any that has ever been raised in the course of a criminal

trial. Take the case of the three accused persons whose cases we have already discussed. Is Jagdeo guilty? The Jury says, "No". Is the verdict of the Jury an unreasonable one? The Chief Justice says, "We believe, but we are not certain, that he" namely Jagdeo "was in this plot also, but we consider that the justice of his case will be met by sentencing him to rigorous imprisonment for seven years". Has the High Court found that the verdict of that Jury was an unreasonable one? One need not be a lawyer to say that it has not; and it is amazing how any judge could convict a person against the verdict of the Jury when he is not certain that he committed the offence. The same reasoning will show how impossible it is to support the judgment of the Chief Justice so far as the other accused persons are concerned. This is a grave misrepresentation of the judgment. There is no question here of fair or unfair comment. Then we come to the article dated the 29th July. "We published in our last issue the amazing judgment pronounced by the Chief Justice in Babu Jagat Narain Lal's case. We have described the production of the Chief Justice as judgment; but it seems it is nothing of the sort. It is more a rhetorical outburst of an angry mind than the cool, considered pronouncement of a judicial mind. We say nothing as to the conviction of, and the sentence passed on Babu Jagat Narain Lal, for such conviction must be expected as a matter of course in the system under which we live. But the tone and temper of the judgment call for serious attention and we would be failing in our duty if we did not enter our emphatic protest against a form of judgment which is becoming standardized on the criminal side of the Patna High Court."

The suggestion is obvious. You will note the words "as a matter of course". The suggestion is that a conviction must necessarily follow under the system we live. Then next paragraph is as follows:—

"For the thing speaks for itself. A long and learned argument was advanced by the learned Counsel for Babu Jagat Narain Lal as to the proper interpretation to be placed on the subject matter of the charge. But the learned Chief Justice does not appear to have given even a cursory consideration to the arguments and disposed of the whole case practically in a single sentence. Now, the Law of Sedition is so framed as to bring within its scope any person who may venture to criticize any action of the Government. But the safety of the subject lies in the prudence which ought

to be exercised by the tribunal trying a case of sedition which should recognise that, under present conditions, the subject has far greater liberty of speech than he had twenty years ago. Where no such prudence is shown by the tribunal, the form of law becomes an engine of oppression and it is our clear duty to speak out. There is no clue in the judgment of the Chief Justice that he realized that India is a different proposition in the year of grace 1928 than it was in 1908. In fact there is no clue in the judgment that the Chief Justice considered any of the arguments of Counsel of the eminence of Mr. S. Sinha. What we find in the judgment, however, is a string of superlatives betraying a lack of that dignity which should always inhere in a judicial mind."

So far as the first part of this paragraph is concerned it is utterly false. Everybody was agreed that the law as laid down in the Penal Code was the law. Certain authorities were placed before you by Mr. Sinha i.e., cases which came up before the Calcutta, Bombay and Allahabad High Courts before the amendment of the Penal Code.

C. J.—And all the authorities were listened to most carefully and the principles of construction that Mr. Sinha argued were agreed to.

Sir Sultan—There was absolutely no issue with respect to that raised by you or me. "But an enormity of this kind from a judge, who does not feel the horror of sentencing a man to seven years' rigorous imprisonment, though he is not 'certain' of his guilt is not all surprising. A judge, who does not observe the elementary principle of criminal jurisprudence that the presumption of innocence is fundamental to the British system of criminal law and that that presumption is in no way rebutted by a finding that the tribunal "believes" but is not certain of the guilt of the accused person may of course be excused if he does not know that the measure of punishment in a case of sedition is the measure of importance which can be attached to the subject matter of the charge for sedition. But it is indeed lamentable that the Chief Justice of the Patna High Court should have ignored these elementary principles of law."

He makes it clear now that you sentenced this man although you did not consider him guilty. Read next para. "The Chief Justice is protected by the high office to which providence and the Right Honourable the Earl of Birkenhead have called him. He is also protected by statute and has chartered freedom to say whatever he likes". Not that it is justified on the record, not that it is justified in law but because

you have got your appointment from the Right Honourable the Earl of Birkenhead you are protected by Statute and you have got chartered freedom to do what you like.

Then the next paragraph reads as follows: "It is our deliberate conviction that the life and the liberty of the subject must necessarily be in grave peril when the Chief Justice of the highest judicial tribunal in the land ignores the arguments, refuses to consider the authorities that may be cited, and, in the end, produces a judgment full of sound and fury but signifying nothing, except imprisonment so far as the parties are concerned."

If this refers to Mr. Sinha's arguments, it is false. The authorities were agreed to; everybody took the law as Mr. Sinha placed it before the court.

Then again: "The Chief Justice of the Patna High Court has introduced a novel method of rendering judgments. Under this method all that he has to do is to state the facts and pass the order. What guarantee has the subject then that his case has been fully considered by the tribunal? We doubt if there is a single judgment in existence of any judge of any court where a person has been convicted of so serious an offence as sedition in a judgment so perfunctory as the one we have before us."

Perhaps it would not be easy to find another case which was so clear as the case before you.

C. J.—The facts of the case were that it was an article which deliberately stated that it was the policy of the Government to foment conflict between the communities. It was an express statement.

Sir Sultan—Yes. Then again:

"It is obvious then that the life and liberty of the subject are in danger under the present administration of the Criminal Law and, unless we wish to perish, we must protect ourselves against this new menace. Since, somebody must say that which is in the mind of most of the people to-day, we take the liberty of saying that in the short time that has elapsed since the departure of Sir Dawson Miller—who, by common consent, filled his office with dignity and left the High Court a greater thing than he found it—and, may we add, of Sir Basanta Kumar Mullick—public confidence in the administration of criminal justice has been disappearing and the High Court losing its rightful position, as a palladium of people's rights and liberties."

I take it that it means the High Court. The next article is dated August 5th. "Press comments on the Chief Justice" but before I come to this article, perhaps I may just refer to the press comments themselves which find approval in this article.

Mr. Bose—Before the learned Government Advocate proceeds to read the press comments, I take a preliminary objection. It cannot be read. That is not one of the matters within the rule (Reads the notice). This refers to the article in the issue of the 5th August.

C. J.—An article can be taken by quotation from other papers.

Mr. Bose—In a matter where persons are being charged for contempt of court, I submit, that the learned Government Advocate cannot travel beyond the rule itself. He said that the article of August 5th referred to an article "Press Comments on the Chief Justice" and he said "before I come to the article" I would like to read the "press comments". If that is so that is not mentioned as one of the grounds upon which the rule was issued.

C. J.—The fact is that in this issue, the date of which is given in the paper, these articles, which the learned Government Advocate is about to read, appeared.

Mr. Bose—A charge for contempt of court must be specific.

Sir Sultan Ahmad—And the specific charge is there. It is not suggested that there was more than one article of August 5th.

C. J.—The point has no substance.

Sir Sultan Ahmad—As a matter of fact all these press comments have become a part of the comments on the Chief Justice. Instead of repeating them in the article, you find them somewhere else in that issue. It is a part of the article (Reads from "Forward") reproduced in the *Searchlight* of August 5, "He has not advanced argument to justify his conclusions. He has not referred to the arguments at all. Perusal of the judgment will easily leave the impression that his lordship is full of anger against "silly, noisy little" men who venture to question the bonafides of the lofty and humanitarian mission of officialdom in India. The dignity of the Bench, the serenity of judicial temper seems to be conspicuous by their absence from the judgment and the impatience of an imperialist with political agitators in India has left its impress on every line of it."

Pandit Nehru—As a matter of fact these other articles have not been supplied to us at all.

C. J.—They are in the paper.

Pandit Nehru—I merely draw your attention to the fact that we have no notice of this. It was thought that they were not the subject of this charge.

Mr. Bose—May I know whether the press comments which the learned Government Advocate intends to use, have been annexed to any affidavit in connection with this rule.

C. J.—No affidavit is necessary.

Mr. Bose—Then if that is so, I object to anything being read to you, except what is stated in this notice:

C. J.—I have overruled the objection.

Mr. Bose—May I place the authorities on this point. The preliminary objection is this. To find an application for committal or attachment in the course of criminal contempt the facts constituting contempt must be proved by affidavit.

C. J.—That was decided in Tayler's case. (Reads). We are not going through the farce of asking the Registrar whether he has purchased copies of the paper.

Mr. Bose—I submit that is laid down by the English Courts and I ask leave to place the authorities.

C. J.—First of all will you deal with the authority in Tayler's case where the same point was raised and overruled. Your point is that the whole of these publications must be proved by some sort of affidavit? What sort of affidavit, you suppose might be filed?

Mr. Bose—By an officer of this court to the effect that these were circulated and read by the public.

C. J.—Quite unnecessary. The point has already been dealt with by the Chief Justice in the case of Tayler. It is a farce to go through such proceedings. I could make the affidavit myself.

Mr. Bose—I beg to place the authorities. The first reference I give you is in Halsbury's Laws of England Vol. 7, p. 310. (Reads). Then take 26 C. L. J. 561 where the court proceeded on its own omission.

C. J.—What are the English authorities you wish to cite.

Mr. Bose.—The passage on which I wish to rely is at P. 561 in 26 C. L. J., I submit what is being done by the learned Government Advocate is adding another issue. In so far as the article embodies extracts from other papers, they can be read. But I submit to read

the press comments which appear in other portions of the same issue is really supplementary evidence.

Sir Sultan Ahmad.—Reads again. "The question that obviously came up before their lordships for judicial decision was not whether Babu Jagat Narain Lal was a silly or little man but whether he had offended against the law of seditious libel in India. His lordship's intuition seems to have materially helped him in arriving at the conclusion that Babu Jagat Narain Lal's article was seditious because he was a silly noisy little man. It will be interesting to know how far his lordship's estimate of the accused's character was based on evidence on record and how far it was influenced by extra judicial elements."

Then again "Was any evidence adduced by the Public Prosecutor to warrant the presumption that the accused was a fool and a knave? If not, what justification the C. J. had for prostituting his high and privileged position and depicting the accused in such a thick colour? The vilification of the helpless accused does not seem to be the only art in which the learned C. J. indulged. His lordship thought fit to utilise his judicial position to do a bit of propaganda in favour of British Imperialism and proceeded to make a little critical examination of the psychology of the mind of the accused". Reference has been made to these comments in the leading article of the "Searchlight".

Kulwant Sahay J.—You do not read the other extracts from the "Patrika".

Sir Sultan Ahmad—No. (Reads the following quotation) "It would be doing violence to truth to suggest that the same confidence is a fact of to-day. It is not and the press comments we have quoted elsewhere are nothing if not an eloquent testimony to the fact. Whatever their other limitations may be, Indian press as a whole seldom, if ever, countenance any rousing down of the High Court. But there are occasions when forbearance can be carried too far and may become a crime to the country on the part of the enlightened conscience of the community that the press represents. We cannot possibly permit either deterioration in the one of the administration of justice or the maligning of our people." Then again "Then came the Sati case judgment with its bad law, angry rhetoric and, in the circumstance monstrous sentences, Sati, of which his lordship knew nothing, was described as "belief of savages". The conviction of a man on the un-

er corroborated testimony of an approver followed and soon after came the amazing judgment in the case of Babu Jagat Narayan Lal."

C. J.—With regard to the case of the uncorroborated testimony of an approver, that is clearly a comment upon a case which was tried by Mr. Justice Macpherson and myself. Eleven accused were convicted by the Additional Sessions Judge and the evidence which he relied on to a very large extent was that of an approver.

With regard to six of the accused the evidence of the approver received ample corroboration from other sources. With regard to five of them although the evidence was uncorroborated the learned Sessions Judge held that he was entitled to accept the evidence of the approver as true and to convict on that uncorroborated evidence. It was a jail appeal. Mr. Justice Macpherson and I feeling that there might be a point of law directed that the case should be admitted and heard and you as the Government Advocate argued the case and we there laid down the principle that the evidence of an approver does not differ from any other evidence save that he starts on the presumption that he is a liar and that his evidence must be corroborated in other material particulars in which case under the Evidence Act his evidence is admissible. The comment appears to be with regard to the five who were convicted.

Sir S. Ahmad—Yes. You there followed (p 568) 2 K. P. 1916. My submission is this. You will not take one sentence separately. I will deal with all the connected sentences and shew their meaning (Reads passages). The Court has been grossly misrepresented. The writer says the law is severe, and asks you to undo the severity of the law. It is your duty to follow the law not to undo the law but he expects that you will undo the law if it is severe and that will satisfy him. That is not your function and that is how he tries to show how the confidence of the people is shaken by your decision

Then the next paragraph says:—

"But by far the most amazing feat was the insult levelled at our people "in this part of the world" by one, who is not a globe trotter out to earn cheap notoriety, nor an executive official carrying the White Man's Burden on his shoulders, but the Chief Justice of a High Court of Judicature. Whatever his lordship may have meant the public at large must take him at his word and they refuse to tolerate their being characterized practically as habitual liars,"

This as used in this article is absolute misrepresentation, gross misrepresentation. You were dealing with certain evidence. You have that on the record also. The comment was that a certain witness's evidence should be regarded with great suspicion because on a former occasion 25 years ago this witness had been convicted of giving false evidence and you said: "But what we know of that former case—it was not a case of great magnitude (Reads the Chief Justice's judgment). This is said to be an amazing declaration which has shaken the foundation of criminal administration of this province. Everybody has been called a liar. Nothing of the kind. It deals with a certain class of evidence and your comment is that 25 years ago this man was convicted of giving false evidence. That is not quite sufficient to discard his evidence because dealing with this class of evidence you do find that they do not have that regard for truth which you would expect in places where education has made effective impression. That does not mean that every body who is in this province is a liar. It is a most mischievous statement and is bound to affect the criminal administration of this Court, the integrity of this Court and the honesty of this Court. To say that in a solemn judgment it has been laid down that everybody in the province is a liar is a matter of serious concern for the court and there is the further warning by the author of these articles "that there is no confidence now left in the High Court, and that the confidence in the High Court is fast disappearing." These are the passages on which I have been making my submissions. I submit that there has been a contempt of your court. I have given these passages to indicate to my friends the grounds on which I urge contempt so that the matter may be cleared up.

Mr. Bose—Before my friend begins may I enquire whether you intend to proceed against my clients.

C. J.—We shall consider the case of the Directors after we have considered the case of the editor.

Mr. P. K. Sen—And the case of the manager will also follow?

C. J.—Yes.

PANDIT NEHRU.

Pandit Nehru—If you will permit me to say at the beginning that we have made a sort of division of labour amongst us and that

I propose to deal with the articles of the Sati case and that with your permission Sir Tej Bahadur Sapru will deal with the other articles.

C. J.—I am very anxious to show the utmost consideration to you because the strain must be great upon you. But I see no reason why we should hear two Counsel for each party.

Pandit Nehru—So far as the Allahabad High Court is concerned two Counsel are allowed on each side.

Adami J.—Are two Counsel allowed to address the Court?

Chief Justice—(After consultation with Adami J.) Very well.

Pandit Nehru—May it please you, My Lords. My friend has given us what he calls an indication of the character of the passages upon which he intends to rely. We are thankful to him for what he has given us but we do not know what his conception of these passages is and how he looks upon them as amounting to contempt of court. Some of these passages he has relied upon merely as links in the story just to explain the meaning of some passages later on. Others contain the evidence in themselves. Even as to that he has not been very particular as to which are the passages which are merely links and which are the passages which form the real substance of the offence. He also made a remark that reading the articles as a whole will leave no doubt in your minds that it is a case of gross contempt. He has also not favoured us with what amounts to contempt in his conception and what he would ask you to hold as contempt. I have to assume all that and to meet him half way on the passages to which he has drawn attention. I do not at present mean to go into the cases or into the law very elaborately but that will have to be done later on. For the present we have to be very sure of our facts before we apply the law. Now, my client is here on a charge of contempt of court or, to put it in other words, as has been said in most cases, for scandalising the court in a matter which has been dealt with by the Court. As you are aware, a very broad line was drawn between cases of contempt arising out of a case which has been determined and between cases in which the proceedings are pending. So far as pending matters are concerned there is no doubt that any criticism which has any tendency to prejudice the court or to create a bias either in the mind of the court, or of the jury, or the public would be a contempt of court. But as soon

as the case is decided then it has been held (we will come to specific cases later on) that the judges are no more exempted from criticism than any public servant. In fact, the moment the case has been decided the judge and the jury submit themselves to the criticism of the public. That criticism, so far as it is reasonable, does not conceal anything and does not misrepresent the judges to such an extent that it must necessarily mean that they are being held up to ridicule or contempt and attacks the integrity of the judges or their fairness or impartiality; in other words unless there is an imputation of moral obliquity in regard to a case which has been decided such criticism will not be a contempt of court. It may amount to libel of a judge, but, as you are aware, where every contempt must also be a libel every libel, is not a contempt and my submission will be that none of these passages relied on by my learned friend is either contempt or constitutes a contempt. These comments are not in law contempt. When I say 'holds up a judge to ridicule and contempt' I mean as a judge of course and that is also a factor in misrepresentation. But there may be slight misrepresentation which may be either accidental or even intentional and which leads to no inference one way or the other if it thereby does not create an impression against the integrity or fairness or impartiality of the judge.

C. J.—I do not think you can put it more fairly.

Pandit Nehru—I submit that none of passages which my friend has laid before you amounts to contempt in the sense in which I have been submitting it now to you. It is not a contempt, for instance, to say that a judgment is wrong.

Kulwant Sahay J.—Neither in fact nor in law?

Pandit Nehru—Yea. Just think, My Lords, what a variety of propositions that one statement contains. The judgment is wrong. It may be wrong for one thousand reasons. It may be wrong because the judge has not appreciated the facts of the case. It may be wrong because the judge has not appreciated the law. It may be wrong because the learned judge does not know the law and has failed to apply it and it may be wrong also because the judge has taken a gratification. So that a mere statement that the judge is not right but wrong might cover a very large field and unless there was something clearly to indicate the intention of the writer to attribute some motive of that character involving moral obloquy of some kind it will not be, I submit, contempt of

court. For instance, attributing impatience to a judge or his being impulsive in trying cases that I submit will not amount to contempt. From that approved statement of the law I now invite your attention to the passages and to offer my interpretation of those passages. For the moment I simply note that these are the passages to which my learned friend takes exception. I think I am right in saying that we have right of reply to my learned friend. In the first article my friend only referred to a passage which he said would explain certain other passages in the subsequent articles and that passage runs: "Now we know, as the law stands at present, Sati, whether voluntary or involuntary, is a crime." I take it that it does not concern us in the present proceeding whether the judgment was a good judgment or a bad judgment. We are only concerned with whether that judgment gave my client, the Editor, enough reason to come and convey the bonafide belief that judgment was defective in the particulars in which he describes it.

C. J.—That is an ingenious way of putting it but is it not the point this whether the effect of the judgment as represented by the accused is true or not?

Pandit Nehru—It may be that the accused may be wrong.

C. J.—An innocent misrepresentation of the effect of a judgment, if it were damaging to the cause of justice, would be a contempt, but that might properly be atoned for by an expression of regret. But here the question is whether it is innocent or not.

Pandit Nehru—In certain matters there may be an honest difference of opinion between a journalist and the judge. As a member of the general public the journalist has as much right to hold his own opinion as the judge has. But it is not the case that in every case where there has been a misrepresentation or contradiction or a difference of opinion as to the effect of judgment that the journalist must express his regret. If he discovers that there was a misrepresentation it would be an honourable thing for him to do. But, I submit, he may hold to the belief that he is not wrong and I submit that he must then take the consequences of the holding of that opinion; but he has to have an opportunity of satisfying the court that what he has said here was not only that he bonafide believed to be the result or the effect of the judgment, but what he believed to be the effect on the general public and that is what my client, I submit, has attempted to do. The duty which my client has to discharge to the public is a very serious one and not only to the public but to you as well.

In this case there is a clash of duties, if I may say so. Here on the one hand you have the duty to uphold the majesty of the law and see that it is not brought into ridicule and contempt, on the other hand you have also the duty to maintain the liberty of the subject. In this case the vindication of the dignity of a judge as a judge is so mixed up with the vindication of the vanity of a judge as a person that it does require a very careful, dispassionate and detached view of the whole thing to separate the one from the other. In England, it is said, that public opinion is so strong that it can look after the dignity of the law. If public opinion is not strong enough in this country, it has to be made strong and it cannot be made strong unless it expresses itself with courage. If every journalist thinks that he cannot criticise a judge without at once incurring liability for contempt there is no public opinion at all and the journalist will be a despicable person. My client has certainly expressed his views and differed from the views expressed in the judgment of Your Lordship. He has a right to differ from Your Lordship and he has a right to point out where Your Lordship has gone wrong. If in doing so he has used an expression which he might well have avoided, but where the result is not affected by the use of that expression, I submit he is not guilty of contempt. There are various ways of expressing the same idea and a journalist may have chosen words which, say, a lawyer would have avoided, but if the meaning he intended to convey be clear, then the mere fact that he made a wrong choice of words will not make him liable for contempt. [Reads the passage] I do not think there is anything objectionable. I think it was only used to show that it was the intention of the writer that he meant to examine the matter with care.

C. J.—The only effect is to destroy any pretence that the subsequent articles were hastily written. It is only to show that the subsequent articles were calculated and deliberate.

Pandit Nehru.—I may say that my client accepts the fullest responsibility for every word that he said. Everything he has said he stands by. I am instructed to justify it. He takes the responsibility for these articles.

Adami J.—There is a good deal of difference in the style of some of them.

C. J.—There is a good deal of indication that these articles were written by different people. That also increases the gravity of the offence.

Pandit Motilal—On that point my client takes the fullest responsibility for every word that he has said. He stands by every thing that he has stated according to his lights and I have been instructed to justify it. I do not know if Your Lordships have compared the style in the previous issues with the style in these articles. When the Editor takes the responsibility upon himself, that stops all the enquiry as to who the writer is. My client's position is this, that he has discharged a public duty and in the discharge of that public duty he has taken all the reasonable care that the law required him to take and he is willing to take all the consequences. That being the case, it is not that I am screening the real writer. On the contrary, my instructions are that it is the Editor who has written them. From the very feeling which pervades the articles, one can say that they were not written in a hurry by a man who woke up from a dream. Whatever there may be in the statements contained in the article, there is no question in my mind from the reading of these articles that the writer had a very strong feeling on the subject and the whole question is whether in expressing that feeling he has gone beyond the bounds.

Coming to the second article, that of the 18th July, 1928, my learned friend (the Govt. Advocate) has made a great deal of it and I think you pointed out as to what the charge really was. As I understand your judgment, there is no mention in it of your convicting the accused on a charge different from that for which he was tried. But you will see what is the the foundation for my client's observation. It is your undoubted finding that this was a case of setting fire to the pyre by the Pandey's. Reads:—

"Now the most curious part of the judgment of the High Court is that it has convicted the accused persons of an offence with which they were not charged". There is no mention, as I understand it, of your convicting the accused upon a charge different from that on which they were tried. What you have got to see is what is the foundation of this observation? The foundation is Your Lordship's undoubted finding that this was a case of setting fire to the pyre by the Pandey's. Your Lordships say that it is the human agency that set fire to the pyre and that the trick was performed by human hands. They know very well that if the trick succeeds at all it would bring about the death of this girl. The trick does succeed and the fire is lighted. I submit that on those facts if these people were guilty of anything, it was murder

or an attempt to murder. It has nothing to do with their consciously abetting suicide.

C. J.—No. It was this. Our finding was that when she sat upon the pyre she was provided with some simple means by which the pyre was ignited, which in all probability she exercised without knowing what she was doing.

Pandit Nehru—The Editor reads the judgment and he finds that in the Court of Sessions and under the head of the charge delivered to the Jury by the Sessions Judge, he told them distinctly that it is not the Crown case that anybody set fire to it but this lady herself lit the fire. Your Lordships say No; but what happened was that these Pandeys manoeuvred the thing in such a way as to make it appear that there was a sort of spontaneous combustion and they were really responsible for it.

C. J.—An ordinary cigar lighter would have done. An ordinary wax match between sand paper would have done.

Pandit Nehru—Cigar lighters would not be provided by ordinary villagers. If the match was put in her hand she would know what it was because she was not killing herself. Whatever it may be, you had some sort of idea in that judgment that it was something which could ignite the fire without anything further being done by the Pandeys or the girl. What I beg to ask is what would that be if it was not murder that the Pandeys did by that act? Killing a person is one thing. You bring about the death of a person by a trick which you know must bring about the death of that person. Is it not murder? Then how is this writer wrong for saying that Your Lordships found him guilty of an offence for which he was not charged.

C. J.—We could not legally convict him because he was not charged. We found him merely guilty of murder.

Pandit Nehru.—That is all he says. It was contradictory to the real case. If it was murder it could not be suicide.

C. J.—Getting on to a pyre knowing that she was to be destroyed by fire from heaven?

Pandit Nehru.—The agency is supernatural. She was expecting that. If she was bent on suicide she was expecting the fire to come to her end through that agency. That agency did not work. It was a trick that worked. The trick is performed by human hands. They know

very well that the trick if it succeeds at all will bring about the death of this girl. The trick does succeed and the pyre is lighted. I submit on these facts if these people were guilty of anything it was of murder or attempt to murder. It had nothing to do with their consciously abetting suicide.

Pandit Nehru—What I submit is, put yourselves in the position of the Editor. The Editor of a journal reads your judgment. He finds that while in the Court of Sessions and under the heads of the charge delivered to the jury by the learned Sessions Judge he told them distinctly that it is not proved that anybody set fire to it but he put a theory before them that this lady herself was carrying a match box in her hands and that it was she who lit the fire and was responsible—that was the case for which they were convicted and that would be a case pure and simple of suicide. When the case comes up before you, you say no—what happened was that these Pandey's manoeuvred in such a way as to make it appear that there was a sort of miracle and they were really responsible for it. It was nothing short of murder if they did. But you do not say in the judgment under what section you are convicting.

C. J.—We say expressly that they were charged with abetment of suicide and it was of that offence they were convicted.

Pandit Nehru—After this finding you simply proceed to award sentence without indicating the section.

C. J.—Can it possibly be the opinion that they were convicted of something else. The sense of the words means, it is true, that they have been found guilty under the section charged but by implication, and, indeed it has been expressly stated that they were really guilty of murder. I agree that that is the express finding, with the exception that from the point of view of the legal offence of which they were guilty it was section 306 and the other section. That is the sense in which they have been convicted—in the sense of a legal conviction. The serious gravamen of this article is that we convicted him of an offence when we were not certain of his guilt. You need not trouble about the other part of it. I rather agree with your interpretation. In that sense we found them guilty of an attempt to murder, although we could not punish them because they were not charged. That often happens in the course of a criminal trial. You will find when the case develops that the man is guilty of a more serious crime.

Pandit Motilal—However there is no contempt here then. Now we come to the next one.

C. J.—May I suggest that the particular gravamen of the charge against your client is of misrepresenting the judgment of the Court. With regard to Jagdeo this is found not only in this place but in the next article and in the other articles which follow. It may be convenient to deal with it at one place.

Pandit Motilal—Reads from “but the serious part of the judgment is.....” So far as the conclusion drawn is concerned it is perfectly right. Says my client, we are not trained lawyers but we have always understood that it is part of the British jurisprudence to base conviction not on moral belief but on proof. That is simply a repetition of the words put in your judgment.

C. J.—But when it is put in conjunction with the other sentences the meaning of the whole paragraph becomes obvious. Suppose I quoted some words of yours in a letter; Pandit Moti Lal Nebru said the following things—and then I followed up by saying “We have always expected Indian gentlemen of his birth and training to behave with ordinary decency.” What would be the implication? The conjunction of the two statements would mean the implication that you have not behaved with ordinary decency.

Pandit Motilal—Quite true. But in fairness to my client, the word “plot” occurs in the judgment only in connection with one kind of plot so far as I can understand and your lordships have said that you were not certain that this particular accused Jagdeo was in the plot. The plot really was to murder this girl and you say now there was another plot side by side with this to which the lady herself and her brother might be parties.

C. J.—Not a plot. There was no necessity for a plot.

Pandit Motilal—One has to take the judgment as it is without commentaries upon it.

C. J.—You mean any reasonable person reading the judgment would think that the interpretation was that we were doubtful as to whether he was in the plot to abet the suicide.

Pandit Motilal—It may seem a very strange thing and so it is. But these things unfortunately happen.

C. J.—There may be something in that if it were an un-instructed man hastily reading the judgment, but to a man who has been carefully considering the point, who knows all the circumstances and who has read all the evidence?

Pandit Nehru—The judgment has to be taken as self-contained. I will give you all the passages in which this has been discussed.

(The Court adjourned for lunch.)

AFTER LUNCH

Pandit Motilal—Your Lordship was pleased to make an observation about the plot. Do I understand Your Lordship correctly when I say that Your Lordship had two plots in your mind? One was a plot on the part of some of these people for murder and the other a plot to abet suicide.

C. J.—A plot to murder and afterwards a plot to abet suicide.

Pandit Motilal—That needs a commentary of Your Lordship's judgment to bring out that point clearly. So far as Jagdeo is concerned, there are three or four references to him in the judgment. One is just in the beginning where your lordship is speaking of the ages of these people. There you simply say: "There is one Jagdeo.....his age is 20 years." Then the next mention of his case is in the sentence: "Thereupon the poor brave weak-minded lady was convinced of the foolishness of the whole proceeding and got off the Khatoli and the corpse was sent off to the ghat carried by the four kahars and accompanied by all the Pandeys save Sampati's brother Murlidhar, the youthful relation Jagdeo, and, it appears also the man who was acquitted, Gaya Pandey. The funeral party vanished along the bund road towards the ghat. The lady was now left alone with her maid, her feeble-minded brother Murlidhar and the youth Jagdeo and she was willing to go to Berhna."

Then it proceeds: "The men called an ekka and the ekka was conducted by the accused Ramautar Dusadh". I suppose the men were Murlidhar, Jugdeo and Gaya Pandey. (Reads on); "whose position in this case is peculiar and I shall have further occasion to refer to it", Jagdeo was not taken with the corpse to the ghat; and this plot which Your Lordship calls the other plot, the plot of murder, it was either hatched on the way to the ghat or after they had arrived at the ghat, because individually the assembly was an unlawful assembly for the

purpose of abetting the suicide. Why does it take this turn on the part of some of the accused that it becomes a plot to murder, because apparently it was passing in your lordship's mind that the Sati having become impossible, they hatched this plot in order to bring her back to the ghat; and whether she was willing or not, they had provided themselves with something, whatever it was, matches or some combustible material.

C. J.—The plot was of an earlier origin than this.

Pt. Nehru—It is rather difficult to understand how began the other plot when they were devoted in the original plot of abetting the suicide. What is the use of murder when she was a willing agent. They would think of murder only when she was not available to them as a consenting party.

C. J.—You cannot have the lady convicted of murder.

Pandit Nehru—I am taking the facts. They had to prevail upon the lady, that was no doubt in your Lordship's mind that somehow or the other they prevailed upon the lady to consent to it. That being so, she comes to the resting place and then at the intercession of the police she is noticed to change her mind and in the company of her relations she leaves for her father's house. Now for the time being the plot was frustrated and.....

C. J.—Both plots were frustrated for the time being.

Pandit Nehru—If that is Your Lordship's idea that the murder and abetting the suicide existed at one and the same time, I submit it is hardly reconcilable.

C. J.—I think our idea was that it was the intention from the very beginning that this woman should meet with her death. Every assistance was going to be used to enable her to meet with her death and no change of determination on her part is going to affect the issue.

Pandit Nehru—So far it was a plot to abet the suicide and when it became impossible, then it became a murder. When Your Lordships say that there was only one plot, it means a plot which originated in the abetment of the suicide and developed into the crime of murder.

C. J.—The only way by which you can judge of psychology of the minds of the accused is by their behaviour.

Pandit Nehru—I suppose, if you will permit me to say, the same thing applies equally to a journalist; he will judge Your Lordships by the words Your Lordships have used, and not by any subsequent explanation. What do I find here. Take the judgment as it is. This Jugdeo is spoken of in three places. I have given the two places and in the second place it seems that he either went back with the lady, and he too changed his mind, and was not any longer a willing party to abet the suicide.

C. J.—Does that effect in any way that he was in the plot.

Pandit Nehru—If he was not in the plot to murder, then what he was convicted of?

Adami, J.—He took part when the actual burning took place. That is my understanding of the case.

Pandit Nehru—What I cannot follow is this. Your Lordships have held that the lady did not commit suicide.

C. J.—The two are not incompatible in the least. Suicide is not incompatible with the murder.

Pt. Nehru—The lady had changed her mind, and from that point of time the question of suicide disappears.

C. J.—It does not necessarily disappear. We have expressly held that if you invite a person to stand upon a pyre which you know is about to be lighted, it is immaterial—how, whether by Divine intervention or by the act of others or by your own act. If you voluntarily sit on a burning fire to die, it is suicide.

Pt. Nehru—Your Lordship's judgment, then, has to be read with a number of additions and explanations. You simply mention the word "plot" twice in the judgment and that plot may mean either the original plot or both the original plot and suicide side by side. The original idea was that he was committing one crime; if it fails, then he committed the other crime.

C. J.—It may be or may not be so; but that at some time was the proposal. When that plot originated we do not know.

Pt. Nehru—If I may say so with due respects, all these things cannot take their rise in the imagination of the judge. What was the evidence? The evidence was that these Pandeyas (in fact from the charge to the jury it was excluded) had nothing to do with the murder of this girl.

C. J.—We cannot discuss the evidence and demonstrate to you that the finding is right.

Pandit Motilal—What I have been inviting Your Lordships to consider is that reading Your Lordship's judgment I feel some difficulties and I invite Your Lordships to remove those difficulties.

C. J.—It can be very easily done. Suppose reading the judgment you come to the conclusion that the plot to which the judge is referring must mean the plot to abet the suicide; supposing you come to that conclusion; then your inevitable conclusion is that this judge has deliberately found that he is doubtful whether he took any part in the offence.

Pandit Motilal—Deliberately or by mistake.

C. J.—Suppose that is your preliminary impression, what a prudent man would do in such a circumstance. Notwithstanding any enquiry that he may make, and there was ample time for making an enquiry, he would say—we should take advantage of that and I shall accuse the judge of deliberately finding a man guilty and convicting him of an offence as to which he had his doubts.

Pandit Motilal—It is not a question of accusing the judge in a hurry. I ask Your Lordships what amount of enquiry and from whom it could be made. Should the Editor have run up to your Lordships.

C. J.—Do you mean to tell me that he was not carefully watching the proceedings of the trial.

Pandit Motilal—But he was not looking into Your Lordships' minds; that is not the impression given by your Lordships' judgment. Does Your Lordship expect a journalist to look into something which leads to a plain conclusion; does Your Lordship mean that if that is the inference which is likely not to be liked by the judge or is likely to go against his administration of justice, then it is the duty of that man to ransack the whole record and for what?

C. J.—If his conclusion leads him to a belief that the judge has convicted a man on mere suspicion and holding that it was a mere suspicion it was his distinct duty to make further enquiry and a man of intelligence would do it.

Pt. Nehru—No amount of further enquiry could have thrown light in the matter which Your Lordships observed is throwing upon the case. It will not appear from any paper on the record. I say that

the judges when they give their judgments it is as much their duty to be careful in using the language as it is the duty of a journalist, who reads that language, to interpret it. If the judgment is capable of being understood in that sense, I submit, the duty of the journalist is done. It is no longer his duty to go and enquire.....

C. J.—He would not examine a judgment of the High Court as a grammarian would examine it.

Pandit Nehru—Or even as a lawyer, because he would take the view which the public are expected to take and the view which he expected the public would take he has placed it before the public.

C. J.—Had this gentleman made the slightest enquiry he would have been told that that conclusion was unjustifiable and from the statement he has made I have little doubt that he did not make any enquiry.

Pandit Nehru—I cannot conceive the person from whom he could have made that enquiry. The record could not throw light upon it. Every precaution was taken by the police to see that nobody set fire. The whole theory which has been found in the judgment—I cannot say that the judges are not competent to construct their own theory; but what I submit is that spinning out a case is not permissible in a High Court Judge. That was a new case which was constructed in the course of the hearing.

C. J.—That was the case which was dealt with before the Sessions Judge.

Pandit Nehru.—I am talking of the hearing before Your Lordships.

C. J.—Which theory you mention?

Pandit Nehru—The plot of murder.

C. J.—That is apparent from the first day of the case; it was a matter of constant discussion; it was the subject upon which we were directly addressed by the Counsel.

Pandit Nehru—I cannot answer to that if that was debated in Court. What would a man reading that sentence in the judgment, think. (Reads:) "As to Jagdeo he is an older youth and he should have exercised more intelligence." This is the only other mention of the man Jagdeo. (Reads:) "We believe, but we are not certain, that he was in this plot also but we consider that the justice of his case will

be met by sentencing him to rigorous imprisonment for seven years." What was intended? Which plot?

Adami, J.—That is what he was charged for.

Pandit Nehru—If he was charged for that, what was there, that your Lordships believed, that he was in the plot; where is that plot described except that Your Lordships have given a description of the events. Your Lordships have not referred to any evidence and have not given us any idea how and at what point of time did any other plot at all exist. The fact that so many people went there, shouting *Sati-Mata-ki-jai*, that this girl was going to become Sati and that these people were helping her—that plot I can understand. If you say that these two things were side by side I cannot by any stretch of imagination think that that would be the position that there were two plots. Any person who had this judgment before him would think that the plot was the crime and if in that plot, the judges are not certain, who took part, who else can be certain.

C. J.—Nobody could have formed that opinion in this circumstance. The case was watched with the greatest interest and also perhaps by the editor and his people.

Pandit Nehru—I do not know whether the editor was present all the time the case was argued, but it is a fact that it excited interest. Is it right to fix the responsibility and knowledge of all that happened at the trial on the editor. This room to-day is over crowded and I do not think these gentlemen are following all the arguments and what Your Lordships are observing. What would attract people's notice would be certainly when the judgment is delivered. My client is here and he tells me he was not present during the trial. It does not necessarily follow that the people who are present at a trial would follow all the arguments advanced or the observations made by the judge. It is quite true that the things seem to be so absurd for a judge of Your Lordship's experience to do.

C. J.—Could it not put this man on his enquiry.

Pandit Nehru—Enquiry as to what? What was he to enquire? There was this judgment. Was he to institute an enquiry of his own. It was his business to criticise Your Lordships' judgment and if it is not clear enough on that point and if it is capable of the interpretation that he has put on it, I think he was perfectly

within his right to put that interpretation, unless it can be shown that he has misread or misrepresented any fact which is contained in the judgment. There is no such thing at all.

C. J.—If it were an isolated instance there might be something to be said in the point that you have been just urging. But the honesty of the explanation and credibility were somewhat affected by the remainder of the criticisms and the context to which they refer.

Pandit Nehru—I shall deal with them all. He can only take them together. We cannot put one meaning upon a passage only.....

C. J.—The cumulative object of the whole series of the articles and the honesty of the writer can be judged upon the whole of them, and not upon an isolated passage.

Pandit Nehru—Honesty or dishonesty is not a criterion for a case of contempt. However much a person may be biased; however much he may have personal feelings, if he criticises him upon his judgment and if that criticism is justified by the judgment he may do that with the most evil intention in the world he has but he will not be guilty. I submit, where can the honesty of this man come in. There is no question of personal feelings between your Lordships and this man to make him dishonest. There are other judges of this Hon'ble Court; he has been editing this paper for some time but I do not think he has been dealing with them in this way. There are the facts and materials before him, and he put a certain interpretation upon those materials and he draws certain inferences and if those inferences are such that any reasonable man would draw them then I shall say that he has not committed contempt. But coupled with those inferences some sort of feeling exists for holding contempt of court that certainly would make the case complete against the man; but the mere fact that he draws inferences from certain passages in the judgment, which inferences any other person in the circumstances would draw, I submit that in that case, in any event he would not be liable for contempt. So far as Jagdeo is concerned, it is impossible for anybody, who is not here and who was not present at the trial and who does not know what passed there, to have come to the conclusion what was really passing in your Lordship's mind and what you really meant by this. Here is a man who is being tried for a certain offence of abetting suicide. Well, in the middle of the judgment certain observations are made which go to show that, your Lordship was of

opinion that it was not a case of suicide but it was a case of murder. Then your Lordship say it could be both.

C. J.—I do not think the possible construction of the judgment could be that, we were not dealing with a case of suicide. The case starts with—it is an abetment of suicide to induce a person to get on to a pyre. First of all it is a case of suicide whatever the method of the fire is. Can you think it is impossible for anyone to escape the conclusion that we were dealing with a case of abetment of suicide?

Pandit Nehru—Your Lordship began by treating the case as one of suicide and not of murder against the person concerned and that is what has complicated the whole matter. Upon that the man simply says that these men were tried of one offence and found guilty of another and then heavy sentences were inflicted upon them. As to this man Jagdeo, the learned judges would not say that he was in the plot. That he says is a thing which is amazing and he says that it is not a correct judgment. (Reads:) "but we consider that the justice of his case will be met by sentencing him to rigorous imprisonment for seven years". That is in the case of Jagdeo. Then comes a passage after that in the same article (reads): "In our view Ramautar Dusadh believed that he was going to drive the Ekka to Barhna and he was compelled by the Pandeys to drive to the ghat". Having regard to this finding, one would expect that acquittal would follow as a matter of course.

C. J.—Why?

Pandit Nehru—Because whatever he was doing was under compulsion.

C. J.—Is that a defence.....

Pandit Nehru—If a pistol is put in my hand.....

C. J.—If I put a pistol in your hand and show you the man whom I wish you to shoot; and you go and shoot him. Are you not guilty of Murder?

Pandit Nehru—But here the case is different. He is an ekka driver, he goes back because he was compelled. Now on that finding, as has been observed here, I submit that every policeman who is concerned is guilty of the same abetment. What is the defence of the police. The defence of the police is that they were so overpowered by the numbers that they allowed it to happen under their very nose. If a grave offence was committed it was the police who helped in its commission. Probably what happened was that most of them were.....

C. J.—The comment on the judgment as regards the ekka driver is of no great importance in this case.

Pandit Nehru—So far then, I have read what of these articles, they do not constitute in the least degree any contempt and the comment is very fair.

Then what have we got next. The next passage is in the second article of the 20th of July: (reads).

C. J.—That is immaterial; it is only a repetition.

Pandit Nehru—Then we come to the third article (reads): "But what we should have expected was that these two distinguished judges would not fail to see that the judgment which they have delivered offends against the first principles of criminal jurisprudence." Upon this, although my learned friend was only citing the other passages, he said it is a contempt to attribute unfamiliarity with Indian conditions to the judges.

C. J.—That is not the offence. It is in stating what is not true, namely, that Mr. Justice Adami is unfamiliar with Indian social life and outlook.

Pandit Nehru—Neither of the two judges was familiar with the conditions of life in this country, so far as the question of Sati was concerned. Your Lordships say—here is the man Ragho Singh who was asked by police to burn the corpse before the widow arrived. He declines. You say—this man was asked to set fire to the pyre on which the body of a Brahmin was going to be burnt. I submit that one who has knowledge of the country will at once say that this man Ragho Singh being a Babhan could not burn a Brahmin's corpse. This was also the evidence in the case.

C. J.—You may have another reason for refusing.

Pandit Nehru—I say that one reason justifies fully the remark that is made. I say with the completest sense of responsibility that neither of the two judges was familiar with the conditions of life in this country. So far as the question of setting fire to the pyre is concerned, Your Lordship has said that one man who was not a Brahmin by caste was asked to set fire to the pyre on which the corpse of a Brahmin was going to be burnt. Any man who has any knowledge of the country would at once say that it is an impossibility. It may be after all that English judges who come to this country acquire as much knowledge as is possible of our

social conditions but the sort of isolated life that every European lives is such that it is too much to claim that he knows all the conditions of life in which Indians live.

Justice Adami—We may not be perfectly familiar but we know them.

Pandit Motilal—That is the one argument which Your Lordship advanced for the conviction of Raghu Singh. If a Brahmin Constable says that he asked another caste man to set fire to the pyre and that he refused to do so, I would not say that the Constable was not familiar with the custom but I would say that he was lying. "It is clear that he was in the plot because he refused to do anything of the kind." Your Lordship has explained that he was not only in the plot to abet suicide but also he was in this narrower plot to commit murder and so far as that goes, I submit, that it is quite a wrong inference to draw from the fact that he refused to set fire that he was in the plot. That is what the accused in this case has said. If his reading of the judgment was true as to Jagdeo that Your Lordships were not certain, and you acted on your belief, then the judgment was certainly against the first principles of British jurisprudence. On the judgment as it stands it is fair criticism and that is the criterion for contempt. Where are the materials to show that the inferences drawn by him are such that no reasonable man could draw? A very wrong inference coupled with animus or some sort of feeling to degrade or hold up to contempt a particular judge—that would make the case complete against the man. Your Lordships begin by treating the case as one of suicide and end by a finding of murder and that is what complicates the whole matter and upon that the man says simply that these men were tried of one offence but convicted of another. He says that it is not a correct judgment. As to Your Lordship's finding about Ramautar Dusadh that he was guilty of abetment I would say, that every Policeman there is guilty of abetment in that sense. What's the defence of the Police? They say that they were so overpowered by numbers that they could not stop this, although, I submit that if a grave offence is committed it is committed by the Police who are simply terrified. These articles do not constitute in the least degree any contempt and the comment is a very fair one. However reprehensible it may be from a social point of view to attribute want of knowledge to the Chief Justice,

it is certainly not contempt of court. We maintain that the High Court has in effect found that the verdict of the Jury was not an unreasonable one, since the High Court has come to the conclusion that Sampati Kuar did not commit suicide but was, practically speaking, murdered by the accused persons.

There is another thing regarding Your Lordship's visit to the Jail. Your Lordships are in a seizure of case and one of the judges goes to the Jail and takes evidence. He gets a doctor to examine certain people and gets the ages of these men determined. I do not know what the object was.

C. J.—The only information we had as to the age of the accused was the note made by the Magistrate in which it was said that a father was 40 and his son 35 years old. Further the ages put down by the Sessions judge frequently came into conflict with what the Magistrate put down. For this reason I went to the prison and asked the Prison Superintendent for his view of their ages. That was a just and proper thing to do in order to prevent possible injustice being done to these people.

Pandit Motilal—It may be a very right thing for a Magistrate to do. But it is a very wrong thing for a member of the Bench of the High Court to do in the absence of the other member and in the absence of the parties. This visit may have effected the trial. One man may have impressed Your Lordship with his innocence, an another man may have impressed Your Lordship in the other way. It was not a judicial act, but it was extra-judicial on Your Lordship's part to visit the jail. It may be a very good thing to do, but certainly it is not a judicial way of doing things. Your Lordship could have adjourned the case or both Your Lordships might have gone to the jail together, or the prisoners called up here. Your visit might have produced a bad impression on your mind. These people might have been exceptionally ruffian looking people who might have struck Your Lordship as being guilty. Your Lordship is presiding as a judge of the High Court and it is not a Magistrate's Court where you could collect evidence. Your Lordships could direct any amount of evidence to be taken by a Magistrate. Your Lordship should not mind being criticised if Your Lordship has gone to the jail and taken expert advice. These, My lords, are my submissions. I maintain that there is nothing in these articles which can be said to have transgressed the bounds of fair comment. The duty of maintaining the dignity of the court is as sacred as that of maintaining the right of public criticism. Without public criticism—fair,

frank, and fearless,—administration of justice has a tendency to run into unhealthy channels. My learned friend Sir Tej Bahadur will now, with your leave, deal with the other articles.

SIR TEJ BAHADUR SAPRU

ARTICLES ON JAGAT BABU'S CASE

May it please Your Lordships! I propose to deal with the two articles which appeared in the "Searchlight" on Your Lordship's judgment. As regards Babu Jagat Narain Lal, Your Lordship will note that it is clear from the judgment of the learned Magistrate that he was a man of some consequence. Merely because he was a man of some consequence I do not suggest that he was entitled to any differential treatment. A man may be of the highest possible consequence and yet if he has committed an offence he must be prepared to take the consequences. The last portion of the Magistrate's judgment shows that he was a man of some consequence in his own province and that he enjoyed with his countrymen in his own province a certain amount of reputation. The fact that Jagat Narain Lal was an accused person in a case would naturally attract considerable notice in this province and it would be duty of the Editor of a paper to take notice of that case. That was the reason why, I say, the Editor of this paper particularly interested himself in the case of this gentleman. Jagat Narain Lal was charged with a very serious offence, the offence of sedition. The offence was that he had imputed very unworthy actions to Government, though it was said on his behalf that it was not the Government whom he had attacked, but it was the subordinate officials of the Government who were responsible for the execution of the policy which was laid down by the Government. I understand that a very eminent counsel, Mr. Sinha, who argued his case at great length, had represented this before Your Lordship.

These are the important circumstances connected with the case. Ultimately Your Lordships come to deliver your judgment. I am not going to raise any question as to whether the judgment was sound or unsound. In fairness to my client, I will ask Your Lordship to put yourself in the chair of a journalist who has got to comment from day to day

upon important events. What would be the first impression of a journalist who comes across a judgment relating to an important trial of this character in which a man of the position of Jagat Narayan Lal is involved. Jagat Narayan Lal may be a good man or a bad man, but the point is that he did occupy a certain position of importance in his own province. If he is described as "a silly, noisy, little man", taking the editor as an ordinary person interested in public affairs and in the reputation of his own countrymen, his first impression would be that the judgment was not a satisfactory one. Supposing he had said we expect the High Court Judges not only "to do justice but to convince us that justice is being done and we feel convinced in this case that justice is not done" would that be contempt? I submit it would not be contempt. Now, supposing the editor proceeded further to say that the judgment contained very strong expressions, some words which pour contempt on the accused, and that it betrays a state of judicial mind which is not to be expected from the High Court Judges, that too would not come within the definition of contempt. When you read this article dated Sunday, July 29 and analyse it and see from what point of view the editor is writing, you may find fault with one strong expression here and another strong expression there and you may say that he has not criticised as you would like him to do. But it is a long way off from discourtesy to contempt. It is open to an editor to say about a judge, howsoever eminent he might be, that he is a perfect ignoramus. There is no presumption in law that a judge knows law. (Loud laughter in court) It is a question of fact in each case whether a judge knows law or whether a judge does not know law. We may, however, safely start in this case with the presumption that the judge does know law. I will respectfully invite Your Lordship's attention to your own judgment. It is far from my intention to challenge its soundness upon the merits of the case. I am proceeding on the assumption that upon merits of the case the conclusion which Your Lordships arrived at was perfectly sound. But what is the impression that that judgment would create upon the mind of a layman? It is a very unpleasant duty to have to appear in a case like this and criticise Your Lordship's judgment. I have no doubt it is equally unpleasant to Your Lordship to have to try that. I hope, however, Your Lordship will not take it that I am wanting in respect to Your Lordship. I will not, however, be doing my duty to my client if I did not present my case upon the judgment which Your Lordship delivered in the case. I will ask

Your Lordship for the time being to forget that you are occupying this high and exalted position and I will only ask Your Lordship to put yourself in the humbler position of a journalist.

(Judgment in Babu Jagat Narain Lal's case was then read) "The subject of the charge is a silly little article in an insignificant little paper written by a silly noisy little man and were it not for the fact that the paper even of this description has some readers amongst the excitable people one would be inclined to treat the offence with contempt, because the logic and tone of the article are such as to make no appeal to any one with any degree of common sense". These words would naturally excite any journalist. Would not the journalist himself say—the Magistrate, says that this man is a man of consequence, how does it come about that when the matter goes before the Chief Justice he suddenly dwindles into a "noisy little creature"—and he will approach the whole question with a feeling of surprise. The Editor would naturally expect a judgment of the High Court to be self-sufficient so as to bring conviction to him and he would say this scarcely sounds like a judgment. When a man reads this judgment by itself without reading the article, would he or would he not say—I wanted to know what the evidence against this man was and what the argument against him was, but instead of that I find that he has been described as a silly noisy man. He would judge Your Lordship's judgment by a different standard.

The second sentence in the judgment reads thus: "But the type of mind exemplified by the author of this article is one which will arise and has arisen in all times under any form of Government, whether the most tyrannical or the most benign". This sentence embodies a political view which is open to challenge, notwithstanding the high source from which it does proceed. "It is, in short, a biological product and is not the result of political conditions". Any critic of Your Lordship in the news paper press might join issue with Your Lordship over this sentence and say that we are leaving the region of law and are getting into the region of politics. How would a judgment like this strike a critic?

Chief Justice—How does it strike a person who has read that article?

Sir T. B. Sapru—I don't know if it is my duty to answer the question? If I were to argue on Jagat Narain Lal's article I would

adopt the same line of argument that was adopted by Mr. Sinha. Although you may find fault with his language, there is a great deal of difference between charging the government of the day with a wicked policy and complaining that its subordinates are not carrying out the high intentions in the manner in which they should be carrying them out, and that on the contrary they are creating trouble between one section and another. I know Your Lordship has held otherwise in your judgment but there is no moral or legal obligation on the part of the public to accept Your Lordship's judgment as absolutely correct. The Editor might very well say: I don't agree at all with the view that the Chief Justice has taken, I don't look upon this article as a seditious article and I am rather surprised that this man should have been disposed of in this summary manner. The criticism, really speaking, does not amount to anything higher than that.

[The article entitled the "silly noisy little man" dated Sunday, July 29 was next read]. With the profoundest respect to Your Lordship, I submit the uppermost feeling in Your Lordship's mind seems to have been a certain amount of contempt not unmixed with anger.

C. J.—Judges should make comments on moral inequity of an offence and express their abhorrence of that offence.

Sir T. B. Sapru—Reading that judgment any man in the position of my client would say that it does show contempt not unmixed with anger. If I may say so, it is one of the privileges of a judge to be angry [Laughter] As regards the sentence in the article dealing with section 124 A what it means is that a prosecution under this section may be started against any one. It will be started by the District Magistrate and then it will come to the High Court. The Editor does not attribute in his article on Your Lordship's judgment any moral obliquity to Your Lordship. He does say that a proper sense of proportion in regard to passing sentence is missing in Your Lordship. I do submit that this is not a matter which really amounts to contempt. You may say that it does amount to libel, but it is quite a different matter.

The argument is this, that so far as Mr. Sinha's argument is concerned, it did not receive proper consideration at the hands of the Chief Justice.

C. J.—In that case one is entitled to judge the conduct of a case from reading the judgment only?

Sir T. B. Sapru—What else is he to do. It is not part of the duty of the editor to come and sit here every day.

C. J.—Do you mean to say he would be entitled to say that because a certain witness is not mentioned the judge has ignored his evidence?

Sir T. B. Sapru—I will ask Your Lordship to bear the circumstances of this case in mind. Here is a man of Jagat Narain Lal's position who stands charged with a very serious offence. What the Editor is pointing out here is not that this form of judgment should not become the standard form of judgment. He may be under a perfectly wrong impression, but that in itself does not amount to contempt. Unless it be a part of the duty to enquire what were the cases which were cited before a judge, what was the time taken in presenting argument he would be perfectly within his rights in looking to the judgment and saying that no attention has been paid to arguments. The sentence is such "but the learned Chief Justice does not appear to have given a cursory consideration to the arguments and disposed of the whole case practically in a single sentence". I am not advocating that the judgment must be of a particular size, but the point of the criticisms is that when you look at the judgment it does not appear to you that the Chief Justice gave any consideration to the arguments of Mr. Sinha. Supposing it is said about a certain judge that he has given no consideration at all to the arguments of a learned Counsel does that amount to contempt?

C. J.—It would depend upon circumstances.

Sir T. B. Sapru:—Your Lordship will remember the famous decision in the Tilak Case in which the judge said that the I. C. S. meant the Government. This interpretation would scarcely be maintainable now. Jagatnarain Lal's case I understand was that you should make a distinction between the government established by law and the agency which that Government employed—for the purpose of the law of sedition and this being his view, he then says, what he expects the High Court to do. The sentence in the article is as follows. "But the safety of the subject lies in the prudence which ought to be exercised by the Tribunal trying a case of Sedition which should recognise that under present condition the subject has far greater liberty of speech than he had 20 years ago". Here he expects Your Lordships in administering law to exercise a proper amount of prudence. He is entering protest against the system and his view of the law of sedition may be right or wrong and we have got nothing to

do with that. Jurisdiction in contempt can only be resorted to when there is no doubt that what the man intended to do was to throw mud on your honour as a judge. The "Searchlight" is printed in English and it may well be presumed that it goes into the hands of men who can understand English. The utmost conclusion that they can come to is that here is a man who thinks that the High Court has not given the right sort of judgment or that the High Court is not exercising that protection which we are entitled to expect from it by the exercise of prudence. He says, that looking at the judgment he is not satisfied that Mr. Sinha's argument's were considered. It is open to him to say that he does not like this sort of judgment. You may say that he has no business to indulge in criticism of that character. Again, when he says you have not shown proper dignity you can't say that he meant to commit contempt. It is not contempt to say that you are not logical, for, a judge is not bound to be logical (laughter). "It did not seem to have struck the Chief Justice that a sentence of a year's imprisonment is far too severe since subject matter of the charge was, as he says, a silly, little article in an insignificant little paper written by a silly noisy little man and since in his opinion the matter is quite trifling. But an enormity of this kind from a judge who does not feel the horror of sentencing a man to seven years' rigorous imprisonment, though he is not certain of his guilt, is not at all surprising." It may be a very severe criticism of Your Lordship's mind as a judge, but it has nothing to do with Your Lordship's independence, fairness or judicial integrity. It only says that Your Lordship cannot adjust the sentence properly to the nature of the offence. If a man says that a certain judge passes a very severe sentence or that his notions of imposing sentences required to be improved, I submit it is no contempt. He certainly does criticise Your Lordship scathingly and he does say that you can't pass the proper sentence. He nowhere says that you pass that sentence out of any sinister motive.

So far as Section 124-A is concerned there is no doubt that every one will tell you that it is the one section against which there has been a considerable amount of feeling during the last thirty or forty years. That section, according to some of the best lawyers, is much wider than the corresponding law in England. "For such conviction must be expected as a matter of course in the system under which we live". The meaning of this sentence is that the system is a very vicious one and in this system there is very little chance

for any man to get out of the purview of this section. He asks what is the High Court to do when the system is rotten from the very bottom itself. If there are two interpretations which Your Lordship can put upon a sentence, Your Lordships must put as far as possible the interpretation which is consistent with his innocence rather than that which is consistent with his sinister conduct. The argument of the Editor is as follows. Here is a counsel of the eminence of Mr. Sinha who appears for the accused and argues at length. But the judgment contains only one or two sentences and the rest of it describes him in a very contemptuous manner. Is or is not the journalist entitled to say that the argument of Mr. Sinha was not considered. He was quite within his rights when he says, that the judgment is not a satisfactory one, in so far as it does not show that the counsel's argument was considered. He is passing the criticism that the Chief Justice should set the standard. It only means that the Chief Justice is not giving the right sort of judgments after considering the arguments of the counsel. It casts no moral reflection and it does not involve any moral obliquity. It only exposes the method of disposing of a particular class of cases, namely, criminal cases. There is no harm in any critic saying that having read the judgment he does not feel satisfied that proper weight has been given to arguments. He does not want to set a standard for you. He is trying to persuade you to set a standard for others. He is finding fault with the perfunctory character of the judgment. According to him, when proper attention is not paid in the judgment to the arguments that are addressed by the counsel one can never feel sure that the proper judgment has been given. His one grievance is that although arguments are addressed to Your Lordship no reference is made to those arguments in your judgment. According to him, if you do not give a well reasoned judgment showing what are the grounds on which you are basing your judgment, there is every reason to fear that people are not safe. He does not mean that you are sending people to jail deliberately or that you are doing injustice. What he says is that your judgments do not produce that conviction which they ought to produce in the minds of the general public.

C. J.—How does that endanger the interests and the liberty of the general public?

'Sir T. B. Sapru—He says that if you don't change the feeling will grow and the public will not be satisfied unless they know what your reasons are for coming to any judicial finding.

At this stage the court adjourned.

Sir T. B. Sapru continued his arguments in the "Searchlight" Contempt of Court case before the Full Bench (consisting of the Hon'ble the Chief Justice, Mr. Justice Adami, Mr. Justice Ross, Mr. Justice Kulwant Sahay and Mr. Justice Fazle Ali) in the Patna High Court on Tuesday. The Court room was over crowded and there was stricter police guard to-day than on the previous day. In fact all the approaches to the Court room was guarded on all sides by sergeants and police constables.

Sir T. B. Sapru said:—My Lords, yesterday when the Court rose I was dealing with the first article on Jagatnarain Lal's case. I now propose to go on to the second article. The article appeared in the issue of the "Searchlight" on Sunday August 5, 1928 and I will take Your Lordships through the particular passages on which my learned friend the Government Advocate relied and make my comments on those articles. Now, My Lords, what he says is this. "We reproduce in the last issue a few of the comments in the Indian press on the doings of our Chief Justice and in this issue we are reproducing some more, testifying to the large field his reputation has traversed. From the *Forward* and *Patrika* at Calcutta to the *Hindustan Times* at Delhi and the *Tribune* and *Hindu Herald* at Lahore is a far cry indeed and covers the whole of Northern India". That was the very first passage on which my learned friend the Government Advocate relied. He has referred to the reputation of Your Lordship the Chief Justice as a Judge and he says that the press in Northern India has made comments on your reputation as a Judge. I submit that it cannot constitute any contempt. If by itself the reputation of a Judge comes in for a criticism it will depend upon the nature of that criticism as to whether it is a fair comment or it is not a fair comment. It would depend on the nature of that criticism as to whether it does amount or does not amount to contempt. So far as this particular sentence or the next two or three sentences are concerned they were written in a spirit of banter; you may condemn him for that spirit of banter or strong language, but there is nothing in these sentences which necessarily implies any improper reflection upon the reputation of Your Lordship as Chief Justice. In order to find whether there is anything improper or not, you have got to go beyond those sentences ;

and I submit that these sentences by themselves cannot constitute any contempt. "It will not be long before the South will echo with his deeds"—"we hope His Lordship is satisfied that whatever be the habits of the people in this part of the world, it is scarcely possible for a man of note to keep his light hidden under a bushel for long in this land. Seriously speaking, these comments in the press call for serious notice." I understand the words in this part of the article are in connection with the habits of the people referred to in Your Lordship's judgment. I have read that judgment and the writer is commenting upon it here. That seems to be the main theme of this article. He is commenting on Your Lordship's observations in a criminal case in which Your Lordship had to decide for yourself as to whether you would accept the evidence of a man who had been convicted of the offence of perjury some 25 years before. And I understand the argument of the learned counsel in that case before Your Lordships was that you should not accept the evidence of that man because he was sent to jail on a charge of perjury. Dealing with that argument, Your Lordships were pleased to make certain observations. I will invite Your Lordships' attention to that particular passage, because it is important to bear in mind what exactly it was that Your Lordship was pleased to say. We are not concerned with the merits of that case. They are entirely outside the scope of the investigation which Your Lordships are holding now. The particular paragraph in that judgment which the Editor has in view in making this comment is this :

"But it appears from what we know of this former case that it was not a case of any great magnitude. Having regard to the habits of the people in this particular part of the world where the giving of false evidence however deplorable it may be is not considered to be an offence which is fatal to a man's reputation, to say the least of it. I do not think that much importance need be placed on that fact."

Now, ordinarily if a witness in a previous trial has been convicted of perjury any judge would find it difficult to accept his evidence given in a subsequent case. But there may be very good reason for believing him notwithstanding the fact that he had been convicted of perjury. Then Your Lordships give two reasons. One of these reasons is that the former case in which he stood charged of perjury was not a case of great magnitude. I have nothing

to do with that reason. The second reason is that "having regard to the habits etc." I submit that it would strike a writer as involving general reflection upon the habits of the people in this particular part of the world.

C. J.—Is not it quite notorious ?

Sir T. B. Sapru—With all respect to Your Lordship I would enter a very strong protest against that. When the Privy Council acquired jurisdiction over Indian appeals we have a reported case in which Lord Wynford so far back as 1834 made some very strong remarks about the habits of the people in this country and said that perjury was rife. Indian judges everywhere in this country have entered a protest against it and we Indians enter a very strong protest against such a notion.

C. J.—Have you ever known a case in this country where the witnesses were not perjured either on the side of the Police or on the side of the defence and have you ever known a case where it was not alleged that the documents were not forged ?

Sir T. B. Sapru—There is an amount of perjury in this country, no more and no less than in several other countries. I have known in my 33 years' experience hundreds of cases where absolutely truthful evidence has been given and I know hundreds of cases in which the whole of the evidence has been perjured from the beginning to the end. The objection is not that Your Lordship characterised any particular individual as a man of a very low type of character. The objection is that Your Lordship made a generalisation affecting the habits of the people of this country. The people of this country may be men of high education and high morals or men of low education and low morals. You have got to divide them into classes and I submit with all respect that what this Editor says is that, it is really remarkable that a learned Chief Justice who has come out fresh from England and who has not had experience to acquire direct first hand knowledge of the habits of the people, should undertake to say this and to indict the whole nation which a very great Englishman towards the end of the 18th century declined to do.

It was certainly open to a judge whether a judge of the High Court or a judge of a subordinate court to say that witnesses A, B, and C, who have appeared before him are hopeless liars and to express censure on their conduct but when he goes out of his way and says, well, perjury is a very common feature in this country.....

C. J.—Is it not very common feature ?

Sir T. B. Sapru—I submit not. I owe it to my experience in the profession to say not. It is in certain classes of cases that you come across perjury. In certain classes you do not. To say that the habits of the people are such that you have got necessarily to choose between one liar and another is a very different thing.

C. J.—But could we accept all evidence given in this country and act upon that evidence.

Sir T. B. Sapru—I know you could not, I am not saying that India consisting of 315 millions consists of absolutely truthful and honest men. We have our proper share of liars. But it is no more discredit to us than it is to any other country which has also got its proper share of liars. It all depends upon what classes of cases you find in which evidence of a perjured character is given. Any publicist worth his salt will take exception to this remark from whatever exalted source it might proceed. My Lords, unfortunately there have been instances here where men in high position indulged in remarks of that character—probably with the best of intention, probably because they were not quite familiar or probably because they had come into touch with that sort of people. But whenever any occasion like that has arisen from the time of Lord Curzon downwards, that has provoked the strongest possible comment. It is quite premissible to a judge of the High Court or a judge of a subordinate court to condemn a particular individual or a class of people who are before him in a judicial investigation; but it is a long way off from condemning that particular class of people to condemning a nation and the habits of the people in this country. I would beg Your Lordships to bear in mind the position of the Editor who has got to make those comments. If he comes across a passage like this he is bound to say that India was not on its trial and that the people of the country were not on their trial before the Court. Certain people might have been condemned as perjurers but what is the justification for a generalisation. I would with the utmost possible respect but with greatest confidence submit that it is a perfectly legitimate line of criticism. This editor would not deserve to be a journalist if he did not enter a protest against this, even if it comes from a exalted person like Your Lordships. The criticism is that in accepting that evidence Your Lordships made an aspersion on the habits of the people in this part of the world. I

therefore submit that so far as this particular passage is concerned, it is an expression of opinion; and, even assuming that Your Lordship's opinion is right, the editor was not bound to accept that opinion. It is entirely open to him to say that he holds a better opinion of his countrymen than His Lordship the Chief Justice. I am not called upon to say anything with regard to what the Chief Justice may say upon the merits of a case.

It may be a very unfortunate thing for any public man to raise a question of this character in the Legislative Assembly but it is certainly within his ordinary political rights to raise a question as to the removal of any person from office including the Chief Justice. "We also publish elsewhere the text of a question which Babu Gaya Prasad Singh proposes to ask in the Assembly suggesting the removal of the Chief justice". The preceding three or four sentences are more or less expressed in a spirit of banter. Now he comes to the serious part of it "Seriously speaking, these comments in the Press call for serious notice". This was also a passage relied on by my friend the Government Advocate. What I submit is this that it may be a very unfortunate thing for any public man to raise a question of this character, but it is certainly not out of his ordinary political rights to raise the question of the removal of a Chief Justice.

C. J.—Nobody does complain of that.

Sir T. B. Sapru—I am sorry. I noted down that this was relied upon by my friend. I will pass on.

The line of argument if I may put it to Your Lordships, is this: There is a standing grievance, it may be right or it may be wrong, we are not concerned with that, that the Government have not during the last hundred years separated the judicial from the executive functions.

C. J.—That is quite a legitimate discussion.

Sir T. B. Sapru—The point of the argument is this that the evils of this system of the combination of the judicial and executive functions are mitigated by the corrective that is supplied by the High Court and that corrective is supplied by the High Court by the manner in which the High Court exercises its jurisdiction over the subordinate Courts and expresses its considered opinion on trials that come up before it either in appeal or in revision. Now he wants the High Court to go on supplying that corrective but he finds that that corrective is not being supplied because he has in view the

judgment of Jagat Narain Lal. And he says this sort of judgment if it is allowed to continue to be the form of judgment in future is never likely to supply the necessary corrective to the subordinate courts. In other words, it is a great tribute to the High Court as an institution that the people in this country whose opinions the writer professes to represent look up to the High Court as supplying the corrective against the vicious system which the Government has not been able to remedy for the last hundred years. It is from that point of view that I would ask Your Lordships to read the few lines and then to see whether you could read into it the innuendo that Your Lordship the Chief Justice is hand in glove with the executive. On the contrary, he says that he expects that the High Court should continue as it had done in the past, in the time of your distinguished predecessor, to supply that corrective. It is always open to a humble subject of His Majesty to say when he finds something wrong about a particular institution, whether it is legal or political, that he wants that institution to be reformed. He may have taken an exaggerated view of the thing; and assuming that he had taken an exaggerated view, I submit that it cannot constitute contempt.

The Indian public are very particular that whatever else they may bring within the arena of controversy, they want to keep the High Court out of their criticism because it is the protector of the weak against the strong. It is the bulwork of popular rights and liberties and that is the argument that is passing through the mind of the writer. However much you may criticise the manner of his expression, I would beg Your Lordship to see the spirit underlying it. I do submit that notwithstanding the phrases which he might have avoided and notwithstanding some of the criticisms of Your Lordship which he might have avoided on the ground of good taste or propriety, I submit that there is absolutely no suggestion against Your Lordship's honour, dignity, independence or fairness. As a matter of fact, you may say that he has used strong language but I submit these articles contain a great tribute to the High Court as an institution. If there is one institution anywhere in India which is held in high esteem, it is the High Court. Here he is referring to that sentiment. He is feeling like a citizen that the High Court must be like Cæsar's wife above suspicion—suspicion that its standard of efficiency has fallen. And what does he say? He says: We do not want any fall from that standard, but we do not suggest that the High Court is in league

with the Government. We do say that the High Court should supply the corrective. The context in which the sentences appear, shows that the conclusions and the observations are so striking that there must be a falling off from the high standard which they had maintained during the time of your distinguished predecessor. That may be a perfectly wrong view, but does that suggest any contempt? "Despite occasional mistakes"—this phrase makes it clear that nobody would claim immunity from error for any judge.

Now comes this sentence: "It would be doing violence to truth to suggest that the same confidence is a fact to-day etc." The meaning of it is this. The High Court have been enjoying the confidence of the people, but not in the same manner in which it used to in the time of Sir Edward Chamier and Sir Dawson Miller.

Why because so far as the evil represented by the combination of the judicial with the Executive is concerned, it used to be corrected in their time in a particular manner and that manner has reference to the kind of judgments which this man has in view. His one grievance is that Your Lordship's judgment did not supply any such corrective.

C. J.—Then it is only a criticism of the judgment and not of the trial.

Sir T. B. Sapru—The grievance is that the judgment does not make a reference at all to the arguments of Mr. Sinha.

C. J.—Does it refer to any procedure of the Court.

Sir T. B. Sapru—As a matter of fact the trial had taken place already in the Court of the Magistrate. His one grievance is that he does not find that Mr. Sinha's argument has been considered or rather appears to have been considered. You may read the whole of the article from the beginning to the end; he nowhere says that you cut short Mr. Sinha or that you showed any impatience with Mr. Sinha; his one grievance is that he does not find that Mr. Sinha's argument appears to have been considered. Any one reading that judgment may say that there is no reference to the arguments of the learned counsel excepting in one sentence.

C. J.—I take it that the proper interpretation throughout this article is that there is no criticism of the procedure, but only of the form of the judgment.

Sir T. B. Sapru—So far as the procedure is concerned, there is no grievance against Your Lordships, that you did not allow the

Counsel to proceed or anything of the kind; but it is the judgment really which he is attacking. (If I am wrong, Your Lordships would correct me). Now the meaning of all that is this. Here he is dealing with the High Court as a Court which sets the standard to the subordinate courts. He says that it is very necessary that the High Court should deal with subordinate courts in a particular manner. Now when he talks of the life and liberty of the people, what he means really is this: we have got no confidence in the system under which the subordinate courts work, but we reconcile ourselves to that system because we have been accustomed to find the High Court supplying a corrective. If the High Court does not supply the necessary corrective and if the High Court disposes of cases like that of Jagat Narain Lal in summary judgments of this character, if the High Court can give such judgments in a case like the Sati case, then we feel that so far as the subordinate courts are concerned, there is no security that people's life or liberty will be absolutely safe, because the subordinate courts must be guided by Your Lordship's judgment. The connection of the High Court comes in because the High Court sits at the top of the subordinate courts.

Sahay, J.—The administration of criminal law does not mean administration of law in the High Court.

Sir T. B. Saprú—He has approached the whole question from the point of view of Your Lordships being a supervising body supplying the corrective so far as the administration of law by the subordinate courts is concerned.

C. J.—Would it not have been better if this man had employed you to write these articles.

Sir T. B. Saprú—If my client were not an editor but a trained lawyer, he would probably have expressed the same idea in a different way. You can blame him for rudeness and bluntness, but rudeness and bluntness do not constitute contempt.

C. J.—Read the preceeding article in which it is said that the phrases I used are inconsistent.

Sir T. B. Saprú—He has approached the whole question from the point of view that the High Court is a supervising body.

Press comments are quoted with a view to show what view of this particular case has been taken in other parts of the country. He thinks: his sentiment is being shared by my fellow countrymen so far as the functions and the duties of the High Court are concerned.

C. J.—Supporting the press comments with approval.

Sir T. B. Saprú—With a view to show what view has been taken of this particular case in other parts of the country. He has given expression to a particular opinion. More or less the same opinion has been expressed with regard to this case by other newspapers. The whole thing becomes clear from the next passage. Here he is speaking absolutely truthfully. Now My Lord the number of cases in which the High Court has come in for a strong criticism has been remarkably few whereas the number of cases in which the subordinate courts have come in for very strong and undesirable criticisms, has been particularly large. Now comes the last sentence and I rely upon it very strongly. "Whatever their other limitations may be, Indian press as a whole seldom, if ever, countenance any running down of the High Court. But there are occasions when forbearance can be carried too far and may become a crime to the country on the part of the enlightened conscience of the community that the press represents. We cannot possibly permit either deterioration in the tone of the administration of justice or the maligning of our people." That really is the position of the writer. Now the question is, what does he mean. We must take the sentence along with the preceding sentences where he has dealt with the question of the evil of the combination of the judicial with the executive functions. Here he is clearly referring to the administration of justice in the subordinate courts for which ultimately the High Court is responsible. He is undoubtedly strong in referring to Your Lordship's criticism in that case, and he says that it is not a part of the judge's duty to run down an entire nation. He is within his right. You may say he had no business to be sensitive; but he may say he has every business to be so about the honour of his nation. That is a question of difference of opinion. In the whole of the argument he is referring to your functions really as a Court of superior jurisdiction exercising supervisory control over your subordinate courts. Now My Lords there is nothing in it to constitute contempt.

C. J.—That is morally an offensive criticism of me as an executive officer.

Sir T. B. Saprú—I submit not. What he is complaining here is this that the Bar are entitled (I do not say he is justified or unjustified in saying so) in matters affecting the practice and procedure of this Court to be consulted. According to my information, they were not consulted. And the Chief Justice passed certain

rules or the High Court passed certain rules. That may be right or that may be wrong. But how does it mean that Your Lordship did it in your executive capacity? Your Lordship the Chief Justice with your colleagues has got the power of making rules. You may as a matter of courtesy and convenience consult the Bar, but if you do not do so, you are doing nothing illegal. If you do not do so the Bar might say their convenience had not been borne in mind by the judges of the court or by the Chief Justice; but no body could say that you intended to play the part of an executive officer.

C. J.—You have misunderstood me. I am not complaining of that criticism because that is a criticism of my administrative duties, but not my judicial duties.

Sir T. B. Sapru—I am sorry My Lord, I will pass on.

"Then came the Sati case judgment with its bad law." If it is open to anybody to say that a particular judge has laid down bad law, why not this man. It is the privilege of a judge to lay down good law or bad law (laughter). There is nothing that may amount to contempt in that.

C. J.—No complaint can be made of an isolated sentence.

Sir T. B. Sapru—I submit that you are privileged to lay down good law or bad law; but anybody may say that what you have laid down is bad law. Then come the phrases, "angry rhetoric and in the circumstances monstrous sentences". Now the sentences which have been passed in the case may have appealed to Your Lordship as being rightly in proportion to the gravity of the offence; but he says that these sentences are monstrous. I would translate that phrase as being too severe having regard to the nature of the offence. It is one thing to say of a judge that the sentences which he has passed are very severe and quite another thing to say that the sentences are cruel or dishonest. He has not attributed any dishonesty to Your Lordship. I would interpret 'monstrous' as 'very severe'.

C. J.—Such as a monster would pass.

Sir T. B. Sapru—I would appeal to you to interpret as a great judge and not as a finicky grammarian. The English language would be intolerable if you were to apply such a meaning.

C. J.—If this gentleman reads English, he must know the meaning of this word.

Sir T. B. Sapru—It is very creditable that an Indian could write such nice English. The word, 'monstrous' does not necessarily mean that the sentences are such as a monster would pass. I would beg Your

Lordship to take a charitable view of these adjectives unless of course you are compelled to take them in their literal sense.

C. J.—Take the next sentence.

Sir T. B. Sapru—I am coming to that. “The conviction of a man on the uncorroborated testimony etc”.

C. J.—What does that mean?

Sir T. B. Sapru—I had not the honour of hearing what Your Lordship held in the course of my learned friend's argument in regard to this matter. The facts are that in a certain case before Your Lordships, there was the evidence of the approver. The approver's evidence with regard to certain persons was corroborated in material particulars, but with regard to the remaining accused there was no corroboration. But you were prepared to accept and act upon the evidence of that approver, because he appeared to you to have been a witness of truth, his evidence particularly having received corroboration in other particulars.

C. J.—Is it not an implication that it is improper.

Sir T. B. Sapru—I say no. From the time of Sir Barnes Peacock the rule has been laid down that there is nothing illegal in acting upon the uncorroborated evidence of an approver. So far as the question of impropriety is concerned, you will find that it is a rule of prudence which the judges have prescribed for themselves that they would generally accept an approver's evidence if there is some corroboration in material particulars. I have known cases in my own experience in which certain judges have accepted the uncorroborated testimony of an approver. What is the writer saying? He is taking exception to Your Lordship's departure from the ordinary rule of prudence. Now, if a particular writer thinks that in a particular matter Your Lordship should have used greater discretion in requiring corroborative testimony so far as the evidence of an approver was concerned, I submit that he is not attributing to Your Lordship any unfair motive or anything which a judge is not justified to do.

C. J.—Does it not impute gross impropriety?

Sir T. B. Sapru—No, My Lord, what he says is this: I would expect the High Court generally to insist upon corroboration being supplied in the case of the testimony of an approver and the Chief Justice in this particular case proceeded to act upon the uncorrobo-

rated testimony. He is criticising the application of the law and what is improper. I would say that even the editor of this paper could not say in regard to Your Lordship that it was improper in the sense that it was morally improper, and that it was inconsistent with your office as a judge.

C. J.—'Morally' has a reference to the desirability of having a change in the law as regards the admission of evidence. Is that your contention?

Sir T. B. Sapru—My contention is that what he is saying is that you should have insisted on some corroboration of the evidence of an approver and it is undesirable to convict without that. How could Your Lordship read into it any moral turpitude on the part of the judge? There is nothing to show that he imputed to Your Lordships absolutely any motive. Supposing Your Lordship's judgment comes up for review in a local journal, it would be perfectly open to the editor of the journal to say, "we do not quarrel with the law, but we do say that Mr. Justice so and so has departed from the rule of prudence which is generally followed by Judges in this country that the evidence of the approver must be corroborated. We think that this is not proper." I submit the editor of that paper would be offering criticism of your work as a judge, not necessarily implying any moral turpitude to Your Lordships. "The conviction of a man on the uncorroborated testimony of an approver etc." "We hope the Chief Justice is now wiser" etc. That was not relied upon by my learned friend. The Executive can look after themselves. Then comes the sentence: "The public must judge a country by the standard of its judicial administration and the measure of justice administered between the subject and the state." It is a perfectly harmless criticism. Then comes the sentence relied upon by my learned friend the Government Advocate: "The law of sedition is so framed" etc. So far as this sentence is concerned, Your Lordship can have no grievance. If any body has grievance, it must be the legislature or the Government. "The High Court alone has been depended upon to mitigate, if not to undo the severity of a law designed by our alien rulers to perpetuate their domination over this country."

The law may be very severe and yet the High Court may mitigate its severity by its interpretation of that law. It all depends upon the view Your Lordships take of a section. In this way you mitigate the severity of law.

C. J.—Not on the question of conviction

Sir T. B. Sapru—The question is whether this article comes within the definition of Section 124-A. If you read it literally then this article must fall under Section 124-A; but if you take the spirit of the thing and read it in the light of the circumstances, then the matter is different.

C. J.—In other words we have to construe statute according to the purpose.

Sir T. B. Sapru—He is not casting any aspersion on the High Court; but he is rather complimenting it.

C. J.—A most undesirable compliment.

Sir T. B. Sapru—A compliment may be desirable or undesirable but every undesirable compliment does not constitute contempt. You may say that he is wrong and that you are not going to relax the rigour of the law, because it is your duty to enforce it. But he says: Well we look to you as Chief Justice of the High Court which is the bulwark of our life and liberty, and you are in a position to interpret the law mildly. But his failure to interpret the law like a trained lawyer or his own view as to the duty of the High Court in relation to the particular statute does not and cannot constitute any contempt. You may say if you like that it is nonsense but every nonsense will not amount to contempt. What I believe really was passing in the mind of this writer was a judgment of Mr. Justice Adami in a sedition case in which the whole law was discussed at great length and the learned Judges of the High Court gave their reasons. And nobody blamed their Lordships.

There, His Lordship said that India is not the same in the year 1928 as it used to be in 1908. He is in his mind comparing Your Lordship's judgment with one of your learned colleague's judgment. That was also a sedition case and his grievance is that when you read the judgment of Mr. Justice Adami and Mr. Justice Macpherson you will find that the two learned judges who convicted the man gave their reasons and discussed the whole law at great length. He wants exactly the same satisfaction from Your Lordship. Now the point of his criticism is that conditions at present, in India are quite different from those which existed in 1897 and far greater freedom is given to the people now than before. I am saying that these were the ideas present in the last passage

which has nothing to do with contempt. But the first passage deals with the manner in which a particular article should be interpreted (Calcutta Weekly Notes, Patna 24, page 283). He is therefore relying really upon the discretionary power of the High Court to interpret the statute like that and to mitigate its rigour. "But the fact remains that the more or less summary disposal of the case has left behind the most disquieting feeling that if the judgment of the Chief Justice were to set the tone of the judiciary in respect of the offence of sedition, the right of free speech will labour under a deadly meance at the hands of the bureaucracy ever ready to run amock but kept under some measure of restraint only by the fear of the High Court." I will very respectfully invite Your Lordship's attention to this sentence. I said to Your Lordships yesterday that his whole point is that he wants the High Court to set the tone of the subordinate judiciary. Here he is much more expressive than in the previous sentence. That is the whole theme of the article. That is to say, the argument is that the High Court is the terror of the bureaucracy; and if the Bureaucracy or the Government sometimes prosecutes a man under section 124-A wrongly, the man comes for justice to the High Court. Now we find that the judgment of the High Court in this particular case is not in the nature of judgments of the former judges or other judges; namely, it cannot put the bureaucracy or the Government on the guard. That is the meaning of it or in other words its meaning is that the judgment of the High Court or the judgment of the learned Chief Justice is not a judgment which can be said to exercise a check on the bureaucracy and the subordinate judiciary. His view may be wrong, but he is expressing a hope that Your Lordships may give judgments which will have an effective control over the bureaucracy. It does not mean that you did pass the sentence because of any extra judicial considerations or anything of the kind. What I will say is that Your Lordship need not take any notice of that. He may be right or he may be wrong in putting that interpretation on the judgment in Babu Jagat Narayan Lal's case. I submit that it is perfectly open to a newspaper editor to say that Your Lordship's judgment is wrong or that it did not proceed upon a true interpretation or a true view of the article in question. Now we are not bound in this case to decide whether Your Lordship's critic's view is right or Your Lordship's view is right.

C. J.—That is not contempt.

Sir T. B. Sapru—If there is no objection then I proceed.

"The whole purpose of the article was indeed an appeal to Lord Irwin, but instead of a well considered judicial examination of these and other aspects of the case, we had a string of abuses of Babu Jagat Narayan Lal indulged in from behind the protection accorded by law."

C. J.—That is contemptuous. It is the duty of a judge to comment upon the badness of an offence and upon its quality.

Sir T. B. Sapru—My first answer is that it was not referred to by my friend as one of the sentences relied upon. I have all along said that it may be at times Your Lordship's duty to make very strong comments upon the conduct of an accused person who is before Your Lordship. Now the writer is not taking exception to that. What he is taking exception to is the use of certain words and phrases which he characterizes as abuse. What he is referring to here is the constant use of these words 'silly little man, silly little paper, noisy little man etc.' He says that he does not expect from an eminent Chief Justice this sort of language by which he is shocked. It is a protest against Your Lordship's language but every protest against Your Lordship's language will not amount to a contempt. His view is this, that he did not expect the Chief Justice would indulge in this sort of rhetoric. He says: I expect a judgment from the Chief Justice and not rhetoric and I do not like this angry rhetoric. The Chief Justice can have a certain amount of feeling but no more than a certain amount and that amount should be prescribed by his own prudence. What he says is this, that he considers that the Chief Justice's angry rhetoric about the damnation of the soul and the pilgrimage to heaven is unbecoming in a judgment. You may not agree with that. You may hold that it is the privilege of a judge that he should wind up his judgment with a sort of peroration. But he says—I do not agree that there is any room for peroration.

If he disagrees with your view he is not guilty of contempt. You may say that the standard he is setting up is very high. Supposing he expects Your Lordship to give a very dry, cold and reasoned judgment without any adjectives in it, you may say that he is silly or foolish but you cannot say that he is guilty of contempt. It is a question of taste

come to the next sentence which is the only other sentence relied upon. "But by far the most amazing feat was the insult levelled at our people in this part of the world, by one who is not a globe-trotter out to earn cheap notoriety nor an executive official carrying the white-man's burden on his shoulders, but the Chief Justice of a High Court of Judicature."

C. J.—What does he mean by this ?

Sir T. B. Sapru—If I may without disrespect say so he expects Your Lordship to be better than Miss Mayo (laughter). The meaning is that Your Lordship is not a globe trotter, but has come to India to make it your home for ten or twelve years. He has entered a protest against that remark of yours there; and it is a compliment to Your Lordship that he expects a higher standard than he would be prepared to expect from a globe trotter or from an executive officer, judged by a generous standard, I submit, that far from meaning any reflection to Your Lordship, it is a tribute to your high office that he expects a much higher standard from Your Lordship. The only implication is that the public at large refuse to be characterised as habitual liars. He is not talking here of any particular class or of any particular person : but he speaks of the general observation in Your Lordship's judgment with reference to the habits of the people in this part of the world and the failure of the people of his country to avoid perjury. Your Lordship did say in that judgment that "having regard to the habits of the people in this part of the world etc."

C. J.—Is it considered as an offence ?

Sir T. B. Sapru—Most certainly. I do emphatically say that it does involve a moral turpitude. But I would very respectfully and very strongly, in fairness to my client, ask your Lordship not to go away with the idea that we are so bad as to allow a perjurer to retain his position in society.

C. J.—The point was whether in the conditions of that case in a rural district in the circumstances of the kind we were dealing with it was wrong. There is not a man who would not treat an imputation of perjury with the greatest resentment; but surely you must know perfectly well that in cases of murder and in cases of riot that we deal with, this was one of the greatest difficulties of the judges in spite of the positive clearness of the evidence. My greatest anxiety was to see who was speaking the truth so that I could act upon his evidence.

Sir T. B. Sapru—But then there is still room for comment.

C. J.—Apart from whole of its contents.

Sir T. B. Sapru—All that you can say is that the language was so ambiguous. It may mean that what Your Lordship wanted to say Your Lordship was not able to express well.

C. J.—I do not know anybody to whom it is ambiguous.

Sir T. B. Sapru—So far as my client was concerned he says Your Lordship's remark about Indians was for too sweeping and he would not tolerate that remark, even though it might come from an exalted person like the Chief Justice. The implication is that the Chief Justice is quite at liberty to say anything with regard to a particular class of people whose evidence he may have considered. If you read the sentence I will respectfully submit to Your Lordships, that you will read into it that meaning. I accept everything that has fallen from Your Lordship without reservation; but when an editor reads that paragraph without Your Lordship's explanation he is bound to criticise it; but that is not contempt. "The conviction of a man on the uncorroborated testimony of the approver followed etc." What is the context here? He is inviting Your Lordship to reject the testimony of a man who has been convicted of perjury. Then there is that remark "in this part of the world." It means Bihar. I would interpret it literally. This part of the world indicates Bihar. It is the plain English meaning.

C. J.—That is without taking the context. Read the whole judgment.

Sir T. B. Sapru—I submit that there is nothing, even, if I read the whole, to show that Your Lordship referred to any particular class. The sentence would certainly give offence to 99 out of 100 Indians.

C. J.—It is a question of taking a sentence from its context.

Sir T. B. Sapru—I say that it was an unfortunate sentence; and if it was an unfortunate sentence, I ask Your Lordship to judge the writer by the same standard.

C. J.—I am not complaining of his interpretation, but I am complaining of his taking the sentence out of the whole judgment.

Sir T. B. Sapru—I will read to Your Lordship these passages. What is there in the context which would qualify that particular observation of Your Lordship's or which would strike an editor writing an article

as amounting to a qualification of that general observation? Your Lordship discussed the facts of the case; pointed out the discrepancy in the first information report and the very elaborate evidence of that man and said that in point of fact the so-called discrepancy is not really a discrepancy. Your Lordship took a particular fact and then you dealt with the argument. But while you reject the argument that you must not accept the evidence of a particular individual, because he is a liar you hold that it does not take away the value of the evidence having regard to the habits of the people in that part of the world which may mean Bihar or Saran only. Now this is far too general an observation and the editor does say that. I do submit that the observation with regard to this part of the judgment is perfectly honest and legitimate. The utmost you can say is that he misunderstood your meaning, but that can not amount to contempt. I submit that there is nothing dishonest and I do say that my client would have been wanting in straightforwardness if he had let that remark go unchallenged. That is all I have got to say with regard to it. There is nothing more which was read in this article by my learned friend on the other side. There that article ends and there is nothing else.

The only other article that was read to Your Lordships was the quotation from the "Forward". Now I propose to deal with it. Your Lordships ruled yesterday that it was included in the article. I am reading that article now to Your Lordships. Now this particular issue of the "Searchlight" is dated the 5th of August and I find that the editor of the paper was reproducing articles from other news papers. The object of doing that was to show that this observation by Your Lordship in Jagat Narain Lall's case had affected a considerable number of men of India in other parts of the country and it created a deep feeling. "The full text of the judgment etc." This man too is making a complaint of the fact that in Your Lordship's judgment in Jagat Narain Lal's case you said that a person like Jagat Narain Lal is inevitable in any system of Government, tyrannical or benign. This is the particular portion of the judgment that he is attacking or finding fault with. What he says is that these are sentences which should not have found a place in a well considered judgment of Your Lordship. There is nothing here about your Lordship's dealing with the law. These sentences are criticised as being an expression of a political character, or a political doctrine or

view. It may be perfectly right or wrong; but he says that they should not have found a place in the judgment of the Chief Justice. Merely because the language is very strong or unpalatable, you cannot treat it as contempt. Let us see what interpretation we can put on it.

C. J.—Do you prefer not to deal further with the heading?

Sir T. B. Sapru—Yes I shall. By 'these extra-judicial elements,' I understand to mean those remarks which Your Lordships made and which he says ought not to have found a place in the judgment of a judge, namely, that in a benign form of Government or in a most tyrannical form of Government a man like Jagat Narain Lal is inevitable. If the judge has got that view passing in his mind, it is most undesirable that he should have such a notion. He thinks such a notion is apt to prejudice an accused person. He is not attributing to Your Lordship a conscious bias. He does not say that you sent him to jail because you wanted to do him an injustice, but he says that these particular sentiments to which Your Lordship gave expression should not find a place in the judgment. The comment is that there is such a thing as a judge having an unconscious feeling in the matter. The whole point of the article is this that if a judge allows those sentiments to come in his way, it is possible that they may unconsciously produce an effect on his mind. That is the line of argument. The words 'extra judicial' have no reference to any sort of understanding existing between Your Lordship and the Executive. It is used particularly in relation to the sentiments which found expression in the words used. "Was any evidence adduced by Public Prosecutor to warrant the presumption that the accused was a fool and a knave".

C. J.—I prefer to call him a fool and a knave.

Sir T. B. Sapru—It is open to Your Lordship to hold that view, but the sole question to be considered was whether he was guilty or not.

C. J.—It is a part of the duty of a judge to comment upon the offence.

Sir T. B. Sapru—What I am going to say is that you are concerned only with the main issue in the case whether Jagat Narain Lal is guilty of sedition or not.

C. J.—It certainly is the practice to comment on anything found—either the folly or the wickedness of the offender.

Sir T. B. Sapru—There is no objection to Your Lordship coming to any finding as to the folly or wickedness of the offence, but not irrespective of the issues that are involved before you in relation to that particular matter; but you have got nothing to do with his general wickedness or with his general folly. That did not come before you. That is a matter of evidence. I would submit with all respect that the editor is quite within his rights to comment on your reference to the accused's folly. That was outside the scope of Your Lordship. Folly in general has nothing to do with whether he was guilty of sedition or not. The point of the criticism is that Your Lordship did not confine yourself to the question at issue; on the other hand the man's character was sought to be blackened.

C. J.—He blackened it himself by his offence.

Sir T. B. Sapru—The offence of sedition is at the very highest an offence of opinion.

C. J.—As to the folly and knavery disclosed in the evidence is it not the duty of the judge to take them into consideration in passing the sentence?

Sir T. B. Sapru—May I respectfully put it like this, is there anything in the sentence to show that the sentence of one year has been passed not because he was found guilty of sedition, but because he was a knave and a fool. You thought that one year's sentence was proper because you found him guilty of sedition. Knavery or folly have nothing to do, I submit, with the offence of sedition.

I now come to the objectionable phrase to which Your Lordship just drew my attention: "Was any evidence adduced by the Public Prosecutor to warrant that he was a knave? If the police did not adduce any evidence that he was a knave, what justification had the Chief Justice to prostitute his position." The point of the criticism is that he may be a knave or a fool or both: but the Chief Justice has dealt with his character in the absence of any evidence as to his moral character generally; and if he did so, he has prostituted his position or in other words, he has abused his position.

C. J.—Is that the meaning of prostitution in your mind?

Sir T. B. Sapru—I have used that word very often in the sense that some thing has been abused or degraded.

C. J.—Nothing in the sense of selling anything.

Sir T. B. Sapru—Not necessarily. It must have a secondary meaning. The interpretation "sell" would lead to no conclusion at all. I have heard English people using this word in the sense of abuse. Your Lordship says "Sell". Sell to whom—Police or Executive? I would translate it as departure from the right line or abuse. The word "prostitute" may imply the idea of 'selling,' but in a sentence like this you have got to look to the entire context. It need not necessarily mean what it is shown to mean in the dictionary. There is no suggestion that Your Lordship took money from any body. It was an unfortunate choice of words in the article. The sentence refers to extra-judicial elements in the observation where Your Lordship deals with the mentality of a certain class of people which would compel them to take a certain line, whether the Government is foreign or national. He is finding fault with your general remark and not with your judicial finding. He says there is no occasion for remarks of this character in the judgment of a judge. They may be perfectly justified on a public platform where a man wishes to deliver an address on the duties of citizen or upon the abnormal character of a particular individual who will never be happy whether the Government is foreign or whether the Government is national. But these remarks do not mean that you sent him to jail because of any considerations other than judicial. Fault is found with those observations; but fault is not found with your finding that the man was seditious. What was passing in the mind of the Editor was was Your Lordship's general observation. The meaning of this is that the writer regrets that those observations should have found a place in the judgment. The meaning of the article is clear and obvious. That is the whole criticism. Now I am prepared to admit that the criticism is a very severe one ; but I submit that it is very far removed from being a contempt or at any rate being contempt for which we have been brought before Your Lordships. These are the only articles which form the subject matter of the rule and I would invite Your Lordships' attention to certain authorities on this particular part of the case. The position really comes to this in regard to Jagat Narain Lal's case. The judgment of Your Lordship has come in for very severe criticism which is based on two or three grounds: first of all he has been described in a very contemptuous manner; secondly Your Lordship indulged in certain remarks of a general character having nothing to do with the case but having everything to do to spoil the man's character ; and thirdly,

the notions formed by Your Lordship about the man indicated a suggestion that the judgment was unfair but not in the sense that you were actuated by any extra-judicial considerations or by any impropriety and nobody has attacked Your Lordship's integrity. Your Lordship's judgment has been challenged partly because of certain observations which were not germane to the matter before Your Lordship, although Your Lordship may think that it is part of Your function or your duty generally to criticise the conduct of a man. The use of the word prostitution implies that something bad has been done, but read in the light of the context, I say it can not mean that you 'sold' your judgment to any one.

C. J.—Does it not imply any moral obliquity ?

Sir T. B. Sapru—Does it imply any moral obliquity ? It depends upon the circumstances of the case. The explanation of that word is that Your Lordship travelled outside the prescribed line for a judge in describing that man in the manner in which you did describe him. There is no evidence laid before you by the police at all that the man has a general notoriety for being a knave or a fool and that Your Lordship's duty required you to condemn him. The article says you should not have taken away his character generally. It is that part of the judgment against which a protest has been entered by not only the writer in the "Forward" but by my client himself. He further says that according to his view of the matter he is not satisfied with Your Lordship's judgment because you do not appear to have given any proper consideration to the arguments of a counsel of the eminence of Mr. Sinha. Your Lordship was pleased yesterday to make an observation that he could have made an enquiry and that he could have come to the Court. In the first place. I would submit on behalf of my client that during the hearing of this appeal, my client was not present here and as he was not present, he is quite within his right in saying that Your Lordship's judgment does not give the impression that the arguments of the counsel have been duly considered. He only means that the judgment was grievously defective and is not morally or legally wrong in saying that the judgment of a judge is seriously defective in certain respects, both in the matter of expression and in the matter of substance. He may say that he takes very serious objection to the taste shown by the learned judge in the matter of describing a witness and to the argument used by the learned judge because they are not convincing. That is the line of argument. I submit you may blame him for using strong

language, you blame him for using very impolite, discourteous or irritating phrases, but you cannot say that he has been guilty of the offence of contempt.

It all depends on what is exactly the meaning of contempt and what is the law with regard to that. I propose to invite Your Lordship's attention to a few authorities in this connection. If it is a contempt at all, it can come under that class of contempt called scandalising the Court. It is not contempt committed in the presence of the court or committed with reference to any pending cause, appeal, action or matter. So far as the case of Jagat Narain Lal is concerned or so far as the Sati case is concerned, both of them were over; and the moment they were over, I submit, they could form the subject of criticism, even severe criticism, on the part of the public. Now therefore what we have got to find is what is exactly in that criticism which can bring them under the head of contempt. I propose to invite Your Lordships' attention to a very extreme case of contempt and to the judgment of the Privy Council (judgment by Lord Morris in 1899, Appeal cases, page 549) the accused in the case was one Macleod and the judgment of Lord Morris shows that they dealt with the question of contempt generally and they discussed what may be contempt and what may not be contempt. If you find any thing in these articles which is in the nature of a libel then according to the law laid down, you must resort to action for libel or criminal intimidation. But, if you find anything with reference to the interests of the administration of justice, then you may resort to this jurisdiction although it is very sparingly resorted to. There may be a very unpleasant reflection upon Your Lordship in your individual capacity as a judge. But so far as the administration of justice of this court is concerned there is no reflection. So far as the administration of justice by Your Lordship is concerned, there is one serious reflection and that is that Your Lordship has not turned out to be as good a Chief Justice as your predecessors were. That may be a very wrong thing to say but it is not contempt. It is always open to a critic to say that a particular Chief Justice is not as good as his predecessor was. He says that having regard to your two or three judgments you have not been discharging one important function which we, the people of Bihar, are entitled to expect you to discharge and that is exercising a strict control over Subordinate Courts by writing proper judgments. I would ask Your Lordship to look

to the real matter of the comment and not to the language and the adjectives there. It is quite clear that you cannot expect ordinarily the same style in a newspaper which you are entitled to expect in a judgment. A newspaper article in every part of the world does use at times strong language. We have got to make allowance for that as a matter of ordinary experience. If a newspaper article uses some very strong words either because the editor cannot help using them or he considers it necessary to give expression to the depth of public feeling, you cannot say that he is guilty of contempt. I submit that this jurisdiction must be exercised with the greatest care.

Chief Justice—I entirely agree. The circumstances of that case were peculiar. The accused did not know what the article contained. So he was let off. Take Grey's case. That is a conclusive authority. You are not arguing that the jurisdiction is obsolete but that it should be exercised with great care.

Sir T. B. Sapru—Yes, My Lord. There is absolutely no difference between the first case and this case excepting that in the former the jurisdiction was said to be obsolete. I am willing to take my stand on these decisions and would ask Your Lordships to apply the right standard. They say that in their opinion (page 56). So far as the summary process of contempt is concerned, it is not to be used for the vindication of a judge as a person. The reflection that was made in this particular case was upon the Chief Justice as Chief Justice.

C. J.—This authority does not lay down that such a reflection would not be a contempt.

Sir T. B. Sapru—They do give us their idea of what a contempt may mean. I take my stand upon that expression of opinion of their Lordships of the Privy Council. I am entitled to ask you to apply it to the circumstances of this case. Then the proceedings before Your Lordship cannot go on for the vindication of Your Lordship. As regards Grey's case I would submit that a decision of the King's Bench may be an authority or may not be an authority but a decision of the Privy Council is binding on Your Lordships. If I am right in the interpretation that I am putting on the judgment of Privy Council, then you can make use of that summary procedure in India for the vindication of the administration of justice but not for the vindication of a particular judge himself.

C. J.—Supposing it is said that this judge is notoriously corrupt.

Sir T. B. Sapru—That is libel. He can then go to a criminal court or to a civil court.

C. J.—Cannot he take proceedings for contempt.

Sir T. B. Sapru—No. The judge represents the majesty of law and it is right and fair that he should protect the interest of justice, so that public confidence may not be shaken in the administrations of justice. But when a judge's personality as a judge is involved, if he does start proceedings like that, the accused persons start under a great disadvantage. But if the judge files a civil action or institutes criminal proceedings the accused and he are on terms of equality before the court. The accused is in a position of great disadvantage when he has got to appear before the very judge whom he is said to have libelled. That may be one of the grounds why this summary procedure is discouraged so far as the vindication of a particular judge is concerned. (Grey's case was next referred to by Counsel). In this case the question was one of personal and scurrilous abuse of a judge as a judge. We do not know what the nature of the contempt exactly was in this particular case. We must take it that it was a very scurrilous abuse of the judge as a judge. Your Lordship as a private gentleman comes in nowhere. We are concerned with Your Lordship as a judge so far as these articles are concerned. If you take the law from the decision of Lord Russell in this case you must put a generous interpretation upon the language of your critic and if that language does not necessarily amount to a sinister suggestion you ought not to read anything into it. So far as these two or three phrases which are troubling Your Lordship's mind are concerned, I shall ask Your Lordship to read them in the setting in which they occur. At the present moment it is for my client to ask Your Lordship to apply the right standard and it is not for Your Lordship to ask him to apply the right standard. I do submit that I am willing to take my stand upon the law laid down by Mr. Justice Adami in the sedition case. You must not spell out a contempt in a certain article if it does not on a general and fair reading of it, lend itself to that construction.

Their Lordships at this stage rose for lunch.

After lunch on Tuesday Sir Tej Bahadur Sapru continuing his arguments said:—

I invite Your Lordships' attention to 1893 Appeal Cases, page 138, which is the well known case of the Bahama islands. In this case Your Lordships will find that Their Lordships of the Privy Council have not delivered a judgment, but their resolution has been recorded there and it is treated as judgment. The offending letter which appeared in the newspaper is printed there and this was one of the grossest possible cases of contempt. The point for Your Lordship's consideration arising from this case is that in judging on the question whether a particular case amounts to contempt, you have got to apply your minds to the question as to whether the administration of justice comes in for any hostile criticism so as to undermine the confidence of the people in it. Their Lordships of the Privy Council make four recommendations. They say that though it might have been made the subject for proceedings for libel, it was not, in the circumstances, calculated to obstruct or interfere with the course of justice, of the due administration of the law, and therefore did not constitute contempt of court. I will proceed on the assumption, that some of the remarks made in these offending articles, which are before Your Lordships, amount to a libel on Your Lordship. But then you have got to apply a further test. It is whether that libel tends to obstruct or interfere with the course of justice or the due administration of the law and if it does, whether it does constitute a contempt of court. So far as that is concerned, whatever may be the gravity of the charge against my client on the question of libel, I submit, you cannot fairly deduce from these articles that he attempts to obstruct the general course of the administration of the law by Your Lordship or by Your Lordship's colleague. His articles relate to Your Lordship the Chief Justice and to Your Lordship's conduct in relation to two or three cases that are mentioned and he says that so far as Your Lordship the Chief Justice is concerned, you have fallen short of the standard that he, according to his own judgment, prescribes for the Chief Justice or the judges of the High Court. He does say in so many words repeatedly that the High Court is a very valuable and prized institution commanding the respect and confidence of the people of this province, that it did command in a unstinted degree the confidence of the people of the province of Bihar in the time of your distinguished predecessors. You may regret that he does say that the High Court does not command the same confidence now. But does he say so with a view to pour ridicule or contempt upon this noble and sacred

nstitution called the High Court, or is his aim and object that the High Court should recover what he considers to have been its great prestige in former times. The object is quite clear. His anxiety is that whatever other institutions may suffer in the estimation of the people of this province, the High Court should not. It is really a sort of criticism coupled with an appeal to Your Lordship and I ask Your Lordship to approach the question from that point of view. He may be right or he may be wrong but that is his feeling. He thinks that this judgment and that judgment of Your Lordship tend to shake the confidence of the people in the High Court. He does not say that the High Court has lost all confidence, but he says that the High Court does not enjoy the same confidence, that it did during the time of Sir Dawson Miller and Sir Edward Chamier, that the High Court should keep alive those old traditions which were a terror to the Executive and which always applied a corrective to the lower courts. He wants that the administration of justice should be absolutely such that it cannot be possibly doubted by any one in the country. That is the spirit in which it has been written. No doubt Your Lordships might say that he has criticised you in language of a very strong character. If I had to write that article I would never have used the same language. He has probably written what a number of Editors would write, when they feel strongly and when they want either to make an appeal to the person against whom they are writing, or when they want to evoke public interest in the matter. It would have been quite a different thing for this man to say that the High Court which used to be a sacred institution, one in which the people had absolute confidence and which they used to treat as a bulwark of their popular liberties is now a miserable and wretched institution and he would ask the people of his province not to have any confidence in it. That would have been absolutely indefensible, that would have been an attack on the High Court as an institution, that would have gone to undermine the influence of the High Court, that would have sacked the foundations of justice. Howsoever much you may condemn a man for using strong language or impertinent language with regard to a particular judge, so far as the High Court is concerned, that stands absolutely as it did before minus that it does not enjoy the same confidence. I submit this is a very legitimate criticism, though it may be very unpalatable. I make an appeal to Your Lordships to bear in mind that there is a very genuine sentiment to be found in these

articles. Whatever its other faults might be, so far the Indian Press has never committed one fault, and that is, that it has drawn a line in regard to the High Court. It has never brought the High Court into the arena of controversy, because the High Court is a friend of the people and is a protector of the people, it stands up for the rights of the people against wanton acts of the executive. That is the line of the argument and I submit, if it is possible for Your Lordship to accept that view, while you may condemn the use of superlatives or extravagant phrases and words, you cannot possibly interpret the articles as implying in the least degree any reflection upon your honour to the effect that you have sold your office to the sweet will of the Executive. There is no suggestion, I submit, anywhere directly or indirectly, that you are in league with the Executive. Nothing can be more derogatory to the position of a judge, high or low, than that it should be suggested that he is not an independent judge. But to say that a judge has gone wrong or that he has given a judgment which has offended public conscience or disappointed public expectations is merely to challenge his intellectual capacity and not the performance of his high office on the ground of want of fairness or lack of impartiality. I make that distinction. There is no attempt to call in question Your Lordship's integrity as Chief Justice. One single phrase taken by itself may be objectionable. But you must take it in the setting in which it appears and bear in mind the line of argument which that man is putting forward and the point of view from which he is writing. While you may condemn the individual phrases, you cannot condemn the object that he has in view. His objective is that the High Court should continue to enjoy the same prestige that it did before. That cannot amount to contempt, because it does not obstruct the administration of justice or interfere with the course of justice or with the due administration of the law. On the contrary, he is anxious that justice should be promoted and that the administration of the law should go on as before. All that you can say is that he has taken a wrong view in regard to particular issues. He is not generalising with regard to the High Court or even with regard to Your Lordship generally. His observations are limited to these two or three cases and from them he draws his inference. I say these articles amount to a very severe criticism, but they do not amount to contempt. You cannot read that intention fairly into these articles. I do most emphatically but

most respectfully say that nothing was further from his intention than to throw ridicule upon Your Lordship.

Mr. Justice Kulwant Sahay—I take it your plea is that the articles do not constitute contempt and no contempt was intended.

Sir T. B. Sapru—This is exactly my case.

Mr. Justice Kulwant Sahay—Then why does not your client say so.

Sir T. B. Sapru—My client says so through me. I am here to speak for my client.

Mr. Justice Kulwant Sahay—Could not there be a word of regret for certain passages that occur?

Sir T. B. Sapru—My client maintains that the articles do not mean contempt. If he felt that he had been guilty he would have certainly expressed regret. But when he holds that he wrote them in exercise of his public duty and what he wrote did not amount to contempt, he declines to express any regret.

C. J.—Supposing we hold that the effect of these articles is to pour ridicule upon one of the Judges of this court, what action should you take?

Sir T. B. Sapru—My client feels that it cannot have that effect. Then my client would say I am sorry for your holding that view.

C. J.—You are sorry for such an interpretation, not for the expression of your view.

Sir T. B. Sapru—If he felt that he really had brought Your Lordship into contempt, he would be prepared to express his regret, but he has a very strong feeling that he wrote this in the discharge of a public duty. That may be a misconceived opinion of his, but so long as he did what he thought to be in the interest of the High Court and in the interest of the people, he has no regret to express for writing these articles. I don't say that I have committed contempt and if I have committed contempt then I shall be prepared to express regret. But as I hold that I have not committed contempt I decline to express any regret.

(Counsel then referred the Court to 1922, I, Chancery Division page 276). In the course of Your Lordship's observations yesterday, you were pleased to observe that he had been guilty of misrepresentation. Now I will proceed on the assumption that there was misrepresentation of one particular portion of the judgment. I wil

beg Your Lordship to analyse and see what is the misrepresentation and what can be the object of misrepresentation. Take for instance the Sati case. The misrepresentation which was said to have been made with regard to that judgment of Your Lordship related to the plot and my learned friend Pandit Motilal argued before Your Lordship that the word 'plot' in the opinion of this man meant one thing and then he went on to say that Jagdeo had unjustifiably been convicted because while Your Lordship said that you were not certain but you believed only that he was guilty and that he should get a certain term of imprisonment.

So far as that misrepresentation is concerned I submit to Your Lordship that the whole object of this man was to point out that upon the evidence in the case and upon Your Lordship's expression that you were not certain though you believed him to be guilty, this man ought not to have been convicted. That part of Your Lordship's judgment is one which, in the absence of any statement such as that which was made by Your Lordship, might very well have led any one into believing that what Your Lordship meant was that he was not in one particular plot and that you were not certain but that you had a sort of moral belief. It is enough that there was a possibility of misunderstanding. If there was a possibility of misunderstanding and if he acted upon that possibility and then said that the man should not have been convicted, he only criticised your judgment. How does it affect Your Lordship's reputation in the eyes of the people of this province? It only shows that this man thought that you had gone wrong just as any man might think about any learned judge that he had gone wrong, although in truth he has not gone wrong. You can say in the case of that critic that he has misunderstood and the judge may say that this man has not applied his mind intelligently. But does that involve Your Lordship really in a loss of that reputation which would affect your position on the bench? I respectfully submit it does not. The charge of my client is that Your Lordship's judgment has been slipshod, if I may use that word. Supposing Your Lordship delivered a judgment of 50 pages on some question of fact or law.....

C. J.—Not unusual.

Sir T. B. Supru—Even then somebody might say that this judgment does not strike him as being very sound and he thinks that the Chief

Justice has gone hopelessly wrongly in applying the law. That is a sort of criticism which every judge must be prepared to accept. It would be quite a different thing if along with that criticism he intended to imply that the judge had gone wrong deliberately with a view to prostitute justice.

C. J.—Or to prostitute his office.

Sir T. B. Sapru—But the utmost you can say is that either this man has not the capacity to understand your judgment or has not got the necessary intelligence or that he has done you some thing less than justice so far as your judgment is concerned. Howsoever you may examine these cases, there is one simple proposition which emerges from them. A mere attack upon a judge is not enough. There must be along with that attack a suggestion or imputation of something lacking in integrity. That is a very comprehensive word.

C. J.—Such as that the judge does not consider the authorities cited to him. It said that Mr. Sinha's arguments were not considered.

Sir T. B. Sapru—You may read the article from one end to the other and you will not find any reference to what happened actually in court.

C. J.—You take the judgment and make no enquiry as to the trial.

Sir T. B. Sapru—The judgment in a particular case is the last expression of the working of the mind of a judge. Suppose, somebody in Madras read Your Lordship's judgment and criticised it. With all respect to Your Lordship, I think, it would be too much to expect that the Madras journalist should not undertake to criticise Your Lordship's judgment until he has travelled all the way from South India to Bihar, made enquiries and inspected the records in the case. He must take the judgment as it is. The judgment embodies the final conclusions of the judge and the criticism is based on your conclusions. He says: I should have expected in ordinary circumstances some reference to the authorities that were cited. He does not say that the learned Chief Justice did not hear Mr. Sinha or that he stopped Mr. Sinha's arguments. He says that it does not appear to him that the Chief Justice has given proper weight to the arguments of the counsel. I submit that would be a perfectly fair criticism

and you would not impose a further obligation upon a writer in the press that he must pay a visit to the High Court before he criticises a judgment or that he must make a reference to the judge himself as to what he meant by a particular phrase. If he takes your criticism as it is and does criticise it you may say that the criticism is bad but you can't say that by that criticism he has misrepresented the proceedings. The words that he used are: "It does not appear" and "there is no clue in the judgment." These are the words you find in two different newspapers—the "Searchlight" and the "Forward". Therefore I submit that if Your Lordship can put two interpretations upon the conduct of my client, one of which is consistent with innocence and the other which is consistent with guilt, then in the absence of any overwhelming considerations to the contrary, it is only fair that that interpretation should be put upon his conduct which is consistent with innocence and which, I submit, would also be consistent with the dignity of this court because it remained absolutely unaffected.

C. J.—Supposing he used an expression which may be innocent but which is capable of an outrageous interpretation.

Sir T. B. Sapru—So far as libel is concerned, it is the reputation of one single judge which is at stake there. So far as contempt is concerned, it is the reputation of the court which is concerned.

C. J.—Is it not libellous to say that Sir Tej Bahadur Sapru prostitutes his position as an advocate?

Sir T. B. Sapru—So far as libel is concerned, probably I will take out a writ for libel. But is that the case here? If anybody says that I prostitute my position as an advocate, there is some sort of innuendo.

C. J.—Is it not the same thing when he says that the judge prostitutes his position?

Sir T. B. Sapru—There is a reasoning attached to it. The strength of the words does not matter, what you have got to see is the idea conveyed by those words in the particular sentence in which they occur.

(Counsel then referred to the Marmaduke Pickthall's case—47 Bombay page 107) Taking the worst possible view of the matter with

regard to the Sati case, the criticism of the "Searchlight" amounts to this, that Your Lordship's judgment was wrong. Similarly, the criticism with regard to the judgment of Jagat Narayan Lal's case. Let us assume that he does insinuate or suggest ignorance of law on Your Lordship's part. All that would not amount to any contempt. The whole question therefore is whether Your Lordship's judgment lent itself to that criticism.

C. J.—He must make enquires and come to an honest conclusion.

Sir T. B. Sapru—He has no legal obligation to make an enquiry outside your judgment. He takes your judgment as your final verdict.

C. J.—If he does, he must take the consequences.

Sir T. B. Sapru—From whom should he enquire?

C. J.—He may enquire from court.

Sir T. B. Sapru—It is an accident that he happens to be at Patna. He might have been at Madras. That he should make an enquiry is a proposition which I very respectfully contest as a matter of law pure and simple. It is no business of his to ask anybody else what the Chief Justice meant by one phrase or another. I say that the judgment of Your Lordships in the Sati case lends itself to such criticism in the absence of any such statement as Your Lordship was pleased to make yesterday when my distinguished friend, Pandit Motilal Nehru, was addressing Your Lordships. Similarly with regard to the judgment in the Jagat Narayan Lal's case, Your Lordship's judgment is a self sufficient judgment. Whether it is good or bad, is a different question. A man who looks at that judgment may feel he is ready to criticise that judgment. I submit, he need not do anything more than read your judgment, unless Your Lordship lays down as a matter of law that when a judgment creates some confusion in the mind of a man, it is his duty to make proper enquiries. Then you would have to prescribe the limit and the source of that enquiry. That would be extending the scope of the duty of an editor beyond any warranted limits and extending the jurisdiction of contempt. Contempt may include libel, but it is not the same thing as libel. In the case of libel, the matter goes before a third person. But in the case of contempt the matter goes before the very judge who has been criticised or libelled and that makes a great deal of difference in the working out of the machinery. The law ought not to be astute to spell out contempt where it is possible to place a different interpretation upon a fair reading of the

article. I submit it is possible to hold that there was very strong criticism of one aspect of Your Lordship's judgment. In the absence of any imputation being made as to your integrity and independence as a judge all that it comes to is this, that you are not exercising proper control by the manner of judgments that you are giving over the subordinate courts. In that way my client says that the position is not very sound and I do protest against it and I do hope that the High Court will regain the prestige that it did enjoy in the time of Sir Dawson Miller and Sir Edward Chamier. To express an opinion like that may be very unpleasant and undesirable, but everything unpleasant and undesirable cannot be treated as contempt.

Mr. Justice Fazl Ali—Before you sit down, I would like to ask a question. I am still troubled somewhat by the article which appeared in "Forward" which has been reproduced in the "Searchlight" and I wish you would satisfy me, if you can, not that I have made up my mind one way or the other. I am still open to conviction. In the same article there is a suggestion that a judge of this court is an imperialist and a propagandist and that he has prostituted his position as a judge. Now, if you consider all these expressions, do they or do they not amount to a reflection on the judicial integrity of the judge as a judge?

Sir T. B. Sapru—My submission is that they do not imply any reflection upon the judicial integrity of the judge. They do imply a reflection upon certain extra-judicial remarks which that learned judge has made in the course of the judgment and which the critic says ought not to find a place in the judgment. If in any political case which comes up before Your Lordship you express any opinion, howsoever sound it may be, it is always open to an outsider to say—I wanted Your Lordship's judgment. I do not want Your Lordship's political philosophy. Here the writer quotes the very sentence from which he deduces the inference that the learned Chief Justice travelled outside his proper function as a judge and he finds something to say in favour of the system of Government that prevails. The word 'imperialist' by itself is not a word of reproach. There would be many people both in this country and in England who would rather feel proud of being imperialists. I know it is sometimes used in a reproachful sense. What he is saying is this, that there are sentences in the judgment which really amount to a praise of the system of Government that prevails in this country at the present

moment. We don't want you to say that howsoever good the Government might be, men of the type of Babu Jagat Narayan Lal are bound to arise.

Mr. Justice Fazl Ali—How can you say that the judge by saying this was doing a bit of propaganda and was prostituting his position as a judge?

Sir T. B. Sapru—The sentence is "His Lordship thought fit to utilise his position for doing a bit of propaganda in favour of British imperialism". It does not say that he prostituted his position because he was a judge. The writer says that he had no business to introduce these political ideas there to which he took objection. This is to be divorced from the rest of the judgment. He takes objection to the extra judicial portion of the judgment. Your Lordship has made a reference to the fact that persons of the type of Jagat Narain Lal are bound to arise in any system of Government, tyrannical or benign. That may be a wrong view of Imperialism but its connection with benign Government exists. What was passing really in the mind of this critic? Here is a man who stood charged with an offence of sedition before Your Lordship the Chief Justice. The suggestion is that you are putting in a word of praise for the Government in your judgment in the case.

C. J.—How is it propaganda?

Sir T. B. Sapru—The British Government in India is an expression of Imperialism. By Your Lordship making those observations which imply a praise of the British Government, you are doing a little bit of propaganda. I will put myself in the position of the writer and I will tell you what is passing in his mind. The process of reasoning is this. Here is this man Jagat Narain Lal who has charged the subordinates of Government with fomenting communal trouble between Hindus and Muslims. The more the people are divided the greater will be the strength of the foreign Government. The learned Chief Justice finds an excuse for the British Government, says the writer. This idea has been suggested to me by the use of the word tyrannical or benign. That is the way in which his mind works. It does not mean that Your Lordship has left the bench and joined a political party and is doing propaganda at the expense of your duty as a judge. How can that mean that because you are doing some British propaganda, therefore you are abusing your position as a judge in regard

to a certain conviction or sentence you may have passed? You may have your own view on politics, but that does not matter at all. What he is saying is this—we don't want you to express any such views. There is no suggestion of conscious bias there. The suggestion is only this that so far as the Government is concerned you suggest that it is a benign Government and although the Government is a benign Government it is inevitable that men of the type of Jagat Narain Lal should exist and should arise because there is 'something peculiar about their mentality.

C. J.—A judge may say that this kind of evidence is constantly found and it is very difficult to put a stop to it.

Sir T. B. Sapru—The reference to British Imperialism was provoked by your reference to the tyrannical or benign form of government. The suggestion is not that if there is a disposition to challenge the acts of policy of the government it is due to political conditions, but the suggestion in your judgment is this, however, tyrannical or benign the government, such type of mind must always be found.

C. J.—Such type of mind means an opinion of this character.

Sir T. B. Sapru—These words 'political conditions' and the reference to tyrannical or benign form of government have suggested this line of thought.

SIR SULTAN AHMAD

After Sir Tej Bahadur had finished, Sir Sultan Ahmad addressed the court as follows:—

The whole case has been argued before Your Lordships by my learned friends so exhaustively that I will not take up much of Your Lordships' time. Yet I feel that in the discharge of my duties in this matter, I will have to deal with the articles once again in the light of the criticisms that have been levelled against Your Lordship's judgments and observations and also in the light of the defence that has been taken up by my learned friends so far as the articles in question are concerned. All of us are now agreed on one point, that Your Lordships have jurisdiction to deal with these writings summarily as Your Lordships are doing. The second point on which there should be agreement is that Your Lordships should, in considering the articles, give every benefit which can be reasonably given to the writer of the

articles. I respectfully submit that even if you do so there can be only one conclusion, and that is that whatever the definition of contempt may be they come within the law of contempt as I understand it. What does contempt mean? It may mean "any act done or writing published which may be calculated to bring a Court or a Judge of the Court into contempt, or to lower its authority." Or, if you take another definition in another case decided in the Calcutta High Court, (21 Calcutta Weekly Notes—"Patrika" case) "it is scandalous attacks upon judges calculated to cause obstruction of public justice, constitute contempt." Or, if Your Lordships take the definition given by the Calcutta High Court in Surendra Nath Banerji's case, (10 Calcutta) "that if an editor of a paper denounces a judge to the Indian public as utterly unworthy to hold his high office, it is contempt". I submit with confidence that Your Lordships cannot but come to the conclusion that these articles fall within these definitions. The attacks are scandalous and are such which are calculated to lower the dignity of the court as a court. They are defamatory; the attacks are without the slightest foundation and there are no facts to support these attacks. If I succeed in establishing my contention, I submit that all the requirements of the law or the authorities dealing with the question of contempt will be fully satisfied. I have drafted an article of my own and I propose to ask my learned friends to say whether this article constitutes contempt of Court. I will give them a copy and invite their opinion.

Sir T. B. Sapru—I can't give my opinion without payment. (Laughter).

Pandit Motilal Nehru—You must give us a cheque along with your article. (Renewed Laughter.)

Sir Sultan Ahmad—Severally and jointly, these passages not only amount to contempt, but if any stronger expression could be used I should certainly use that expression. I will show to Your Lordships that all these writings are absolutely false and without foundation. If I show that even my learned friends would agree that it is contempt of court. The article written by me is as follows:

"The Chief Justice sitting in a Division Bench and with the concurrence of his colleagues has been administering criminal justice in such a manner that public confidence has been disappearing

and the High Court has been losing its rightful position as the palladium of people's rights and liberties and the life and liberty of the subjects are in great peril. He ignores arguments and sentences men to seven years' rigorous imprisonment when he is not certain of their guilt. He does not observe the elementary principle of presumption of the innocence of the accused....."etc.

This is my reading of all the articles which are the subject matter of discussion before Your Lordships. My learned friends are perfectly entitled to say that I had taken passages from different articles without the setting. But I have been exceedingly fair to them. With the setting the result would be much more serious than without the setting. All these passages do not appear in one sporadic article. It is not one article which has been written in a hurry; it has taken weeks in a series of articles to substantiate the points that Your Lordships find put in one place here. The writer of the different articles has taken great pains to show how the criminal administration in this Court has been suffering, how the confidence of the people has been disappearing and how the Chief Justice has convicted a man when he was not certain of his guilt and how the life and liberty of the people are in great peril. He says it is a new menace which must be resisted.

I propose to show that every single passage which I have quoted here is without the slightest foundation. It is not a fact that the Chief Justice has ignored arguments. It is absolutely unfounded that he has refused to consider the authorities cited before him. It is absolutely false that he has sentenced anybody to seven years or even to two days rigorous imprisonment when he is not certain of his guilt. It is not a fact that he has not observed the elementary principle of presumption of innocence of the accused. He has not declared that every one in this part of the world is a habitual liar. I will show that there is no foundation for the remarks which were made in an article reproduced from some other paper in the country, that the Chief Justice prostituted his high and privileged position and has shown his preference to the Imperialists. I will show that every single passage is absolutely false and without foundation. What would be the effect of such unfounded statements made in a series of articles which have absolutely nothing to support them. I will show to Your Lordships that this has been deliberately done with one and only one object in

view. The judgment of Your Lordship in a case does not suit the writer of these articles and therefore he must discredit you. I shall now try as far as I can to deal with the various submissions that have been made on the different articles by my learned friends.

"Now the most curious part of the judgment of the High Court is that it has convicted the accused persons of an offence with which they were not charged." The point which I submit to Your Lordship in connection with the Sati case is this. It is absolutely unfounded that Your Lordships gave a man a sentence of 7 years' rigorous imprisonment when you were not certain of his guilt, that you did not observe the elementary principle of presumption of the innocence of the accused, and thirdly that you convicted the men of an offence with which they were never charged. The accused were charged under section 306 read with section 107 I. P. C. It was a case of abetment of suicide. The Jury gave a verdict of not guilty. Your Lordships after considering the evidence in the case came to the conclusion that the accused should be convicted. They were then convicted of the offence with which they were charged and sentenced to various terms of imprisonment, the maximum sentence being ten years. From what material does the accused say that Your Lordships were pleased to convict the accused persons in that case of an offence with which they were not charged. There is no foundation for it in the judgment and I cannot conceive how he came to mention that. Every single passage in the summary I have made is absolutely false and without any foundation.

Mr. Justice Fazl Ali—The argument advanced on the other side is that when the sentences were passed the section was not mentioned and that there are some passages which indicate that the judges thought that it is really a case of murder.

Sir Sultan Ahmad—I am first of all dealing with the facts as stated in the judgment and I am at present showing to Your Lordships that the assertion in the article that Your Lordships held that you believed and that you were not certain of his guilt and yet sentenced him to seven years' rigorous imprisonment is absolutely false. From what has the accused deduced that Your Lordships do not know the elementary principle of presumption of innocence of the accused? To say that Your Lordships sitting here as a Court convict an accused person of an offence with which he is not charged and that you sen

tence him when you were not certain of his guilt shows that in the opinion of the writer Your Lordship is not worthy of the position that you are occupying. There was nothing more than this untrue statement of facts. Would not that be a matter which would come within the law of contempt? The Chief Justice of the High Court not showing the elementary principle of the presumption of the innocence of the accused, convicting a man about whose guilt he is uncertain and sentencing him to seven years and convicting people on a charge not framed against them—would not these statements, made without any justification, bring into public contempt Your Lordship as a Judge of the High Court? If the article is calculated to bring about that result there is no defence to this proceeding. If the matter stood only on those few facts Your Lordship's order calling upon him to show cause would be absolutely justifiable. My learned friends said that the accused may not have been convicted legally for murder, but the effect of the article is that you have found them guilty of murder or abetment of murder and consequently you have held that Jagdeo is not guilty of abetment of murder as he was not in the plot. What is this plot? A mere reading of the judgment will show that the case for the Crown was that all of them were guilty of abetment of suicide. It is immaterial how the fire began, whether it was miraculous or whether it was ignited by a particular individual. Your Lordships say in the judgment—"we find, however, that the Pandeys are guilty of a deliberate plot in order to hoodwink the girl and every body thought that the fire came in a miraculous manner". That was the plot and Your Lordships say that you are not certain that Jagdeo was in this plot also and therefore Your Lordships say that you will deal with him a little more leniently than with others. There is no foundation for the assertion that in the judgment Your Lordship has said that he was not guilty of the offence with which he was charged. The only question was whether he was also a party to the plot of the Pandeys whereby they wanted to show that the ignition was miraculous. For the purpose of reducing his sentence, Your Lordships came to the conclusion that he was not in this conspiracy. As regards the other point whether Your Lordships, as a matter of fact, came to the conclusion that the Pandeys were legally guilty of murder, there is no foundation in the judgment at all. It is quite open to a judge to say that these people are guilty of

a graver offence than abetment of suicide, but it is quite a different thing to say that Your Lordships have found them guilty of murder and convicted them of an offence with which they were not charged.

At this stage the Court adjourned till Wednesday.

On Wednesday Sir Sultan Ahmad continuing his address said:—

Last evening I was making my submission on the three passages in the issues of July 18th, July 20th and July 22nd. I had picked out three passages and I ventured to submit that they were actually false. Neither did Your Lordships in your judgment convict the accused persons of an offence with which they were not charged nor did you in your judgment say that you believed but were not certain that an accused did not commit the offence and yet you convicted him and sentenced him to seven years. Nor did you forget the elementary principles of the presumption of innocence of an accused. I attempted to show that these statements were false and I submit that it can not be seriously contended that this would not be contempt. If as a matter of fact, you were guilty of having done what is attributed to you could it be said that you are worthy of the high position which you occupy? I submit this would definitely come under the definition of contempt given by Chief Justice Garth in the case of Surendra Nath Bauerji. I have also dealt with the second part of the argument of my friends that after all is said and done you in fact held that these people were guilty of murder and therefore there was justification for saying in the article that the Court had convicted the accused persons of an offence with which they were not charged. Even if you had said in your judgment anywhere that these people were guilty of murder even that would not justify the remark that you had convicted the accused persons of an offence with which they were not charged. Secondly, as a matter of fact, throughout the judgment you made it perfectly clear what the offence with which the accused were charged was and what was the actual deed done by the various classes of the accused. One has simply to read the judgment to find out what a distinction you have made with respect to the part played by the accused other than the Pandeys.

C. J.—It may hardly be necessary for you to deal at length with that case. What you have stated upto the present, that is to say that we were accused of convicting a man of an offence with which he was not charged is, we think, clear. We think there is a possibility that upon the wording of the judgment looking at it alone and without any care taken to enquire into the matter that it may be possible that a person might be misled by the expression used, the doubt may arise as to whether he was in the plot. It is a possibility with a person of not very high intellect and examining the matter without taking any trouble. Therefore I think we hardly want to hear you at length upon that.

Sir S. Ahmad—Then I will leave that. I go to the other case of Jagat Narain Lal. I take it that you do not desire that I should take up your time with the third article on the Barb Sati case.

C. J.—It is the next article to our mind which seems to call for some comment which you may care to make.

Sir S. Ahmad—Yes. The article of the 29th July. I apologise to you if I am a little long over this article because it needs very careful consideration. But before I look into the article itself I should like you to just refer to your judgment. As four of you were not parties to that judgment I will just explain shortly what the case was about. The accused Jagat Narain Lal was charged with writing a seditious article in his paper called the "Mahabir". The evidence in the case consisted of the oral evidence of the translator who had translated the document and the document itself. This was practically the whole evidence apart from the formal evidence of the complainant, the Police Sub-Inspector. The accused had been convicted by the City Sub-divisional Officer of Patna. My learned friend Mr. Sinha appeared for the appellant in the appeal and I had the honour to appear on behalf of the Crown. Of course any argument advanced by Mr. Sinha was bound to be learned and able. The case itself was a very simple one, on construction of the article itself, whether it amounted to sedition. As regards the law, my friend referred to various judgments, not only the Full Bench decision of the Calcutta High Court in the "Bangabasi" case but the decisions of the Allahabad and Bombay Courts (in the Tilak case) to show what the meaning of disaffection was and also that the article as a whole should be considered and that the Crown should not be allowed

to pick out a few passages here and there. That was the whole argument on law and then my friend read the article and made his submissions upon the article itself. His whole argument was that there was no attempt to cause any dissatisfaction or disaffection against the Government constituted as a Government but that it may have been an article which caused dissatisfaction against the conduct of certain officials by which the Government is carried on. So far as the law was concerned, I accepted every word that my friend said, and you pointed out to Mr. Sinha that there was no quarrel about the law and that it was exactly as my friend had put it because after those decisions there was an amendment of the Penal Code and you will find that section 124-A has been brought into line with the decisions in those cases. No new law was enunciated but only the section was made a little clearer. After the amendment of the Penal Code there was no difference of opinion as regards the law. Therefore all of us were agreed including the Court as regards the law which was applicable to such cases. As regards the construction of the document itself it had been construed by the trial Court. That came up here in appeal and you construed the document in your judgment and held that it was seditious.

C. J.—We agreed with the canons of construction laid down by Mr. Sinha in his argument.

Sir S. Ahmad—Entirely. There was no doubt about it. You accepted the canons of interpretation. In view of the nature of the case and of the arguments advanced, let us see whether you have not got all that you would expect in a judgment of this character. Will you please turn to page 21.

Fazl Ali, J.—I think it will be fair to the accused if you confine yourself only to the judgment. We cannot assume that he knew about the argument.

Sir S. Ahmad—I shall show that he fully knew. He says that an able argument was advanced by Mr. Sinha and that authorities were cited. He must have been here in Court.

C. J.—And a full report of Mr. Sinha's argument appeared in his paper.

Sir S. Ahmad—Yes. Would you kindly turn to the judgment itself. Mr. Sinha's argument is given there and is accepted by the Court. I am drawing your attention to the judgment to show that there is full decision upon the case. (Reads) "It is an attack upon the Government" etc. Can it be said that you did not consider the construction placed upon the article by Mr. Sinha on behalf of the accused? Does that show that you shut your eyes and said I 'ignore the arguments I refuse to consider the authorities and I hold that the accused is guilty.' Does not this very sentence clearly show that full consideration was paid to the argument advanced by Counsel? Further: "This case cannot for one moment" etc. That was the gravamen of the argument of Mr. Sinha that you must construe the article as a whole, you could not take out passages here and there and say an offence under section 124-A has been committed. Then (reads) "As Mr. Sinha points out etc.....foolish writer". What more would one write unless one wanted to write a needlessly more elaborate judgment than this. Mr. Sinha advanced an argument on law and we entirely agreed with him. Your Lordship said so in your judgment. Is it not enough to say that Mr. Sinha argues that the article must be considered as a whole and one has no business to pick out passages here and there and you entirely agree? You must remember that your decision was a decision of the High Court as an Appellate Court. After going through the conclusions arrived at by the lower Court, and after hearing Mr. Sinha, as the judgment itself shows you came to the conclusion that the article in question came under the purview of the law. You will also remember, that section 424 of the Code of Criminal Procedure says that so far as judgments are concerned while the lower Court must necessarily give reasons for their conclusions in their judgments you are not by the express language of the Code absolutely liable to do so. As a rule you do consider all the arguments and give your reasons but it must be remembered that section 424 Cr. P. C. provides. (Reads the section). "Other than the High Court" you will observe these words. Therefore section 367 Cr. P. Code which lays a certain liability on a lower Court for writing out a judgment giving full reasons does not expressly apply to you. The question whether your judgment should be considered by any rule of thumb is immaterial that under the circumstances of the case there could be no other judgment than the judgment as we find it. It may be that some of you

might have written a judgment of a few pages more. The question however is, whether the judgment is not as full as the facts of the case and the arguments advanced, required. What were the requirements? On the question of law there was complete agreement that the article must be considered as a whole, and there is a finding to that effect which is perfectly clear. I will not forget to make my submissions upon the words "silly little man" or "foolish writer" or "insignificant paper". In my submission far from using any insulting language a fair reading of the article would show that these words were used for the benefit of the accused. It was not only a question of conviction. There was also a question of sentence involved in the appeal and your remarks were intended to show that I should not attach greater importance to the case than the sentence passed justified. There was nothing of insult to the writer. I should think (it is not my language) that this sentence was used not for the purpose of degrading him, nor for the purpose of showing that he was a man who by birth was an idiot or anything like that but to show that it was an insignificant paper and that the article was written by a foolish man and it should not be taken too seriously as I attempted to show in my submissions to the Court at the time. I submit that if the editor of an article tries to read into these words any studied insult to the accused he is wholly unjustified but on that I will not address you further and will come to the article itself. Please turn to the following passage. (Reads) "we say nothing.....live" One cannot help enquiring from the editor as to what he really meant by saying that conviction must be expected as a matter of course under the system in which we live. What is that system which results "as a matter of course" in a conviction under section 124-A? Does not that reflect upon the integrity of the Court? The law has been laid down in the Penal Code and if I may say so, your duty is to interpret the law as you find it. Why conviction as a matter of course? If the article cannot come under section 124-A surely there will not be a conviction. There is a sting behind these words and I submit that you will have to uphold the dignity of your own Court and say that no conviction can be had as a matter of course before you. It will only be when there is either sufficient evidence or where the article itself on the face of it constitutes the offence of sedition. I submit that there is a decided sting behind this passage and that is consistent with what follows. (Reads) "But the tone and the temper.....Patna High

Court." Then Again "For the thing speaks for itself". That clearly shows that he had full information as to the proceedings in Court. Now as regards the long and learned argument. (Reads) "But the learned Chief Justice does not appear to have given a cursory consideration to the arguments and disposed of the whole case practically in a single sentence". Is it fair to say? Is it fair to say that the whole of the argument has been dealt with in one sentence? You had agreed with Mr. Sinha on the question of law. Then (reads): "Now the law of sedition is so framed.....Government". "But the safety of the subject lies.....20 years ago" I have no objection to that. Certainly in every case there may be a rule of law and rule of prudence laid down by you but what follows. "Where no such prudence is shown by the tribunal the form of law becomes an engine of oppression and it is our clear duty to speak out." Does not that mean by necessary implication that that prudence which ought to be exercised by you in interpreting and applying the law has not been applied by you and that therefore the form of law will become an engine of oppression? I do not see how these words can be justified. It is not that I am asking you to pick out passages here and there but I am reading the article as a whole and I submit respectfully that the whole of it is nothing but a serious attempt to scandalise this Court. Then next: "The judgment begins....." Then "to say the least of it" This passage is taken as offering an insult to the accused. I submit that if you had on the evidence (if there had been any evidence) and on the writing itself come to the conclusion that he was a knave you would have been perfectly justified in saying so in the judgment and then inflicted that punishment which would be consistent with that finding. But I submit that in this judgment you clearly say—far from saying that he is a knave—that he is a silly little fool. I do not see where the insult comes in. Then Reads: "It did not seem to strike the Chief Justice....." That is a question of opinion. He might say you could inflict one month or a year imprisonment. Then the next passage that I want you to consider is "But an enormity of this kind from a judge". "Enormity" I take it means some sort of crime or wickedness. Otherwise I do not know what this word means. It seems to me that "enormity of this kind" suggests something more serious than simply an error of judgment. The natural meaning would be either a crime or wickedness of this kind—use any word you like—

from a judge who does not feel the horror of sentencing a man to seven years rigorous imprisonment when he is not certain of his guilt. Then "A judge who does not observe the elementary principles of criminal jurisprudence.....subject-matter of the charge for sedition." All that I can say is that if the writer had said you were acting in the same manner as Jeffries did there would not have been much difference between that and this. Is it in keeping with the dignity of the Court if you do not know the elementary principles of law, the elementary principles of the presumption of the innocence of the accused? If you do not know these elementary principles surely his view is that the Court is not fit to administer criminal law. I submit that if the law of contempt can be made use of at the present moment this article certainly comes within the purview of that law. Then "But it is indeed lamentableprinciples of law". Before I go further I will make my submission upon the argument advanced by Sir Tej Bahadur Sapru upon these two paragraphs. His submission was that after all is said and done he is referring to you as a supervisory body as an appellate Court that has to keep watch over the work done by the lower judiciary and you have to set an example to the Subordinate judiciary by giving full consideration to arguments advanced in cases and also by writing out long and good judgments and by remembering elementary principles of law and the presumption of the innocence of the accused and that people must not be convicted about whose guilt you are not certain. This is said to be a lecture to you for the benefit of the subordinate judiciary ultimately but firstly for your own benefit so that when dealing with cases coming up from the lower Court you should know what you have to do. If the article had been meant to convey what is suggested in the argument of my friend Sir Tej Bahadur, surely it would have been written differently. But I submit that he has got quite a different set of facts and on that he has built an argument which cannot fit in with the facts of the present case. I think if I repeat the argument of Sir Barnes Peacock in the case of Taylor which is so very expressive I need not say anything more. I only change the name (Reads at p. 279 of 26 C. L. J.) If you write out an article which does not depict truly the articles in question and then try to show that there is nothing objectionable in the article you are welcome to do it but I will say that your interpretation does not fit in with either the language or the tone of the real

articles—read as a whole or in different passages. There is no doubt that there is a direct attack upon you and upon your way of conducting your business in this Court.

C. J.—That is made clear by the last three lines on that page.

Sir S. Ahmad.—Yes. Now the next passage "But we cannot pass by the insult etc". This has reference to your judgment in another case. I will deal with this point later. I take it—I am not sure—whether this refers to the passage in the other judgment or has got reference to this case

C. J.—I think it refers to the same subject.

Sir S. Ahmad.—(Reads "The Chief Justice is protected.....what ever he likes)." "Has chartered freedom to say whatever he likes." An isolated passage like that may have any meaning but read with the article itself it shews that you as a judge of this Court have by virtue of your appointment got the full liberty to say in Court whatever you like, so much so that you have got the full right to insult people in Court as you have done. I do not know from where the writer has got that you are entitled to insult people by virtue of your appointment. Is this or is this this not a gross case where your sense of honour has been vitally attacked. Then the next paragraph "If the judgment which we are considering.....censured him". Here again the article clearly means what it says that your judgments are worthless and worse than those pronounced by a junior Deputy Magistrate; after all is said and done section 367 Cr. P. C. applies to you also and you must give full reasons as if section 424 Cr. P. C. does not exist. I again draw your attention to another passage in the same judgment of Sir Barnes Peacock in 26 C. L. J. 345. There also Mr. Taylor in one of his letters had said that "if a District Judge had so acted he would have been suspended". Well he does not say that you would have been suspended but he says you would have been censured. The writer has not done that honour to you which was at any rate done by Mr. Taylor to the High Court of Calcutta. This article thinks that a Sessions Judge is too big for comparison and therefore he brings in a junior Deputy Magistrate and says that if a judgment as you have written had been written by him he would have been the subject of censure by you, but you are protected by statute; you have got chartered freedom to say whatever you like. I do submit that a comparison like this is degrading to your dignity as a Court and is clearly calculated to bring this Court into

ridicule. I submit it is a clear case of scandalising your Court. Then again "Even Babu Jagat Narain Lal.....behalf". Of course he was entitled to and all the points urged by on his behalf were considered. I have shewn on the judgment itself that you gave full consideration to all the points urged on his behalf.

C. J.—That is to our minds one of the gravest parts of the offence.

Sir S. Ahmad.—Yes. Then we come to the next page "It is our deliberate conviction.....in grave peril". You have only to visualise the situation and the alarm which is created by the article, "Life and liberty of the subject.....in the end". Please remember that it says you have refused to consider the authorities and have ignored the argument and then you "produce a judgment.....parties are concerned". My friend Sir Tej Bahadur Sapru says, after all he is discussing the judgment; this is the result of your bad judgment. But life and liberties of the people can not be imperilled, because you have written a bad judgment. Even if it did relate to a bad judgment and if by that it was intended to suggest that the life and liberty of the subject were in grave peril, I submit it would be contempt. In either view of the case I submit it is a very serious matter to say that the life and liberty of the people should be in grave peril.

C. J.—It must be antecedent to the judgment.

Sir S. Ahmad.—It must be. In the end you "produce a judgment which is all sound and fury" "and signifies nothing" "ignores the arguments". As if you were reading a newspaper when Mr. Sinha was arguing. As if you said, Mr Sinha can talk as much as he likes you are not going to listen to him. As if you said "I have made up my mind, cite any authorities you like they will go for nothing and I will not consider them". Then the next passage "It is obvious then.....administration of criminal law". Whether this refers to your judgment or whether to your conduct of the case itself in either case I submit according to the writer it has resulted in grave danger to public life and liberty and he says "Unless we wish to perish.....this new menace". What is the menace? Because you have written a bad judgment? Because you have not considered in the judgment the authorities cited at the Bar; because you have not dealt in the judgment with all the points raised in the argument. Assume everything as is suggested. How is that a menace to the life and

liberty of the people which are in grave peril? I submit that some other wizard will have to come and explain this to shew that it is not contempt. Then "Since somebody must say that.....disappearing". Of course, according to the writer, people had confidence in the High Court four months ago but now that you are presiding over it and as you are not fit to administer criminal law public confidence is fast disappearing. Obviously there is no foundation for the alarm that he has created and he has not truly represented the views of the public on this point. As Sir Barnes Peacock said "I do not believe that you are representing public opinion when you say that the life and liberties of the people are in peril." I submit that nothing can do greater harm to the administration of Justice in your Court, nothing can shake the confidence of the people more effectively than by suggesting that you in the discharge of your official duties have refused to consider arguments and that you have ignored the authorities cited. What is the implication? The Court must have its own way. It is not said that I was not heard on behalf of the crown but elaborate arguments on behalf of the accused were given the go by. I submit that this article is the grossest of all the articles that I have come across against which summary proceedings were taken. A clearer case of contempt than this is inconceivable and therefore I will not say more than to request you to uphold the dignity of your own Court and thereby ensure that confidence which people over whom you have jurisdiction are entitled to have. I submit that reading this article as a whole or in the setting in which we find it there can be no doubt that it amounts to contempt of Court. I now proceed to the next article. Your attention has already been drawn to the comments in the *Forward* I will not trouble you with those passages which have been read to you already twice. I will however draw your attention to the article itself. (Reads "We reproduced in the last issue.....traversed.") What is the reproduction? The reproduction to which he has given full approval in the earlier part of that page. Then "It will not be long....." Who is responsible for the alarm created in the North of India? It is the writer of the articles. If he has done a most creditable act he will have the fullest credit for it but if he has not he must bear the responsibility and consequences. The responsibility must be upon this paper for extending the field of contempt against the dignity of this Court. Then "From *Forward* and *Patrika*..... in this laud". Surely the credit of that is certainly due to the

writer of this paper for having brought you to the notice of a larger audience than this province could contain. Then "Seriously speaking....." My friend said the earlier part was a joke, a banter. It may turn out to be a very expensive joke if the joke is played at the cost of the Judiciary. Now he becomes serious "Seriously speaking.....notice." These comments in the press were made on your judgment and he reproduces these observations in this paper. In this leading article he draws attention pointedly of the reader to these comments and puts the seal of his approval upon them by saying that they "demand serious notice." Your judgments and observations have attracted attention in northern India and the time will come when the South will ring with your deeds. Now he says you must reflect upon what has happened. The whole of India now is in alarm. The life and liberty of the people are in peril and this has been seriously noticed by the papers in Northern India and soon South India will take due notice. Therefore not only has he quoted the articles at another place but more or less he has incorporated these comments in his own article by saying that they call for serious notice. Then "We also publish elsewhere.....for the recall of the Chief Justice". It is not my desire to make any submission as to the wisdom of that procedure. That is another matter. The only point I am driving at in this connection is that it is consistent with the alarm that he has created before. If you are acting as judge Jefferies, surely an attempt must be made in whatever way it may be to secure your removal from the Bench. If you are not fit to do justice between man and man or between Crown and man, if you are not fit to occupy the chair you are occupying the motion or proposed motion in the Legislative Assembly is quite intelligible. Then "As a matter of fact the outcry.....has been made". Nobody has got greater sympathy than myself with the demand of separation of Judicial from the Executive and in other places I have contributed my quota to that demand but that is neither here nor there. "Press comments on the Chief Justice". These are not press comments on the lower judiciary. What are the comments? "As a matter of fact the outcry is nothing more than the expression of the outraged feelings of the people over observations and convictions which are exercising the minds public at large." Observations by whom? convictions by whom? Surely it is obvious that he means the Chief Justice of this Court. But he says this is the

result of a combination of the two functions. How he does not say. Then he says "It is a truism.....today" I submit that an expression of the opinion based upon the articles that I have already placed before you saying that the High Court has lost the confidence of the people on the ground stated therein would constitute contempt of Court. Then "We cannot possibly permit either deterioration in the tone of the administration of justice". That is an old idea and absolutely a proper one. Then "or the maligning of our people". It is no good saying this has no reference to you in this Court because on my submission on the previous article this has clear reference to certain remarks made by you in one of the judgments. What follows "Then came the Sati case with its bad law." My friend Sir T. B. Sapru said—I hope I am not wrong—I am open to correction—that there is no presumption that even the judges of the High Court know law. If that is not the presumption then I say you are not fit to be judges. I say emphatically and I say so with great respect to my friend that that at any rate there is a presumption that the judges of this Court know law and I hope and trust it is a presumption in other Courts as well and I respectfully suggest that unfortunately if that presumption is ever rebutted, you will not be entitled to remain in office. It is one thing to say that the judge may go wrong on law or fact but it is quite another thing to say that the judge does not know law. That is the first thing which a judge must know, before he is entitled to a seat on the bench. That is the first elementary ingredient of your office. I have not seen it recorded anywhere, that there is no presumption that a judge knows law.

C. J.—Perhaps Sir Tej Bahadur Sapru meant there is no presumption that a judge is a good lawyer.

Sir S. Ahmad.—It is quite open to my friend to say that a judge may go wrong in law or in appreciating the evidence; that is a different matter but you cannot say there is no presumption in favour of his knowing law. If there is no presumption I do not know why he is there. I as a citizen would emphatically protest against his being there without the presumption. We go on "Then came the Sati case.....monstrous sentences". One has to go back to 26 C. L. J. once again. You will find a discussion on the words "Cruel sentence" in about 15 or 20 pages. The article said that a cruel sentence was passed on Mr. Taylor by the Chief Justice. I plead guilty to not knowing clearly the distinction between cruel sentences and monstrous sentences but it

appears to me that 'monstrous sentence' is perhaps a little stronger than 'cruel sentence'. One may say that the sentence is severe but 'cruel' and 'monstrous' connote something more than severity of the sentence itself and go to the mental obliquity of the judge—something apart from the case animating him to pass a sentence like this. It goes to affect in a measure the working of his judicial brain. Sir Barnes Peacock and Mr. Justice Macpherson point that out and they discuss the bearing and import of the word 'cruel'. I do not want to read the whole of it. You will see from the discussion that the Court was inclined to take the view that the word cruel as used in that case was objectionable and amounted to contempt and it was only after Counsel gave them an assurance that nothing more than severe sentence was meant that they thought fit not to proceed in the matter. But at one stage Sir Barnes Peacock pointed out that but for that word the proceedings itself would not have been taken. Therefore after the assurance given by my friend Sir T. B. Sapru that the word as used in this case did not mean anything more than a severe sentence I will only say that by itself that may not be taken as contempt of Court but the word will have its due place in giving consideration to all the articles as a whole. Then we come to the next sentence "Sati of which His Lordship knew nothing was described as a belief of savages." Well he had the best of authority to say that. The Chief Justice may not know but those who appeared in the case gave the Chief Justice that assurance. If the Chief Justice was misled he was misled by others who had authority to give him that advice. I shall quote from the judgment at p. 19. "By the learned, moving and interesting address of Mr. Jayaswal whose knowledge of Hinduism is unrivalled in this province and is acknowledged all over the world we were reassured in our view that Sati has long been discarded by all pious Hindus with any pretence to respect of their fellows, and Mr. Nandkeolyar frankly described it as a relic of brutal barbarism." Surely if you went wrong, if you were misled, it was upon the assurance of those who were in a position to give you advice on that matter. Then "The conviction of a man on the uncorroborated testimony of an approver followed". All this is given to shew that as he said before serious notice must be taken of the comments which have appeared in the papers in the North and may appear in the papers of the South. Then "The conviction of a man.....Babu

Jagat Narayan Lal". I will say nothing more about this but I must say something about "the conviction of a man on the uncorroborated testimony of an approver." Obviously this man is in touch with all that is passing in your Court. Surely if he wants to write about any judgment it is expected that he will at any rate just look into the judgment itself. If he had looked into the judgment why did he take that as a basis of attack. But the whole idea is this that you are guilty of enormities of an extraordinary character and he is giving a list of your misdeeds. In that connection this is brought in as one of the illustrations. Then "we hope the Chief Justice is now a wiser man." Then "In a country like India.....State." May I add that if I had been in the position of the Editor, I would have added one more suggestion that in a country like India the one test by which a Judge must be judged and the standard of the judicial administration must be measured is that in every case there must be an acquittal. There must be no convictions. This would have been consistent with all he said. Otherwise it is absolutely meaningless. Then look at this "The law of sedition is so framed.....Country." All that I can say is this: whether the law of sedition is good or bad you have taken the oath to interpret the law; you are not to undo the law or modify the law; you have to interpret the law. Certainly in criminal cases if there is any doubt on any point the benefit of that doubt must be given to the accused or in a fiscal question the benefit must go to the subject. These are well recognised principles of the administration of justice, but all the same you cannot modify the law. If the law is severe it has to be severe in your decision. You cannot make it less severe. Then next "But the fact remains that the more or less summary disposal of the case" this I take it means the trial itself. "Summary disposal of the case"! That case was heard for two days! I am quite sure that Mr. Sinha will bear me out when I say that he had a most patient hearing before you. You heard him on all the authorities, he cited, you gave him clearly to understand that you quite agreed with him in his exposition of the law. Where was the summary disposal? If he is referring to the judgment certainly it is a short judgment but what more was to be said? But why summary disposal? The case was heard at such length as he himself says that Mr. Sinha addressed you at great length. The next passages are important "But by far the most amazing feat..... whatever His Lordship may have meant".....at his word".

Does not that shew clearly that the writer knew very well what you did mean. He says whatever you may mean but I must take you at your word. Any stick is good enough to beat a man with. It does not matter to him what you meant.

C. J.—At least it shews that he was uneasy in his own mind as to whether that interpretation was possible.

Sir S. Ahmad—Yes. He himself says so and he says I am going to take you at your word (Reads). If you, and I say that in all submission and in all humility—if you ever meant to suggest that everybody in this country was an habitual liar I would at once join in the emphatic protest of Sir T. B. Sapru, but I am convinced and honestly convinced that you never for a moment made that suggestion. Surely one has to read the judgment as a whole to find out what is meant? Surely it means this that if you go to the rural areas of India, rustic witnesses will say anything they like and it will not be fatal to their reputation if their evidence was untrue. You were considering the class of witness and the area where the witnesses came from. Read the judgment as a whole. The writer knows very well that the Court never meant and could never have meant what he is trying to impute to him. But he says. I am going to take you at your word. Why should he dissociate this passage from the judgment? Read the judgment as a whole. See what class of witness is concerned. What is the good of saying you have declared everybody to be a habitual liar when it is clear that is not the case.

C. J.—It is obvious that the writer knew that that was what I meant.

Sir S. Ahmad—He says so himself. But he says I do not care. Even if you do not mean that it does not matter at all. Now I am going to catch hold of you and say you have declared every single individual in India to be a habitual liar. No judge however high placed can afford to be in India and say everyone is a habitual liar. He knows you did not mean it but he says it does not matter. I have got a sentence from your judgment and I am going to use it against you to create an alarm. I am going to shew that the life and liberty of the people are in peril. I will see that not only the north of India rings against you but also the South. That is the spirit in which the article is written. Therefore so far as the articles are concerned I submit that reading them as a whole or reading them separately one cannot but come

to the conclusion that this is a writing or these are writings calculated to bring Your Lordship's Court and you as a judge of this Court into contempt and lower your authority. You have been denounced as utterly unworthy of the high office which you are occupying and it is said that you are unfitted by nature to maintain the traditions of your office. These are my submissions upon the articles. May I draw your attention to some of the cases or if you have looked into the cases then I shall only give their references.

C. J.—We have read all the cases.

Sir S. Ahmad—Then I have got nothing further to submit.

C. J.—There is the "Forward" article.

Sir S. Ahmad.—I told you I would not discuss that because you have read it. It is so obvious that even Sir T. B. Sapru found himself slightly in trouble in explaining that.

Pandit Motilal Nehru replying on Wednesday to the arguments advanced by Sir Sultan Ahmad on behalf of the Crown said:—

My Lords, the whole case has now been threshed out and I do not propose to take up your time at any length. As far as I have been able to follow my friend in regard to the articles commenting on your Judgment in the Sati case, we are now,—the whole thing has been,—reduced to one specific charge and that is where the writer of these articles says that the accused have been convicted of an offence with which they were not charged.

C. J.—Not entirely. There is the statement that the judge convicted a man of whose guilt he was not certain. It has a bearing on the article which re was plenty of time to investigate.

Pandit Motilal Nehru—Then there are these two things. As to the first I submit there can be no reasonable doubt in the mind of anyone who reads your judgment that at least one set of reasons which you gave are reasons for a finding that the men were guilty of murder and no other offence. Where you say that it is these Pandeys who devised this instrument, whatever it was, or any apparatus, it was at least one part of the plot if not the whole plot and when it comes to the setting of the fire, well who did the trick. It was the Pandeys.

C. J.—There is no doubt about that.

Pandit Motilal Nehru.—That being so that is a reason, as I thought you were pleased to agree, for convicting this man of murder. I am submitting that that is a reason for convicting them of murder.

C. J.—Do you mean to say that it would have been a reason for convicting them of murder, if they were not charged with it.

Pandit Motilal Nehru—Certainly. When that is the reason given for finding the man guilty. I submit that the writer of that article was perfectly justified in saying that while you are supporting your judgment by reasons which are reasons for finding a man guilty of the charge of murder, you are really not sentencing the man convicting him of the crime for which he was being tried, that is to say abetment of suicide. I submit my friend can build as much argument as he likes on the use of the word 'convict' and he can say that you did not actually convict these people of murder. He relies upon the opening statement in your judgment that this is a case in which so and so have been tried under section so and so which refers to abetment of suicide and he says then we come to the end and you simply inflict the sentences and give your reasons for it and therefore it must be taken that you are convicting the accused before you under the that very section under which they were charged.

C. J.—Supposing people are charged with the abetment of suicide and the circumstances show in the course of the trial that they were guilty of murder, is the judge not to take that into account ?

Pandit Motilal Nehru—Then, is it not a fair comment to say that the judge has found that these men were guilty of murder and that is all his words should be taken to mean. What I submit and understand by conviction is that there were reasons present in your mind, which reasons you expressed in your judgment and which did support a finding of guilt on a charge of murder.

C. J.—I agree, if there had been a charge of murder.

Pandit Motilal Nehru—Yes. A trained lawyer may be able to make out a case of suicide as well as murder, but to a man in the position of this writer either it was suicide or murder. If it was suicide there could be no murder and the abetment would be of the suicide. If it was murder it could not be suicide because the woman was not a consenting party to it. That is the way in which a party who is not a trained lawyer would look at it, and

that is the idea he expresses. He says here is a case of abetment of suicide and of having abetted the suicide by various acts. They helped and assisted woman from the first up to the last incident of setting fire to the pyre. Therefore they were guilty of an act which caused the death of the woman. Then the writer says: But when I look into the judgment of the Chief Justice what do I find? I find that he gives reasons which would not cover a case of suicide but which clearly go to show that these men intended to commit murder. There is no escape from this to the mind of a man I am describing. If she was not a consenting party and it was not a case of Sati it could only be the case of murder and the reason is there in the judgment. He does not mean that you changed the evidence or amended the charge or that a sort of fresh argument was addressed to you here on the basis of its being a case of murder or Sati. All that he means is this, and I submit it is a very fair comment to make. Here is a case which was originally a case of Sati and it was tried as such. The judge in his charge to jury deliberately tells them that the accused had nothing to do with the ignition of the woman. They heard arguments upon it as such in the High Court but when it comes to the judgment I find that the reasons given, at least one set of reasons given, covers a case of murder and not a case of suicide and therefore I say they were finding one thing and sentencing them for another. That is all it comes to. I do not mean to ask you to say that that is a perfect argument. All that you will consider in connection with this case is whether that is a reasonable argument, having regard to the person stating that argument—whether it would not occur to a man in the position of the accused, of the editor of this paper, that there is this defect which he wants to get over and he says: I cannot do it. I find that the case is a case of abetment of suicide—I find that the reasons given are reasons for finding them guilty of murder and therefore I think I am justified in saying: here is a set of accused persons tried for one offence and punished for another. Of course my friend laid stress upon the words "they were convicted" in the sense that they were convicted under some other section. But my client simply draws attention to that line of argument which is, I submit, an over punctilious justification of the judgment. Next, when we come to the other part, namely the case of Jagdeo—you were not certain but you only believed and therefore you acted against the first principles of law.

Does they impute something which amounts to contempt of Court? I submit not. He may have said you do not know law at all. That would not be contempt. There are decided cases. If a Judge gives a judgment which is contrary to law—we can assume a case like that although it is not applicable—it may be so contrary to law that it may betray a lack of legal knowledge and upon that judgment it is open to any commentator to say that this judge does not know law. I submit that is not contempt. It is not even libel. The judge would have to make out that he does know law. And when my friend Sir T. B. Sapru said there is no presumption in law that a judge knows law he did not mean it in any other sense. All that he can be convicted of in making that comment is that you betrayed an ignorance of the first principles of British Jurisprudence.

C. J.—Supposing if you can imagine a judge who thought that he was entitled to convict a person without being certain of his guilt, would not the implication be that that judge is not fit to hold his office.

Pandit Motilal Nehru—I do not care what the implication is. The first thing I submit is that the line has to be a sharp line drawn between cases pending and cases decided. As soon as the judge decides the case he gives himself over for criticism by the public.

C. J.—That is a contention of law which I cannot accept. Some narrower implication than what you have said it may be possible to accept within certain limits.

Pandit Motilal—I was just going to say that. The only limit is that there must be some element of moral obloquy, something which reflects upon the character of the judge in his capacity as a judge. That is the only limitation I submit.

C. J.—Incapacitated either by lack of knowledge or defect of character or moral obliquity in relation to the particular case?

Pandit Motilal Nehru.—If it is any dereliction of duty which has the least reference to want of character or to any other kind of obliquity, I suppose that would be the grossest possible contempt of Court but what I submit with due deference is that you will not look at it simply in the light in which my friend has asked you to look at it. I cannot conceive of a decided case in which if the critic says the judge is wrong that the inference cannot be drawn that he is not fit for his office. The mistake may be of a very elementary character but because a judge makes a mistake on an elementary point of law and that mistake

is pointed out by the critic, I submit that by no stretch of imagination can it be contended that that was contempt although the result may be by inference that the judge is not fit to hold his office. The only criterion is that there must be some reflection upon the character of the judge; either his independence may be called into question or something of that kind. The critic in pointing out his mistakes does his bounden duty especially when he holds the position of an editor of a newspaper. Sir Barnes Peacock himself says 'we are the servants of the people and it is for the people to criticise us.' If it is a pending case, anything which has a tendency to affect any of the parties that is contempt of Court but when a case is decided and the judgment is released to the public then for the first time the judge comes under the criticism of the public on what he held in the whole course of the trial. And if defects are shown which may or may not lead to the inference that the judge is not fit to hold his office that will not amount to contempt. You will have to show some active misrepresentation of such a character which has reference to the partiality of the judge or the impartiality of the judge or his independence or things of that character. There is no suggestion in any of these articles of anything of that kind.

Fazl Ali J.—If it is a gross misrepresentation as to the capacity of judge which tends to bring the judge into contempt, will not that be contempt—apart from moral obliquity.

Pandit Motilal Nehru—Strictly speaking I submit it is not a case of contempt. Because what can a man say? This judge is not fit to hold office. On what is such misrepresentation based? I cannot conceive a case apart from the specific charge upon which it can be said that the judge is misrepresented.

C. J.—Gray's case is a case of that sort.

Pandit Motilal Nehru—Gray's case is hardly helpful because we do not find in the report the alleged contemptuous matter. When the judge has found something and this man maliciously turns and twists it into something else and argues that the judge is incapable and so on, that would at once import a sort of malice into the case and it may be of a character amounting to libel. But the whole *raison de etra* of this jurisdiction disappears when you divorce it from that particular area. I can easily conceive of the mildest of criticism which can be reasoned out to be a reason for the

judge to be unfit to hold his office but that cannot be contempt. There is not one passage which my friend pointed out which can be shown or suspected of casting any slur upon your independence or fairness. All that is said is that you do not understand the condition of the country or that you ignored the first principles of law and as to that also I do not understand my friend when he referred to the grossness of the misrepresentation being contempt. I say there is no misrepresentation. On the contrary this man has said the judgment lends itself to misrepresentation. You will remember Jagdeo—you believed but were not certain that he was in the plot.

C. J.—Is the situation clear to you yet.

Pandit Motilal Nehru—I confess my utter inability to understand what plot is meant there. You were pleased to observe that it was the plot to murder and abet suicide and then I argued upon that hypothesis but what was there for the writer of the articles to know which particular plot you had in mind at the moment.

C. J.—I ask you if it is clear to you after what I have said.

Motilal Nehru—Here is yet another plot discovered by my friend Sir Sultan Ahmad. His plot is now the actual arrangement of mechanism by which this thing was to take fire. He said the plot with which you found that Jagdeo was not concerned was the plot between some of these people who had invented this method of igniting the fire.

C. J.—You are probably right. It was not right of me to ask you what was in your mind.

Pandit Motilal Nehru—It does not matter my Lord. It is perfectly immaterial to you what is or what is not in my mind. I have to make my submissions and you have to consider them for what they are worth. Every conspiracy does consist of a series of acts. You may, if you like take each act as a specific plot with the other or a series of acts constituting one plot. Anybody who has looked at the judgment of a case in conspiracy whether Sati or murder the plot would be one and all acts as the various steps in the plot. Of course it may be understandable and it does happen that everybody concerned in a conspiracy is not concerned in every step of the conspiracy but they are all actually guilty, and when it is said that a man is not in the plot the impression of an ordinary man is, and especially of one who has had

not the benefit of your elucidation, that he was not party to it at all, had no connection with it at all. I simply put it before you as a thing which a man may reasonably consider to be so. It may be explained and I do accept what you have stated that that was what was passing in your mind. But how can anyone who had not had the benefit of hearing your interpretation of it come to know that there were two plots going on side by side and that you thought that so far as the actual murder plot was concerned Jugdeo was probably not in it but that he was of course a party to the general plot to abet the suicide. What I submit is that the same consideration is to be applied to the judgment as to the comments on that judgment. If a man takes a judgment and on the face of it there are certain extracts which by the application of the ordinary canons of interpretation can only mean one thing and he attributes that meaning to it, I submit it is no offence. But of course if he makes it clear that it means something which it cannot possibly mean that of course is entirely different. I submit that when you look at the comment itself you will be pleased not to examine the correctness of it. The comment may be wrong as applied to the facts but where assuming the state of facts to which the comment is meant to apply to be true then you have to consider whether that comment was reasonable or not and then when you come to the assumption of facts you may arrive at the conclusion whether there is any reason for that fact. My friend asks what is the natural result of these articles? He says it is only this the Chief Justice does not know the first principles of law. It follows as the next step that he is unfit for his office and therefore there is contempt. I say that is fallacious reasoning. I will begin in this way. Here is the Chief Justice of the Patna High Court who has delivered judgment in which such expressions occur. This passage in the judgment means this and can only mean this whether you take it with the context or without. I cannot concede to my friend that this passage about the habits of the people can be explained upon any other hypothesis than that. I will be frank. It is not because my client has taken a very obstinate attitude and has come to contest these proceedings but for that passage the suggestion made by Mr. Justice Kulwant Sahay the other day might have been accepted because of the explanation offered by the writer and the observations made by you. If you look at it in the ordinary way it becomes one of a person being the innocent cause of annoyance to you and your colleagues. In a case like that it is up to a man to say I am sorry but there is this great barrier in the way.....

Kulwant Sahay J.—It has been explained to you that that was not the meaning. It was never the meaning in making that statement in the judgment to say that everybody here is a liar. It was never the Chief Justice's intention to say that.

Pandit Motilal Nehru—Have we, my lord, also not made it clear that we did not intend to bring this Court into contempt? Well, so long as it is there in the judgment without explanation as I submit to you just now you will have to see the words. These words have been given out to the world and they will remain. (Reads) If those words are withdrawn it is a different matter, but no amount of explanation to an outsider will do away with their effect. As I submitted, my friend's explanation I cannot accept. I ask him what context he is going to set it in. I will read the whole judgment, but what connection has this got with any other part of the judgment. It is a remark of a very sweeping character and my client as public man ought to suffer the consequences of doing his duty as long as those words remain there.

C. J.—You have not yet dealt with the substantial part of this contempt which is contained in the article of July 29th and the subsequent articles. There is a little danger and I want to disabuse your mind of that lest the observations of my learned brother may possibly be interpreted as an offer of an apology from the Court to your client. The explanation was given to you.

Pandit Motilal Nehru—It would be impertinence for me to ask you to apologise to any one. Nor My Lord, do I expect it. That is what stands in the way of my client. He cannot see his way to apologise to a judge or anybody who has given expression to that opinion. But if you see fit to do that in some way or other my client will not be wanting in showing the respect which it is his duty to show.

Chief Justice—The whole point is very simple. It is the allegation that the Chief Justice in the trial of case before him and before giving judgments ignores the arguments and refuses to listen to the authorities cited. That is the point.

Pandit Motilal Nehru.—Let us see if the word "before" is there. (Reads). That makes a difference. The language speaks for itself. It is not "Before". That clearly refers to your treatment of the matter in the judgment.

Chief Justice—You must read with that the passage on the top of page 12—the articles on the press comments and the press comments themselves. That is the point with which you have to deal. The passage beginning with "It is our deliberate conviction etc."

Pandit Motilal Nehru—I would ask you to begin just one sentence earlier.

C. J.—How could he say that he did not know what took place in the course of the case when it must have been within his knowledge.

Pandit Motilal Nehru—I do not say that he is entitled to say, after the argument appeared in his paper, that he did not know what was said. But does it thereby also follow that the same must have also been considered by a judge? The mere fact that an argument has been advanced does it also convey the idea that it has been properly considered.

C. J.—He knew the way the case was conducted and he knew the way I dealt with the argument. He was in a position to know whether the argument was not attentively listened to and agreed to.

Pandit Motilal Nehru—The point is, he is saying you ought to infer from the judgment.

C. J.—"Ignores the argument and in the end pronounces judgment."

There is no possibility of misunderstanding those words.

Pandit Motilal Nehru—That has reference to the judgment and not to what took place at the trial. He is discussing the judgment not the proceedings. He says the case was ably argued and now comes the judgment. I find that there is no indication in it that any argument has been considered.

C. J.—Supposing the construction is otherwise. I quite appreciate your construction. It is necessary that you should put this construction on the words. Supposing the construction is otherwise. Can it be contended that it is not contempt of court, that the Chief Justice in hearing a case will not listen to the authorities and ignores the arguments.

Pandit Motilal Nehru—I submit not. It would only amount to a very serious charge of carelessness on the part of the judge and nothing more.

C. J.—No moral obliquity on the part of a judge to conduct himself in that way?

Pandit Motilal Nehru—If he does not pay special attention?

C. J.—This is a practice which is pointed to.

Pandit Motilal Nehru—He is referring to one case only. He says in this case it has happened.

C. J.—Then how is it that the life and liberty of the subject must be in grave peril if one case only is referred to.

Pandit Motilal Nehru—He says: if this continues it will be a menace but he does not refer to any practice because he is not aware of any. He says: I am aware of the fact that this case was ably argued, that the authorities were cited, now comes the judgment and there is no indication that these authorities were considered. He is talking of one specific judgment and one specific case. (Reads "we doubt whether there is a single judgment in existence etc.) He cannot possibly refer to a practice. He is referring to that particular case and his chief complaint is that the judgment does not deal with the case in a manner proportionate to its importance. I submit that it is not only not a case of contempt but there is no aspersion of any kind intended except of course the suggestion that the judgment was not written as it should have been. Then he institutes a comparison between the existing administration of Justice and as it used to be in the time of Sir Dawson Miller and Sir Edward Chamier. That of course any one may do. Wherever he speaks of loss of confidence he speaks of fast losing confidence. Confidence in what? Confidence in the High Court acting as a palladium of the liberties of the people as against the executive. Whether he is right or wrong is a different matter. Take the next article. I do not know whether you would like to ask me any other question about this article.

Chief Justice—This is the article which quotes with approval the others.

Pandit Motilal Nehru—That is the view submitted to you by my friend. Let us just read these lines to see what is the purpose for which these articles are printed. (Reads). He means that this judgment of yours has been commented upon by so many papers which he names. My friend says who is responsible for this. I say the judge. The comments are not on the editorials appearing in

the *Searchlight*. Whether the comments are good or bad is not in question. But when my friend asks what is responsible for these comments, I say the judgment itself. The criticism may be right or wrong but the whole object with which this is printed is to show what is the view taken—not to identify himself with the view but to show that this judgment has been adversely criticised by all the papers named here and to that extent only. There is not a single passage from any paper quoted with approval or otherwise.

Fazl Ali J.—But mere publication of contemptuous matter will bring him in.....

Pandit Motilal Nehru—Oh yes. I know that. But my friend by suggesting that my client quoted it with approval meant to aggravate his offence. Mere publication is a different thing. Then my friend commented on this "seriously speaking etc." The first sentence is in lighter vein and he goes on in a serious vein.

C. J.—Supposing I copied from any newspaper a statement that so and so is a liar and a fraud and said this comment calls for serious notice. Do you mean to say that is not a libel?

Pandit Motilal Nehru—The mere fact of copying such a libel is quite enough for a conviction. There is no question of approval or disapproval here. My friend wants to aggravate the offence by saying that he is quoting it with approval. He is quoting it only to show that the criticisms are there.

C. J.—Is there any passage which shows we cannot go quite as far as. See how our campaign is getting on. Is not that the point. See how successful our campaign has become.

Pandit Motilal Nehru—I think with due difference that an Editor may take just pride in starting something which is taken up by other papers on the merits. Because the Editor of the *Searchlight* has written so and so the papers examine it.

C. J.—Is it a community of interest?

Pandit Motilal Nehru—What the community of interest is I do not know.

C. J.—As between the "*Searchlight*," "*Forward*," "*Hindustan Times*," and the "*Hindu Herald*,"

Pandit Motilal Nehru—I am afraid I do not understand what you mean to convey.

C. J.—A joint campaign.

Pandit Motilal Nehru—Up to this time the papers of the South have not been received and we do not know what they say. We do not understand if it is suggested there is a conspiracy in the press organization. There is absolutely no foundation for that. Is it suggested that there is community of interests because these happened to be Indian papers. I am afraid, this is another of Your Lordship's unfortunate generalizations.

C. J.—It is not because these are Indian papers, because these papers are mentioned here.

Pandit Motilal Nehru—That may be so but that does not show that my client has entered into a conspiracy with these papers. The "Patrika" is a very old paper and is widely read. I do not know what is the basis.

C. J.—It is true of all things which are taken up by any particular section of the press. Those who are in community of interest take up the same point.

Pandit Motilal Nehru—Then the test is this. If your judgment is harshly criticised by one section of the press and it is approved of by another section of the press then there is a conspiracy between them. That can be said of anything upon which a newspaper comments.

C. J.—Perhaps it was my fault; we have travelled a little further from the point at issue.

Pandit Nehru—(Reads) The whole idea is what is stated in the opening sentence that 'his reputation has traversed the whole of northern India' (Reads).¹ That is merely a flourish (Reads again). My friend quite agrees that he himself has contributed his quota to this controversy of the separation of judicial and executive functions and every day you will find certain newspapers referring to this fact. I remember that the Calcutta High Court was specially mentioned as one of the protectors in the whole of India against the executive.

C. J.—It is a belief held in my own country that the High Court is always supposed to be the palladium against the executive. It is a perfectly correct and legitimate point of view.

Pandit Motilal Nehru—And therefore the man says, it is for the High Court to expose the executive by giving their full reasons and going into the whole case and says, that if judgments of this kind are standardised there will be no such warning to the executive as it was the custom of the High Court to convey.

C. J.—Seriously I do not think you need trouble very much except in so far as it introduces the comments of the other papers. To my mind from the point of view of contempt the two serious things are the point which I have asked you to deal with. You have dealt with that and now about the importation of the articles of the "Forward".

Pandit Motilal Nehru—My friend discovered a certain amount of nervousness in Sir T. B. Sapru's argument about that. But I have shaken off all nervousness. This is the article (Reads). Every man guilty of the offence of sedition might be classed as a man who questions the bonafides of the executive. Quite apart from the fact that a judge may not indulge in politics on the Bench the fact remains that Judges like other people have their own politics and there is no harm in a judge being an Imperialist as well as anybody else. There are people avowedly Imperialist. It is not a term of abuse anywhere. What the writer here means is this that a judge who is of the imperialist shade of politics if I may so put it, in dealing with the question in which a subject is tried for having done something against the Empire, is unconsciously guided by the Imperialistic notions that he has of things in general. That is to say what is here said is that a certain political belief in the mind of a judge may, in spite of himself, induce him to apply certain principles or rules to a particular case which would not be the case in the case of a man who is not an imperialist (Reads) As I said there is no abuse here at all and there is no aspersion. Most of the people who come out to serve the Empire are Imperialists.

C. J.—It is the headline which is printed on broad type across the page.

Pandit Motilal Nehru—"Prostituting the position of a judge." Yes. (Reads) We have been told by the Government Advocate that in Jagat Narain's case there was practically no evidence of any witness in this case. There was only the documents and under ordinary circumstances there would have been a conviction on a charge of sedition. But we have no evidence that Jagat Narain was a noisy man or a little man.

C. J.—It was not a question of physical stature but I think if you will see the article, there was no doubt as to the noisiness of the article and the mental stature of the person was very clearly visible from the subject of the article.

Pandit Motilal Nehru—Any way it shows you looked upon it with contempt. My client thought that you were giving him these

compliments in order to mitigate the sentence. It may be that a man may be abused and the sentence mitigated and complimented and the sentence mitigated. The narrow way is to compliment a man or to find some redeeming feature.

C. J.—Or to find that the article would not have any serious effect upon any body and secondly that the mental stature of the person was obvious on the face of the article and that the matter ought not to be treated very carefully.

Pandit Motilal Nehru—Quite so. But when we read these words they do not convey all these metaphysical considerations. It is an ordinary term used in ordinary parlance. That does not call up any of the metaphysical or biological attributes applicable to the man. You simply want to get rid of him. Silly little man go away. You must be taken to have used these words in the ordinary sense in which they are used.

C. J.—Pandit Motilal, you are a master of dialectics. Do show me from the judgment how it was a propoganda in favour of British Imperialism. Sir T. B. Sapru tried very hard but.....

Pandit Motilal Nehru—If I may refer to your judgment, I am putting myself in the position of this editor and trying to depict the line of thought which must have been passing through his mind when he wrote these lines (Reads). "But the type of mind etc". Let us consider what are the implications of that passage. It is generally believed that a seditionist is a product of some form of Government which does not appeal to him and that is why you take care to say that the Government has nothing to do with it. You say Government may be benign or tyrannical.

C. J.—There is a type of seditionist 'who could be found to use an Irish expression "always against the Government" no matter what the Government is.

Pandit Motilal Nehru—Quite so. And this man is of that type—"Against the government" as you put it. So that he is here disconnected with the very purpose of Government. He is a public man you will remember however silly and little he may be. He is a member of the Legislative Council and Secretary of a very large organization. Whenever a case of sedition comes before the public it is natural for the public to enquire what has this man done. What does his offence consist of and naturally the public form their own opinion of the truth

or otherwise of the allegation. It may amount to sedition in law but it may be perfectly true all the same made against the Government of the day. A man may hate a Government for good or bad reasons but the law of sedition does not help him. He must be convicted. In the public mind an impression is created when a man is on his trial for sedition and he is either convicted or acquitted. If he is convicted the public naturally go beyond that and enquire into what had happened and what reason did he give the Government to proceed against him. So that in every case of sedition it is practically impossible unless of course the Government is taken out of the argument to disconnect the accused and his doings with the Government of the day. When you hold that this is a man who must be there whatever the form of Government, the Government is at once exculpated. I can only think for the Editor and I say that this is the line of thought which he is following. He says: here is a judgment which by assigning a certain character to this man, a certain biological character, puts him out of the category of the ordinary seditionist.—He must have owed its existence to the Government. Therefore by putting him out of that category and making him simply a biological product, all the discussion about the Government becomes irrelevant.

C. J.—No matter what the type of Government may be—whether British Imperialistic Government or some other form of Government.

Pandit Motilal Nehru—Here on your finding it is not necessary to go into anything that the Government has done because you find that this man will be there. He is a freak of nature. He will be there whatever the form of Government tyrannical or benign. This man is a kind of growth in the country which happens quite irrespective of the nature of the Government or the character of the Government. That being so the whole fault is with the man. The Government does not come in.

C. J.—The Government may be greatly to blame in doing certain acts. That form of mentality may exist under a cruel Government.

Pandit Nehru—But you have taken it out of that category by assigning to him a biological character.

C. J.—Which is expressly stated as possible under a tyrannical or benign form of Government.

Pandit Motilal Nehru—So that the character of the Government is put out of the question entirely. The editor points out that this is no business of yours. It looks very much like propaganda on behalf

of the Imperialist; in fact it is straying away from the field of law into the field of politics. Whatever opinions you hold, a court is not a place to express political opinions.

C. J.—I think you have been more successful than Sir Tej Bahadur Sapru.

Pandit Motilal Nehru—That is the only interpretation that can be placed upon it. Quite apart from whether it is contempt or not, he is assigning the part to you of a propagandist, a comment which arises on that passage in your judgment.

C. J.—I have no grievance on that particular head. I was merely interested in seeing how the biological process was carried out. But to turn to the serious part of it. I am on that heading and upon "Prostituting the position of a judge" and the re-production. The Government Advocate did not refer to it.

Pandit Motilal Nehru—No, he did not refer to it (Reads) I cannot defend the words, but it is not merely the strength of the words or the rudeness or the impertinence but we have to see what the idea is which it conveys. What is the idea conveyed in this heading. First of all he says there was no evidence to show that this man was a silly little man.

C. J.—Of course there was. There was the article itself.

Pandit Motilal Nehru—He may be wrong but we are not now examining the reason. I am explaining what my reading of this passage is. He says if there was no evidence to show that he was a fool and a knave then what justification did the Chief Justice have for prostituting his high and privileged position in depicting the accused in such a manner? It may be even stronger than abuse; he is in a position to call this man all these names. That is only a statement that you have made. The word prostituting is there but I submit that the word only meant making an exceedingly wrong use of your position as a judge to call that man names. He puts the question, was there any evidence or not. If not, then it amounts to an abuse of the position of the judge to give this man so many names without there being reason for it. What is the specific charge there? What is the aspersion there? He is finding fault not with your judicial conclusion but with your judicial taste. You will see he does not presume to say that there was no evidence. He says it would be interesting to know how

far your knowledge of his character was based on evidence. As you were pleased to observe the evidence was there in the article itself. But if there was no evidence, then he says, it would be such and such a case and that I submit may be very impertinent but I submit that it does not contain the ingredients of contempt. It is not a reflection on your character or impartiality and the idea of that imperialistic propaganda is present to the mind of the writer and tinges every expression of opinion immediately following or preceding and he says if the Chief Justice has a certain political faith or belief or opinion then he would naturally in spite of himself be influenced by that view and judge things accordingly. Here he says the Government being out of the controversy altogether this is a kind of propaganda on behalf of the Government, not that you are paid for it or asked to do it but because of your faith in that particular form of Government. It may be a language in very bad taste. I do not give my approval to these things but it is very far from saying that this constitutes contempt. Even if you had said in the judgment that it appears to me from a perusal of this articles that this man is so and so then he would not be able to say that there was no evidence, but there is no such observation in your judgment. There is simply this statement that he is such and such a man and a writer may well ask what is the basis of that statement. If it is based upon evidence well and good. If it is not based upon evidence then it must be the imperialist's opinion. I do not think I need trouble you any further or go into the cases because as in the case of Mr. Sinha (Jagatnarain's case) there does not seem to be any difference as to what the law really is. My friend has commented on such cases as he relies on. I submit before I finish that you will examine all those cases and you will find that my friend has been reading passages from such judgments which constituted libel but you have to read both. In some judgments you will find no mention of any moral obliquity or unfairness or the things which I submit are the main essential ingredients of contempt. But when you look into the cases the evidence is that the aspersions made are of the foulest kind, of misbehaviour involving the very worst class of moral turpitude. You will find, that has probably misled my friend when he refers to anything which is calculated to lower a judge's dignity or position as contempt. I submit that that is not stating the whole of the proposition, that is only part of the proposition. There must be in cases of this kind something which lowers or calculates to lower the

dignity of a judge in respect of what he has done by casting some aspersion upon his fairness, partiality integrity and so on. You will see that there is no difference at all in the cases upon this point. In some cases it has not been brought out so clearly as in others. But in criticism where would you draw the line as to what is within the privilege of criticism and what is not, because the man criticising to that extent is bound to show that the judge is wrong and as I pointed out in my opening the degree of going wrong may vary from a trifling mistake to a judge knowing nothing at all about it. All these states and degrees are covered by the privilege of criticism unless of course it attributes a corrupt motive to the judge.

C. J.—With regard to the Company and to the Directors and the Manager we shall not call upon them. They have been brought here—not that they are excusable—but in order that they should see the way in which their paper is conducted. We shall consider our judgment and deliver judgment tomorrow morning in respect of the Editor and Printer.

THE JUDGMENT

IN THE CONTEMPT CASE

The following is the full text of the judgment of the High Court in the Contempt of Court proceedings against the Editor of the "Searchlight":—

ORIGINAL MISCELLANEOUS CASE NO. 1 OF 1928.

Murli Manohar Prasad and others.

For the Crown:—The Government Advocate.

For the accused:—Pandit Motilal Nehru, Sir Tej Bahadur Sapru, Messrs S. C. Bose, P. K. Sen, C. C. Das, S. P. Varma, Naimatullah, Sami, Mehdi Imam, D. L. Nandkeolyar, S. Sahay, S. N. Bose, R. T. N. Sahay, J. C. Sinha, S. R. Sen Gupta, B. K. Prasad, N. C. Ghosh, A. N. Lal, R. Saran Lal, K. N. Lal, K. Dayal, J. Sahay, A. K. Roy, N. C. Roy, M. Prasad, G. P. Sahi, B. P. Sinha, D. N. Sircar, P. P. Varma, N. C. Ghosh, K. N. Varma, R. N. Lal, B. P. Varma, B. P. Jamuar, S. N. Sahay, S. Dayal, A. Aziz.

Courtney Terrel C. J.—In this case Murli Manohar Prasad who is the Editor and Printer of the "Searchlight" a newspaper circulating in this province has been called upon by the court to show cause why he should not be committed or otherwise dealt with for contempt of court for having published certain articles in the issues of that newspaper dated June 24th, July 18th, July 20th, July 22nd, July 29th, and August 5th, concerning the High Court and the Chief Justice and

his administration of justice in this Court. The proprietors of the paper, the Behar Journals Limited and its Directors and Manager have also been made respondents to the rule.

The rule was issued by myself as Chief Justice sitting with Mr. Justice Fazl Ali from the Criminal Bench. It is necessary before proceeding further to deal with a preliminary point raised on behalf of the respondents to the effect that the rule should have been issued by the court as an entire body and not until the whole of its judiciary had been consulted and that the Chief Justice together with another single judge had no jurisdiction to issue any rule. It was argued that since the court had not seen fit to make any rule dealing with the issue of rules of this nature nor as to the Bench before which such applications should be placed that it followed that the court could not exercise the jurisdiction to issue a rule save when sitting as an entire and corporate body. To my mind the answer to this contention is simple. In the first place by clause 28 of the Letters Patent "any function which is hereby directed to be performed by the High Court of Judicature at Patna in the exercise of its original or appellate jurisdiction may be performed by any judge or by any Division Court thereof appointed or constituted for such purpose in pursuance of Section 108 of the Government of India Act 1915." It was conceded that if a rule were in fact issued such rule could on its return be dealt with by any single judge or any Bench of judges selected by the Chief Justice and it cannot be denied that

if I had chosen to make a formal order in this particular case that the matter of the issue of this rule should be dealt with by myself alone, that such order would have been effective under the Letters Patent and under the Government of India Act. Such an order though not formally made must be implied from the fact that the rule was issued by Mr. Justice Fazl Ali and myself. Further it has been the invariable practice for rules of this nature to be issued by any single judge or any number of judges of a Court of Record. Indeed it is impossible to conceive how the jurisdiction could be effectively exercised unless such a procedure were resorted to. In none of the reported cases has this point ever been raised and although it is true that that state of affairs does not preclude the respondents from raising it in this case yet a decision that it was well founded would involve a complete change of a practice which has been uniformly followed, which has received the approval of every High Court in India and has been followed in cases which have reached the Privy Council. In our opinion the point has no substance.

It is necessary in order that the merits of this matter may be appreciated to refer to certain decisions of the Criminal Bench of this Court to each of which I was a party and in each of which I delivered the judgment of the Court. The earliest of these was one decided on the 16th May of the year in which certain persons in a rural district were convicted of culpable homicide in respect of the death of a man who had been drowned. It is unnecessary to set forth the judgment at length. It has been read in the course

of this case and one point only need be noticed. A witness appeared in support of the prosecution who some five and twenty years before the occurrence in question had been convicted of giving false evidence. Dealing with the argument of Counsel for the defence with reference to the evidence of this witness I observed in the course of my judgment: "Further he stated that the witness's evidence should be regarded with great suspicion because on a former occasion some five and twenty years ago this witness had been convicted of giving false evidence but it appears from what we know of that former case that it was not a case of any great magnitude and having regard to the habits of the people in this particular part of the world where the giving of false evidence, however deplorable it may be, is not considered an offence which is fatal to a man's reputation to say at least of it, I do not think that much importance need be placed on that fact." I may say at once that it was not my intention to impute to the people of this province or of the district of Saran any immoral views on the subject of perjury. The case attracted no attention. It was not reported and was not made the subject of public comment until the issue of the articles, the subject of this rule.

The next judgment to be mentioned was that delivered by myself sitting with Mr. Justice Adami and delivered on the 13th June. A number of persons were charged under sections 149 and 306 of the Indian Penal Code with being members of an unlawful assembly whose common object was to abet the suicide of a certain woman and with abetting the woman's suicide. In the course of that judgment I discussed the facts

of the case and came to the conclusion that the accused were all guilty of the abetment of the woman's suicide. I was further of opinion that the evidence showed that with regard to certain of the accused they had been parties to a plot the nature of which was in fact to murder the deceased woman. With regard to one of the accused, a person named Jagdeo, I said, "As to Jagdeo he is an older youth and he should have exercised more intelligence. We believe, but we are not certain, that he was in this plot also but we consider that the justice of his case will be met by sentencing him to rigorous imprisonment for seven years". Those individuals whom we considered to have been parties to the plot to murder the deceased were sentenced to rigorous imprisonment for ten years. In the course of this judgment the word "plot" is not used save in the passage which I have quoted.

The third case was one in which a person named Jagat Narain Lal was charged with sedition under section 124 A of the Indian Penal Code in respect of an article which appeared in a vernacular newspaper named "Mahabir" of which he was the editor. The article complained of accused the Government of deliberately fomenting communal strife. The accused was represented on the appeal by Mr. Sachchidananda Sinha, an eminent Advocate of this Court. In an argument of great learning and considerable length he set forth the law relating to sedition and the proper canons of construction to be applied to any publication alleged to be seditious. The case was heard some length The arguments used and the authorities cited by Mr. Sinha were very carefully considered and the Court expressed

itself as fully satisfied with the principles of law enunciated by him, nor were those principles contested in any way by the learned Government Advocate who appeared for the Crown. The case therefore resolved itself into one of very small compass, that is to say, the actual meaning of the article when construed according to the principles enunciated by Mr. Sinha in his argument. In the course of my judgment I set forth the view that the meaning of the article was unmistakable, that its effect would be to cause persons who read it and believed it to hate the Government and hold it in contempt and to become disaffected. I came to the conclusion and expressed my view that the tone of the article was such as to deprive it of any serious appeal to intelligent persons but having regard to the degree of harm which the article might produce upon uneducated minds, I held that the sentence imposed by the Court appealed from was justified. This decision was delivered on the 19th July.

The fourth case was concerned with a Jail appeal. 11 persons had been convicted of dacoity and the principal evidence in the case was that of a member of the gang who had turned approver. As to six of the accused the evidence of the approver was amply corroborated, but as to five the Sessions Judge had convicted the accused upon the evidence of the approver alone giving in great detail the reasons which he considered justified him in this course. This case, as I have said, came before Mr. Justice Macpherson and myself as a Jail appeal and upon reading the judgment we formed an impression that it would be wise to consider with great

care the law relating to the acceptance of the uncorroborated evidence of an approver and the circumstances in which the law had been applied to the facts of this particular case. We, therefore, directed that the case be set down for argument and the learned Government Advocate appeared in support of the conviction. The case was very thoroughly argued and we examined all the authorities. Finally, we delivered separate judgments which have since been reported up holding the convictions and setting forth at some length the considerations which should guide the Court in coming to a conclusion whether or not to act upon the uncorroborated testimony of an approver.

Now the articles the subject of this rule, contain reflections upon me in my capacity as a judge and as Chief Justice of this Court and I think it right before considering them in detail, to deal briefly with the law applicable to comments of this nature and to the jurisdiction of the Court under which such comments may be punished with. From the earliest times it has been recognised that the superior Courts of Record have an inherent jurisdiction to punish contempts of their authority and it has been pointed out that contempt of a Court of Record may be of one or more different kinds. We are here dealing with that class of contempt which has been termed scandalising the Court. In the *Queen v Gray* 1900 (2 Q. B. 36 at p. 40) Lord Russell, Chief Justice, said: "Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt or to lower his authority is a contempt of Court. That is one class of contempt. Further, any act done or writing published

calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwick L. C. characterised as 'scandalising a Court or a judge.' That description of that class of contempt is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism, and if reasonable argument or any expostulation is offered against judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court. The law ought not to be astute in such cases to criticise adversely what under such circumstances and with such an object is published; but it is to be remembered that in this matter the liberty of the press is no greater and no less than the liberty of every subject of the Queen." Then follows some remarks about the facts of that particular case and the Chief Justice continues "we have therefore to deal with it as a case of contempt and we have to deal with it *brevi manu*. This is not a new fangled jurisdiction; it is a jurisdiction as old as the common law itself, of which it forms part. It is a jurisdiction, the history, purpose, and extent of which are admirably treated in the opinion of Wilmot C. J., then Wilmot J., in his opinions and judgments. It is a jurisdiction however, to be exercised with scrupulous care, to be exercised only when the case is clear and beyond reasonable doubt." In a much earlier case in the reign of King George III, *Rex vs. White* and another reported in I Camp. p. 359 Grose J., is reported as having said that it certainly was lawful with decency and candour to discuss the propriety of the verdict of a jury or

the decision of a judge and if the defendants should be thought to have done no more in this instance (under considerations) they would be entitled to an acquittal; but on the contrary they had transgressed the law and ought to be convicted if the extracts from the newspaper set out in the information contained no reasoning or discussion, but only declamation and invective and were written not with a view to elucidate the truth, but to injure the character of individuals and to bring into harted and contempt the administration of justice in the country. The view of the law taken in these cases and particularly in the case of the Queen vs. Gray has been consistently followed by the High Courts of India. In the matter of the *Amrita Bazar Patrika* (26 C. L. J. 538) Mr. Justice Mukherji says: "It is not necessary for our present purpose to give an exhaustive enumeration of acts which amount to contempts of Court. It is sufficient to state that scandalous attacks upon judges calculated to cause an obstruction to public justice, do constitute such contempt. Blackstone, in a celebrated passage of his commentaries (Vol. IV page 285) which will be found quoted in *Legal Remembrancer Vs. Motilal Ghose* (1913) (I. L. R. 41 Calcutta 173 at page 255) specifies in his description of contempts of Court contempts which arise "by speaking or writing contemptuously of the Court or Judges, acting in their judicial capacity and which demonstrate a gross want of that regard and respect which when once Courts of Justice are deprived of their authority, so necessary for the good order of the kingdom, is entirely lost amongst the people". Sir John Wilmot C. J. in *R. Vs. Almon* 1765 Wilmot 243 at page 255 justifies "a

similar view". After quoting the opinion of Wilmot C. J. and giving a list of recent authorities Mr. Justice Mukhraj continues. "The principle deducible from these cases is that punishment is inflicted for attacks of this character upon judges, not with a view to protect either the Court as a whole or the individual judges of the Court from a repetition of the attack but with a view to protect the public, and specially those who either voluntarily or by compulsion, are subject to the jurisdiction of the Court, from the mischief they will incur, if the authority of the tribunal be undermined or impaired". A little later on at page 540 he says: "It is immaterial whether the attack on the judge is with reference to a case about to be tried, or actually under trial, or recently adjudged; in each instance the tendency is to poison the fountain of justice, to create distrust, and to destroy the confidence of the people in the Courts which are of prime importance to them in the protection of their rights and liberties". At page 545 the same Judge says: "The power to punish for contempt is inherent in the very nature and purpose of Courts of Justice. It subserves at once a double purpose, namely as an aid to protect the dignity and authority of the tribunal and also as an aid in the enforcement of civil remedies. The power may consequently be exercised in civil or criminal cases or independently of both and other solely for the reservation of the authority of the Court or in aid of the rights of the litigant or for both these purposes combined. By reason of this two-fold attributes, proceedings in contempt may be regarded as anomalous in their nature, possessed of characteristics which render them more or less difficult of ready or definite

classification in the realm of judicial power. Hence, such proceedings have sometimes been styled *Sui generis*".

To this authoritative expression of learned Judges I venture to add a consideration which has also in the past been made the subject of judicial comment. It must be remembered that a Judge by reason of his office is precluded from entering into controversy in the columns of the public press. Whether the comments be of a permissible or of an improper character, he cannot enter the arena and do battle with his adversary upon equal terms. The judge of a superior court is moreover precluded by considerations of decency from having recourse to the remedy available to any other citizen of whom defamatory words are spoken or written, that is to say, of taking proceedings for libel or slander before the ordinary tribunals which are subject to his own jurisdiction and he requires therefore in the exercise of his office a special protection in order that his authority and dignity may be maintained.

I now turn to a consideration of the articles which are the subject of this case. In the issue of Sunday, June 24th, there appeared an article which dealt at considerable length with the judgment in the Sati case delivered on the 13th June. It is not necessary to deal with this article at any length. It was a criticism and a perfectly legitimate criticism of the judgment but towards the conclusion it mentions the particular case of the youth Jagadeo and states "We propose to deal with this aspect of the case in a subsequent issue". In the issue of Wednesday, July 18th and

in the issues of Friday July 20th and Sunday July 22nd there appeared three articles successively dealing with this case. Now, in addition to comments of another character with which I do not think it necessary to deal, there appear distinct allegations several times repeated that the youth Jagdeo should have been acquitted and there is quoted in support of this contention the observation from my judgment which I have set forth above: "We believe but we are not certain that he was in this plot." This is taken as a distinct statement that the Court was of opinion that Jagdeo was not guilty of the offences with which he was charged but was nevertheless sentenced to rigorous imprisonment for seven years. I have been at some pains to point out that my observation in the judgment has no such meaning and that the doubt in the mind of the Court with respect to Jagdeo was merely as to his complicity in the plot to bring about the death of the woman. There was never in the mind of the Court the slightest doubt that Jagdeo was guilty of abetment of suicide. It is somewhat shocking that any one should on a mere perusal of the judgment and without any further enquiry come to the conclusion that any judge could convict a person after having expressed a doubt of his guilt of the offence charged. Had the matter rested on this single misinterpretation of the judgment of the Court, we should not have been inclined to take a serious view of these articles. On Sunday July 29th however appeared an article commenting upon the case of Jagat Narain Lal: The article contains many offensive expressions in the worst possible taste. Of the greater part of these we

do not think it necessary to take notice. There, is however, one grave charge against me in my capacity as a judge which is deliberately made, which is not susceptible of any misunderstanding, which is a reflection upon my judicial conduct of a nature so grave that if it were true I should be unworthy to hold my high office. Early in the article the author says: "We say nothing as to the conviction of and the sentence passed on Babu Jagat Narain Lal, for such conviction must be expected as a matter of course in the system under which we live" and a little later on: "A long and learned argument was advanced by the learned Counsel for Babu Jagat Nurain Lal as to the proper interpretation to be placed on the subject matter of the charge. But the learned Chief Justice does not appear to have given even a cursory consideration to the argument and disposed of the whole case practically in a single sentence." Now in view of the fact that a full report of this case appeared in the "Searchlight", it is impossible for the Editor to disclaim a knowledge of what in fact took place at the hearing of the appeal. Then after commenting upon the sentence as being far too severe the author of the article says: "But an enormity of this kind from a Judge who does not feel the horror of sentencing a man to seven years' rigorous imprisonment, though he is 'not certain' of his guilt is not at all surprising. A Judge who does not observe the elementary principles of criminal jurisprudence that the presumption of innocence is fundamental to the British system of criminal law and that that presumption is in no way rebutted by a finding that the tribunal 'believes' but is 'not

certain' of the guilt of the accused person may of course be excused if he does not know that the measure of punishment in a case of sedition is the measure of importance which can be attached to the subject matter of the charge for sedition. But it is indeed lamentable that the Chief Justice of the Patna High Court should have ignored these elementary principles of law." Later on he says: "if the judgment which we are considering had been pronounced by a junior Deputy Magistrate, then we have no doubt that the High Court would have severely censured him. As we have already pointed out, the arguments of Mr. Sinha have not been referred to; and in fact the real part of the judgment consists of not more than one or two sentences. Even Babu Jagat Narain Lal, 'a silly noisy little man' though he may be, was entitled to ask the High Court to consider points urged on his behalf". Now, up to this point it has been contended on behalf of the respondent that the article is a mere criticism of the form of the judgment and a complaint that the judgment itself does not contain a review of all the points raised by the learned Counsel for the defence. It is, however, clearly not the intention of the author to comment merely upon the form of the judgment. His intention is to give the impression that the Chief Justice ignored the arguments of the Counsel and refused to consider the authorities cited and that such is the intention of the author is made abundantly clear by the next succeeding passages of the article: "How are we to say that those points have been considered, since there is no indication in the judgment that

the Chief Justice was even aware of those points. It is our deliberate conviction that the life and the liberty of the subject must necessarily be in grave peril when the Chief Justice of the highest judicial tribunal in the land ignores the arguments, refuses to consider the authorities that may be cited, and in the end produces a judgment full of sound and fury but signifying nothing, except imprisonment so far as the parties are concerned," and later "it is obvious then, that the life and liberty of the subject are in danger under the present administration of the Criminal law and unless we wish to perish, we must protect ourselves against this new menace." The argument was advanced on behalf of the respondent that all this meant no more than that the judgment of the High Court is taken as an instruction and example by the lower courts and that the imperilling of the life and liberty of the subject referred to was the mere imperilling of the life and liberty of such persons as might come before inferior Courts after reading such a judgment. It is for this Court as a matter of law to construe words and phrases which have no technical significance and to decide what is their meaning and what is the effect which they are calculated to produce and I have no hesitation in deciding that the words used by the author mean and are calculated to mean and intended to mean the conduct of cases before the Chief Justice is such that the arguments and authorities are ignored and that for that reason the life and liberty of the subject brought before the Chief Justice is in peril. Such a statement made about a judge in the execution

of his office is a contempt of Court of the gravest character.

On Sunday August 5th there appeared an article entitled "Press Comments on the Chief Justice." Among the phrases occurring in this article are the following:—"As a matter of facts, the outcry is nothing more than the expression of the outraged feelings of the people over observations and conviction that are exercising the minds of the public at large. It cannot but be otherwise in an official ridden country like India which presents the amazing spectacle of being the only civilized country where judicial and executive functions are deliberately kept combined by a system of Government whose promises for separation have been broken as often as they have been made. It is a truism there is no gainsaying that the one silver lining in an utterly dark, and dismal horizon has been a lurking belief on the part of the people that the High Court with its great traditions of judicial independence stood, at any rate in some measure, as the protector of the life and the liberties of the people. The High Court has been regarded as the one bulwark against Executive wantonness and Judicial vagaries and throughout the period of office of Sir Edward Chamier and Sir Dawson Miller, despite occasional mistakes, public confidence in the High Court remained unshaken. It would be doing violence to truth to suggest that the same confidence is a fact of to-day." Later on there occur the words: "His Lordship started with introducing far reaching changes in the rules without as much as a pretence at consultation with

the Bar who were one fine morning done the courtesy of being presented with a *fait accompli*. Then came the Sati case judgment with its bad law, angry rhetoric and in the circumstances, monstrous sentences...The conviction of a man on the uncorroborated testimony of an approver followed and soon after came the amazing judgment in the case of Babu Jagat Narayan Lal."

A little further on he says: "But by far the most amazing feat was the insult levelled at our people 'in this part of the world' by one who is not a globe trotter out to earn cheap notoriety nor an executive official carrying the White Man's Burden on his shoulders, but the Chief Justice of a High Court of Judicature. Whatever His Lordship may have meant, the public at large must take him at his words and they refuse to tolerate their being characterized practically as habitual liars." The passages above quoted distinctly impute to the Chief Justice the reproach of passing monstrous sentences, of unjustifiably convicting a man on the uncorroborated testimony of an approver and with accusing the people of India, or the people of this province of being habitual liars. None of these reproaches is justified and the cumulative effect of these statements, having regard to the preceding articles, is to lead to the belief that the monstrous sentences improper reception of the testimony of an approver and the wholesale condemnation of the people of the province as habitual liars are facts which render the Chief Justice unfit for his office and undoubtedly tend to debase his authority. As I have said the title of the article is "Press Comments on the

Chief Justice" and there is quoted amongst other articles dealing with the Chief Justice one from a paper called "Forward" published at Calcutta. This article contains a large cross headline "prostituting the position of a judge." Under this headline was set forth the following statement:—"Was any evidence adduced by the Prosecutor to warrant the presumption that the accused was a fool and a knave? If not, what justification the Chief Justice had for prostituting his high and privileged position and depicting the accused in such a thick colour? The vilification of the helpless accused does not seem to be the only art in which the learned Chief Justice indulged. His Lordship thought it fit to utilize his judicial position to do a bit of propaganda in favour of British imperialism and proceeded to make a little critical examination of the psychology of the mind of the accused". I do not propose to deal further with the use of the word "Prostituting"—then stating that neither of the Counsel appearing for the respondents was able to justify its use or to urge with any force that it had other than a grossly derogatory implication; nor were they able to justify the statement that the judgment contained political propaganda in favour of British Imperialism. The article introducing these press comments and the Press Comment itself cannot be considered otherwise than as a gross contempt of Court.

In conclusion I cannot do more than follow the example of many well-known and distinguished judges in pointing out that a judge should neither fear nor resent public criticism whether of his judgment in

matters of law or his judgments in matters of fact and I well realise that it is the duty of a judge to protect the privileges of the public against acts of tyranny as well as against the crimes of public offenders and I should have been among the last to claim any exemption from such criticism. I hope that I may always be open to criticism and that my natural vanity may never prevent me from giving ear to my critics nor from affording to them such attention and respect, as their position in life, learning and professional standing may claim. But I should be unworthy of the high office to which His Majesty has been pleased to appoint me if I refrained from protecting that office or from punishing those who offer it affront. The articles for which the respondent is responsible are undoubtedly calculated to lower the prestige of the High Court over which I have the honour to preside and to impair my dignity as a judge and as Chief Justice. This is the first example of its kind which has occurred in this province and it is to be hoped that it will be the last. We have not thought fit to punish either the company or its directors or manager. The list of directors contains the names of many worthy people who, we are sure, cannot have viewed the proceedings of the Editor of their paper with any approval. We have brought them here in order that they may have due cognizance of the facts and we propose in their case to make no order. We desire, however, to say that any repetition of this offence will be met with consequences far more severe. The sentence upon Murli Manohar Prasad, who is described in the "Searchlight" newspaper as the

editor and printer, is that he before 2 o'clock this afternoon pay a fine of five hundred rupees and that in default of such payment he be confined in the Patna Jail until such fine shall have been paid.

Patna, the 16th August, 1928.

Adami J.—I agree

Ross J.—I agree.

Kulwant Sahay J.—I agree.

Fazl Ali J.—I agree.

Patna, the 16th August 1928.

APPENDIX I

CHARGES WITH TWO OR MORE HEADS

I, S. Haidar, a Magistrate of the first class at Patna hereby charge you the marginally named persons as follows:—

1. Bidyasagar Pandey of Sartha, [2] Raghu Singh of Berhna, [3] Lachman Pandey of Sartha, [4] Sahdeo Pandey of of Berhna, [5] Hardeo Pandey of Sartha, [6] Kesho Pandey of Sartha, [7] Murlidhar Pandey of Sartha, [8] Jagdeo Pandey of Sartha, [9] Gaya Pandey of Berhna, [10] Ramdhani Hajam, [11] Ramautar Dusadh, [12] Musammat Lakhia Kaharin, [13] Jagdeo Kahar, [14] Kandhai Kahar, [15] Shamlal Kahar, [16] Tukan Kahar.

First that you, on or about the 22nd day of November 1927 at Barh [Police station Barh, Zila Patna] were members of an unlawful assembly, and in prosecution of the common object of the same [*viz.*, unlawful assembly] to abet the commission of suicide by Musammat Sampati Kuer at Gaudabe Asthan [Barh] some members of that assembly abetted the said offence of suicide [while you were members of the said assembly] and you are thereby under Section 149 I. P. C. guilty of [Sd. T. L.] the said offence punishable under Section 306 of the Indian Penal Code and within the cognizance of the Court of Sessions. And I hereby direct that you be tried by the said court on the said charge.

[Sd.] S. Haidar, 17-1.

Secondly, I, S. Haidar a Magistrate of the first class at Patna, hereby charge you the marginally named persons as follows:—

That on or about the 22nd day of November 1927 at Barh [Police Station Barh, Zila Patna] one Musammat Sampati Kuer, widow of Sidheswar Pandey of village Sartha, Police Station Chandi, committed suicide and that all of you abetted its commission [In various ways, *e. g.* [i] by [Sd. T. L.] encouraging the said Sampati Kuer to commit

[Sd. T. L.] suicide by shouting [Sd. T. L.] [*Satiji-ki-jai*], [ii] by preventing [Sd. T. L.] the Police [by threats and otherwise] from interfering in the performance of the said act of suicide, [iii] by preparing in funeral pyre and placing the dead body of Sidheshwar Pandey on the pyre near which Sampati was made to take her seat, [iv] by cutting and getting her nails cut and her feet painted, [v] by supplying to the said Sampati Kuer articles of toilet such as vermilion, tikuli and pitambari etc., [vi] by preventing the police from trying to save Sampati Kuer from drowning when she rushed into the Ganges after she had caught fire, [vii] by preventing the said Sampati Kuer from getting medical aid after she had been burnt and when she herself came out of the water and was lying at the Gaudabe Asthan, and thereby committed an offence punishable under Section 306 of the Indian Penal Code and within the cognizance of the Court of Sessions.

And I hereby direct that you be tried on the said charge by the said court.

[Sd.] S. Haidar

17-1-28.

Thirdly, I, S. Haidar, a Magistrate of the first class at Patna hereby charge you the marginally named persons as follows:—

That you, on or about the 22nd day of November, 1927, at Barh [Police Station Barh, Zilla Patna] conspired to do an illegal act to wit abetment of suicide and that the same act, viz., abetment of suicide was committed [by some or all of you] in pursuance of the conspiracy and [that you] thereby committed an offence punishable under Section 120 B. of the Indian Penal Code and within the cognizance of the Court of Sessions.

And I hereby direct that you be tried by the said court on the said charge.

[Sd.] S. Haidar, 17-1-28.

Charges read over and explained.

[Sd.] S. Haidar, 17-1-28.

Additions and corrections initialled in [] by me on Feb. 13, 28.

[Sd.] T. Luby

S. J.

13-2-28.

APPENDIX II

The Summing up by Mr. Luby, Session Judge, Patna to the Jury in
The King Emperor vs. Vidyasagar Pandey and 15 others Sections 306,
149 and 120-B, I. P. C.

Heads of Charge to the Jury.
Sections 298, 299 Cr. P. C. read

Respective functions of Judge and Jury explained

Particulars of the accused persons:

- | | | |
|---|-----------------------------------|-----|
| 1. Vidyasagar Pandey aged about 14 years of Sartha P. S. Chandi | | |
| 2. Sahdeo " " | 22 | " " |
| 3. Hardeo " " | 26 | " " |
| 4. Kesho " " | 41 | " " |
| 5. Murlidhar " " | 16 years of Berhna P. S. Barh | |
| 6. Jagdeo " " | 19 | " " |
| 7. Gaya " " | 22 | " " |
| 8. Raghu Singh (Babhan) | 37 | " " |
| 9. Ramautar Dusadh " " | 28 | " " |
| 10. Lachman Pandey " " | 40 | " " |
| 11. Lakhia Kaharin " " | 35 years of Sartha P. S. Chandi. | |
| 12. Jagu Kahar " " | 45 | " " |
| 13. Kanhai " " | 40 | " " |
| 14. Sham Lal " " | 30 | " " |
| 15. Tukan " " | 40 | " " |
| 16. Ramdhani Hajam " " | 50 years of Barh Towu Zila Patna. | |

No. 4 is proved and admitted to be a *gotia* of No. 5.

Nos. 12, 14, 15, are brothers and No. 13 is their cousin.

Place of occurrence Barh town.

Date of occurrence Nov. 22, 1927.

Charges read and explained.

The principal charge is under Sec. 306 I. P. C. for abetting the suicide of one Sampati aged about 20 years, sister of accused Marlidhar, who was burnt on the pyre of her deceased husband Sidheswar Pande, brother of accused Vidya Sagar Pandey.

Sec. 306 I. P. C. read.

The terms "suicide" explained.

The term "abatement" explained and S. 107 I. P. C. read to the Jury.

The second charge is under S. 306 with S. 149 I. P. C. Sec. 149 I. P. C. read to Jury.

The term "unlawful assembly" explained and S. 149 I. P. C. read to the Jury.

The third charge is under S. 120 B.

S. 120B. read to the jury.

The Term "Criminal Conspiracy" explained and S. 120A read to the Jury.

The term "illegal" explained by reference to S. 43 I. P. C.

Proceedings were instituted on the basis of a "first information report" (Ext. 2) which was drawn up by Nurul Haq Head Constable (P. W. No. 1) on his own information at 10-30 a. m. on Nov. 22, 1927 after Sampati had been burnt. In this F. I. R. he made Sampati and the eight Pandey accused under section 309 and 309/114 I. P. C. he mentioned the four Kahars (3 by their correct names and 1 by a wrong name) the Ekka driver (but by a wrong name,) and the maid servant (but without naming her).

F. I. R. read to the jury.

The first news of the intended suicide is said to have been brought by constable Ramayan Singh (P. W. No. 5) to Nurul Haq the police station at 5-30 a. m. and to have been entered in the station diary then and there, *vide*, Ex. 1.

Ext. 1 read to the Jury.

There is another entry in the station diary about what happened at the P. S. at 7-30 a. m. *vide*, Ext.A.

Ext. A read to the Jury.

Another entry (Ext. B.) in the S. D. has been exhibited for the defence with the idea of throwing doubt on the credibility of Nurul Haq.

Ext. B. read to the Jury.

Evidence for Prosecution.—You have heard the evidence of Nurul Haq (P. W. 1) and of the constable Ramayan Singh (P. W. 5.) and Mukhlal Singh (P. W. 7) who claim to have been with him throughout. They have added many details to the story unfolded in the F. I. R. Thus the F. I. R. does not mention (1) the presence of the Inspector at the P. S. or at the ghat, (2) Nurul Haq's use of a Motor Car to get back to the P. S., (3) shouting of "Sati-ji-ki-jai" at the Court compound or at the P. S., (4) insistence by the Panday at the Court Compound or at the P. S. that Sampati must become a Sati, (5) the parts played by Ramdhani and Raghu. The F. I. R. as it stands is a pretty long document. But Nurul Haque says he could not include every detail in it, as he had other things to think about on Nov. 22. It has been argued before you that the F. I. R. was not written at all until the S. I. had returned from Patna and held a consultation with the other police men. If that were the case one would not have expected to find any important points omitted from the F. I. R. The F. I. R. is an important document in most Sessions cases. It is for you to consider whether this F. I. R. shows signs of subsequent concoction or should be taken as genuine record of Nurul Haq's first impression of the occurrence. Then you have the evidence of Mahabir Tewari H. C. (P. W. 14) and Lachmi Singh (P. W. 9) of the Treasury Guard, who took part in the argument at the court compound. Also of Lalbehari Lal S. I. (P. W. 21) on the same point.

The Inspector [P. W. 20] and five constables (P. W's. 11, 12, 13, 16 and 19) have told you that they saw Sampati and her companions at the P. S. and subsequently marched to the Ghat and witnessed the tragedy that occurred there. Kedar Nath Pandey H. C. (P. W. 17) was not put forward by the Prosecution, but only tendered for cross-examination. He has stated that the S. I. deputed him to the burning Ghat at 6-30 A.M. to prevent the suicide, he was there when Sampati immolated herself, but does not identify any accused except Lachman. Rameshwar Prosad H. C. (P. W. 15)

has deposed that he was present during the argument at the P. S. He has pointed out Jagdeo, Lachman, Murlidhar, Vidyasagar and Raghu as participants in that argument.

Nur Mohammad Ekka driver (P. W. 2) had deposed that his Ekka was taken from him by force at the court compound by Ramautar accused. Doman Mian Ekka driver (P. W. 3) has deposed that he saw Ramautar driving Nur Mohammad's Ekka towards the P. S. with 2 men and 2 women on it and an escort of 2 constables and a crowd shouting "*Sati-ji-ki-jai*". Then we have the Sub-Deputy Magistrate, who has been called as court witness No. 3 (as the prosecution classed him as hostile). He has deposed that he got a police report at 12-30 on the 22nd and went to the burning Ghat to record Sampati's "*dying declaration*" but did not record it because there was an uproar. He questioned Sampati and she told him that "*she was burned by fire that came out by itself*" and she refused to go to Hospital. He does not identify any of the accused persons. He went away and did nothing more either that day or the next day.

The Assistant Surgeon (P. W. 6) deposed that he went to the burning ghat at 2 P. M. at the request of Sub-Deputy Magistrate to treat Sampati's injuries, but did not treat them. He has said that he was intimidated by Sampati's companion, but that he could not identify any one who intimidated him. On the 24th Sampati was taken to the jail and placed in his charge and after that he examined and treated her injuries. She died at the jail during the night of Nov. 25-26.

The Sub-divisional Magistrate (P. W. 10) was out on tour on the 22nd. He has told you that he received the F. L. R. from the police in the evening on the 23rd, and that the Sub-Deputy Magistrate's report reached him half an hour later. It is not clear why the S. D. M. did not get his report to the S. D. O. earlier. S. D. M. puts the blame on the office. The S. D. O. returned to Barh and went to the ghat in the morning of the 24th. He found Sampati lying in the open on a layer of cotton wool. There was big crowd. People were shouting "*Sati-ji-ki-jai*" and making obeisance and offerings (including pice). Sampati's companion were picking up the pice. The S. D. O. noticed Lachman accused and Vidyasagar accused there. He went there again in the afternoon with armed police and removed Sampati to the hospital. Lachman and Vidyasagar objected to the removal.

The investigation was commenced by the S. I. when he returned from Patna to Barh in the evening of the 22nd. He submitted a

charge-sheet under section 309-114 I. P. C., against the 8 Pandeyas, Lakhia and Raghu on Nov. 25. But after Sampati's death the case assumed a more serious aspect, and he subsequently submitted a revised charge sheet on Dec. 12 under Sec. 306 I. P. C. against all the present accused:

It is argued that Nurul Haq could have taken up the investigation in the morning of the 22nd but did not do so because the F. I. R. was not yet written. The Inspector has stated that Nurul Haq had power to investigate, the S. I. has said the opposite. Nurul Haq has said that he did not record any evidence before the S. I. returned. There is a note in Col. 4 of the printed form attached to Nurul Haq's F. I. R. to the effect, enquiry taken up by W. H. C. Nurul Haq. This note purports to have been written by R. Prasad, a H. C., who was not asked to explain it. A test identification was held in Barh Sub-Jail on Dec. 12 by the Honorary Magistrate (P. W. 8) who filled up the report (Ext. 6). All the accused except Ramautar and Lakhia were in the jail then. The identifying witnesses were the two treasury guards [P. W's. 9 and 14.] and Rameshwar Prasad H. C. (P. W. 15). All three of them picked out Lachman accused and Jagdeo accused, and P. W's. 14 and 15 picked out some other accused. The defence Mukhtar was present, and was consulted by the Hony. Magistrate about the arrangement for the test identification.

P. W. No. 4 is a Head Constable who prepared the plan (Ext. 3) and explanatory schedule (Ext. 4) copies of which were supplied to the Jury and to the defence lawyers at the opening of the trial.

The Dafadar and Chankidar of Berhua have been examined as court witnesses and have deposed that Gaya accused is first cousin of Murlidhar accused and that Raghu accused is a friend of the Pandey and is religiously minded.

Unfortunately no evidence has been forthcoming from village Sartha in which Sidheshwar died. So we are left in the dark about two important points, *i. e.*, (1) whether Sampati had announced her intention of becoming a *sati* before she left Sartha, (2) at what time and in what conveyance (if any) and in what company Sampati left Sartha for Barh. The Public Prosecutor has said that no man of Sartha [not even the village Chankidar] is willing to give any evidence about the matter.

Pleas of accused:—The accused persons all pleaded not guilty to charges. Before the committing Magistrate they said merely that

they would reserve their defence for the Sessions Court. Vidyasagar has said that his sister-in-law Sampati came to Barh to cremate her deceased husband; that when they came near Barh, she announced her intention of becoming a Sati so he and Sukan after remonstrating took her to the criminal court "so that the authorities might know about it". He has admitted that he was at the burning ghat but not that he was on the Ekka or at the P. S. Hardeo, Kesho and Lachman have said that they had come separately to Barh on their own business; went to the ghat on hearing of the Sati and were arrested there on a mere suspicion. These three and Sahdeo and Gaya have said that they are not connected in any way with Sampati. Murlidhar has admitted that he is Sampati's brother, but denied that he came to Barh with her. Jagdeo has said that he had nothing to do with Sampati or with her death. The police made him an accused because he declined to give evidence for them. Raghu has made a similar allegation against police. Lakhia has admitted that she was Sampati's maid and accompanied Sampati from Sartha to Barh, she has also said that the police brought her to the burning ghat, and that she had nothing to do with Sampati's suicide. Ramautar has said that he drove Sampati to the Ghat at the request of Nurul Haq who pressed him into service at the P. S., he can not say to whom the Ekka belonged. The barber Ramdhani has said that he shaved the head of the deceased Brahmana's [*i. e.* Sidheshwar] corpse at the request of Sukan who paid him one anna, as wages. He did nothing for Sampati and did not see her burnt, he is a man of Barh, and has no connection with Sartha or Perhuas. The four Kahars have said that they have carried Sidheshwar's corpse from Sartha to Barh Cutcherry at the request of Sukan Pandey, who paid them Rs. 5, as wages. Sampati did not go with them. Next morning [*i. e.*, on the 22nd] they carried the corpse from the cutcherry to the ghat under the S. I's. orders and left it there.

No witnesses have been called for the defence. But you should not allow this fact to prejudice your minds against the accused. A person accused is not bound to prove his version of the facts, indeed he need not open his mouth at all unless he likes. Even if he remains silent, he cannot be convicted unless and until the prosecution case has been conclusively proved against him.

It is for you to consider, therefore, whether all or any of the witness have been conclusively proved against all or any of the 16 accused persons.

It has been pointed out to you that there are no independent eye-witnesses to support the evidence of the policemen. And it has been urged that if the events of the morning were as described by the policemen, there must have been respectable independent men who saw and heard the sights and sounds described, at the Outcherry compound and at the P. S. and at the Ghat. This is not disputed. But it is urged for the Crown that no private citizen of Barh either wishes or dares to come forward to give evidence for the prosecution in this case. The S. D. O. (P. W. 10) and the Hony. Magistrate (P. W. 8) and other witnesses have told you that there was grave great excitement in Barh over the supposed miracle. The people of Barh consider it a great honour to the town. And pilgrims from other places came to Barh, bringing money into the town and spreading its fame far and wide. You will have to consider whether it is likely that any Hindu would dare to give evidence for the police in such case or that any citizen of Barh would give evidence against men who had conferred such benefits upon his town. It is argued that men of education would be above such considerations. But you have heard the evidence of two men of education, namely the Sub-Dy. Magistrate and the Assistant Surgeon; they have admitted that they were intimidated by the populace and dared not do what they had gone there to do; over and above that, they have even said that they could not identify any of the men who intimidated them. The S. D. M. has said he was at the Ghat for about an hour, but did not even notice whether the demonstrators were men of Barh or men from outside.

If the permanent officials bent like this before the storm, can you expect that private persons who live and make their living in Barh would care to stand up against it?

You will probably agree that the officials of Barh made a very poor show. The police (according to their version) had three distinct opportunities of saving the widow, but failed to do anything decisive. Even at the last stage, *i. e.*, at the burning ghat, they had a whole hour in which to save the girl but made no attempt to save her. But the feebleness and failure of the officials does not affect the question of the accused's guilt.

You have to consider whether the evidence of the policemen is to be believed or not. And in weighing their evidence, you must consider that they were in an awkward situation, both at Barh on Nov. 22 and

here in the witness box. On the one hand they were all Hindus, (except Nurul Haq) and must have been affected to some extent by the religious feeling peculiar to a Hindu. You Jury men, being all Hindus, must know more than I do about the religious feelings of Brahmans and Rajputs. On the other hand they were also members of the police force and had to consider how their conduct and word would appear to their official superiors. To a policeman, the suicide of a Sati is an illegal act, to a Hindu it is (I understand) a meritorious act which elevates the widow above her fellow creatures and sheds great lustre upon her family. When a witness is distracted by conflicting considerations, is exposed to the stress of cross-examination by three or four lawyers in succession (as these policemen have been exposed), it is only to be expected that some of his statements may be inaccurate. Taking these things into consideration, you must decide for yourselves whether the story is substantially true or not.

It is not disputed that they were present and watching throughout the proceedings at the burning Ghat at any rate. In fact the defence lawyers have dwelt repeatedly on their presence, and on their proximity to the pyre, while trying to fix the responsibility for the result upon them. If (as they say) they were mere spectators, and for a whole hour they must have had admirable opportunities for observing who were Sampati's helpers and what part was played by each of those helpers. And they must have known that a prosecution would surely follow and that they would be expected to give evidence about what they had seen.

It may be conceded that they were bound to accuse somebody in order to protect themselves from blame. But you must consider whether there is any reason for supposing that they have combined to accuse the wrong persons. This has not been suggested by any of the accused except Jagdeo and Raghu. There is nothing to support Jagdeo's insinuation against the police. As regards Raghu, it has been admitted by Rameshwar Prasad H. C. that he had some dealings with Raghu over an impounded bullock (pp. 8 and 9 of his deposition) but he has not admitted that there was any dispute between him and Raghu over the matter.

You will probably agree that Sampati could not have come to Barb at all without the consent and co-operation of some of her relations, as a Hindu widow of respectable family could not travel so far on her

own initiative or unattended. Vidyasagar has said that Sampati came to Barh for the purpose of cremating her deceased husband. You as Hindus will know whether it was incumbent upon the widow to cremate her dead husband, who had a brother and other male relatives alive. In any case it is admitted by Vidyasagar (and stated by several P. W's.) that Sampati had announced her intention of becoming a Sati before she reached the court compound, once she had announced that suicidal intention, all the members of her escort became responsible for her safety, and it was incumbent upon them to take every possible step for preventing her from giving effect to her suicidal intention. She was only a young woman and unable to proceed in any direction without escort. She was still more than two miles from her objective, i.e., the burning Ghat. If they had wished to save her life, they could easily have taken her home from the court compound and she would not have become a Sati. But there is nothing to show that they even sought to dissuade her from her purpose or reported her intention to the authorities. On the other hand there is a mass of evidence to show that they acclaimed her suicidal intention as something divine or at least inspired and assisted her to reach her objective, instructed her in all the ceremonies required of a Sati and overawed the authorities by their own violence and by enlisting the sympathies of a vast rabble.

If you believe that evidence, and hold Sampati's escort responsible for her death, you must then consider whether the accused persons or any of them were among her escort and shared the responsibility for death. You must remember that each of the 16 accused is entitled to have his case separately considered by you.

To assist you in that direction I have prepared the following abstract of evidence against each of the accused:

F. I. R. details already given above (page 2)

All the 8 Pandeys have been named by P. W's. 1, 5, 7, 11, 12, 13, 16, 19, and 20 as actively assisting and encouraging Sampati in suicide and enlisting the sympathies of the mob by shouting "Sati-ji-ki-jai". Ramautar and Lakhia have been named by the same witnesses, Ramautar as having escorted Sampati from the Cutchery to the Ghat and Lakhia as having accompanied Sampati and assisted her in preparing herself for the pyre.

Ramdhani has been named by P. W's. 5, 7, 11, 12, 13, 16, 19 and 20 as having shaved the head of the corpse and cut Sampati's nails and reddened her feet.

here in the witness box. On the one hand they were all Hindus, (except Nurul Haq) and must have been affected to some extent by the religious feeling peculiar to a Hindu. You Jury men, being all Hindus, must know more than I do about the religious feelings of Brahmans and Rajputs. On the other hand they were also members of the police force and had to consider how their conduct and word would appear to their official superiors. To a policeman, the suicide of a Sati is an illegal act, to a Hindu it is (I understand) a meritorious act which elevates the widow above her fellow creatures and sheds great lustre upon her family. When a witness is distracted by conflicting considerations, is exposed to the stress of cross-examination by three or four lawyers in succession (as these policemen have been exposed), it is only to be expected that some of his statements may be inaccurate. Taking these things into consideration, you must decide for yourselves whether the story is substantially true or not.

It is not disputed that they were present and watching throughout the proceedings at the burning Ghat at any rate. In fact the defence lawyers have dwelt repeatedly on their presence, and on their proximity to the pyre, while trying to fix the responsibility for the result upon them. If (as they say) they were mere spectators, and for a whole hour they must have had admirable opportunities for observing who were Sampati's helpers and what part was played by each of those helpers. And they must have known that a prosecution would surely follow and that they would be expected to give evidence about what they had seen.

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Ramdhani has been named by P. W's. 5, 7, 11, 12, 13, 16, 19 and 20 as having shaved the head of the corpse and cut Sampati's nails and reddened her feet.

Kesho, Sahdeo, Lachman, Murlidhar, Jagdeo and Vidyasagar have been identified by the S. I. as participants in the affair at the Cutchery.

Lachman, Jagdeo—picked out by P. W's. 9, 14, 15 at test identification.

Raghu, Murlidhar, Vidyasagar—picked out by P. W. 15 at test identification.

Kesho, Sahdeo—picked out by P. W. 14 at test identification.

Lachman, Vidyasagar noticed by S. D. O. at Ghat twice on 24th,

Kedarnath (P. W. 17) has deposed that he saw Lachman receiving her ornaments from Sampati after she had taken her seat on the pyre.

Raghu is said to have been noticed at the P. S. by Rameshwar Prasad and at the Ghat by P. W's. 5, 7, 11, 12, 13, 15, 16, 19, 20.

Lachman, Raghu and Lakhia are said to have been arrested in Sampati's company on the 24th afternoon.

Ramautar has also been named by the two Ekka drivers (P. W's. 2 and 3).

Lakhia has also been recognised by P. W's. 9, 14 and 21. When you come to consider the charges you have to decide first whether you are satisfied that Sampati committed suicide. It is not disputed that she was burnt on the pyre. No postmortem was held, but you have the Doctor's opinion that she died from the effects of the burning, that opinion has not been seriously challenged. If you find that she was burnt and died from the effects of the burning, the next point for your consideration is, how did she come to be burnt. The P. W's have told you that the fire arose out of Sampati's clothing at a time when her left hand was concealed from view. She herself told the S. D. M. that "fire came out by itself" and that seems to have been the popular belief in Barh town, if the evidence about the subsequent happenings in Barh town, (i. e., the worshipping of the Sati, her grand funeral, and the subsequent pilgrimages etc.) is to be believed. It has been argued before you that the fire may have been produced by miracle and you should, therefore, give benefit of doubt to the accused. But the "doubt" must be a reasonable doubt. You are to give a verdict in accordance with the accepted rules, one of which is that "the constancy of natural law is to be assumed until the contrary be proved". No one professes to have seen the widow or anyone else setting fire to her clothing. But as her clothing was fired, you will be within your rights in finding that some one must have set fire to

it. You cannot find that the accused set fire to it, because that is not proved or even alleged against them. But if you are satisfied with the evidence, you can find that the widow set fire to it. It would be perfectly easy for her to secrete a box of matches on her person, and to strike a match with one hand under her clothing at the auspicious moment. The Police theory that she did this, with her left hand, is supported by the evidence of the Doctor, who says he found most of the burns on the left side of her body.

If you find that the widow committed suicide in the manner described, you must then consider whether the accused person or any of them abetted her therein.

As regards the four Kahars I must direct you to record a verdict of not-guilty because there is no evidence that they abetted the suicide in any way. All that has been proved against them in this Court is, that they carried the dead body of Sidheswar to the burning Ghat under the order of the S. I. and obviously that was no offence. Ramantar is said to have taken Nur Mahammad's Ekka by force and driven Sampati to the burning ghat on it, despite the orders of S. I. and the Inspector and despite the protests of the two escorting constables.

Ramdhani is said to have prepared Sampati for the sacrifice by cutting her nails and reddening her feet under Lachman's orders and to have ignored the protest and warning conveyed to him by the Inspector. The shaving of the corpse's head may be ignored as that was no offence in itself.

Lakhia is said to have attended Sampati throughout and assisted her to prepare for the sacrifice by bathing, dressing, performing her toilet etc. These acts were such as any maid might ordinarily perform for her mistress, but you must consider whether they do not assume a different aspect when performed in face of the prohibition and warning uttered by the Inspector. There is also the giving of Khoencha by Lakhia to Sampati at the last moment; you are to consider what was the precise significance of such a gift at such a moment. Raghu is said to have assisted the Pandeyas at the P. S. and at the ghat, and to have placed the dead body on the pyre; and to have ignored the Inspector's request to dispose of the dead body before Sampati reached the ghat. Being a Babhan, he was perhaps not qualified to burn the body. But if (as is alleged) he was temporarily in charge of it, he

might have had it carried away to some other place in order to frustrate the widow's purpose.

The eight Pandeys are said to have encouraged Sampati in her suicidal intention through out; supported her against the dissuasion and protest of the police; led her to the ghat despite the police escort, instructed and supported her in the ceremonies of preparation; enlisted the sympathies of the mob by shouting "Sati-ji-ki-jai", overawed the authorities, objected to the rescue of the woman from the river and prevented her removal to hospital.

It is argued that the removal of Sampati to hospital was not effected on the 22nd because she herself objected, not because the Pandeys objected. But I may suggest for your consideration that a doctor does not usually accede to unreasonable requests of a patient. It was obviously bad for Sampati to lie out in the open and to neglect her injuries. If the doctor had had a free hand he might have been expected to treat Sampati in the correct manner whether she agreed or not. But he has told you that he was intimidated and could not do anything at all to relieve her sufferings.

There are also certain specific acts attributed to certain accused. Vidyasagar, Murlidhar, Lachman are said to have ridden on the Ekka with Sampati. Lachman and Murlidhar are said to have held up cloth as a pardah to conceal Sampati while she was changing her clothes. Lachman, Murlidhar, Vidyasagar and Jugdeo are said to have prepared the pyre, Hardeo and Raghun are said to have placed Sidheswar's corpse on the pyre. Hardeo is said to have given the corpse to the widow after she had plunged into the Ganges. These acts appear innocent enough if considered by themselves. But they must be considered along with the rest of the evidence (if you believe it) when you are deciding which (if any) of the accused persons were actively concerned and interested in the affair and what is the degree of their culpability. If you find that an unlawful assembly was formed with the common object of abetting the suicide and that the suicide was abetted by any members of that unlawful assembly, then any persons who were members of the unlawful assembly at the time will be liable to be punished for the abetment. Before convicting

under S. 149 I. P. C. you must be satisfied

(1) that the suicide was abetted by some member of the unlawful assembly;

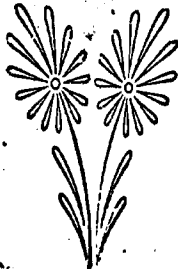
(2) that the suicide was abetted in prosecution of the common object of the U. A. or was such as members of the U. A. knew to be likely to be committed.

The third charge under S. 120-B for criminal conspiracy has not been pressed; if you find that suicide was committed and abetted, you need not trouble about the third charge at all. It only remains to caution you that if you have any reasonable doubt about the guilt of any individual accused, you should give him the benefit of that doubt.

(Sd.) T. Luby.

Sessions Judge

Written and delivered at Patna on March 15th, 1922



APPENDIX III

VERDICT OF JURY

The jury retired to consider their verdict. After an absence of 1½ hours, they returned and presented an unanimous verdict of Not Guilty under all the charges for all the accused persons.



APPENDIX IV

THE "FORWARD" ARTICLE

Charge in the Contempt Case.

The following is the article of the "Forward" the reproduction of which in the "Searchlight" of the 5th August 1928 constituted one of the offending articles in the Contempt Case:—

The full text the judgment delivered by Mr. Courtney Terrel, Chief Justice of the Patna High Court—Mr. Justice Allanson concurring—in the Sedition case against Babu Jagat Narain Lal, M. L. C., is now before us. The judgment seems to be a novel departure in the method of dealing with cases under "the prince of penal sections" as Mahatma Gandhi characterised Section 124-A I, P. C. Mr. Terrel seems to be a believer in the theory that brevity is the soul of wisdom. He was short and sharp. He has not advanced argument to justify his conclusions. He has not referred to the arguments at all. Perusal of the judgment will easily leave the impression that his lordship is full of anger against "silly, noisy, little" men who venture to question the bonafides of the lofty and humanitarian mission of officialdom in India. The dignity of the Bench, the serenity of judicial temper seem to be conspicuous by their absence from the judgment and the impatience of an imperialist with political agitators in India has left its impress on every line of it.

The question that obviously came up before their lordships for judicial decision was not whether Babu Jagat Narain Lal was a silly or little man but whether he had offended against the law of seditious libel in India. His Lordship's intuition seems to have materially helped him in arriving at the conclusion that Babu Jagat Narain Lal's article was seditious because he was a "silly, noisy, little man". It will be interesting to know how far his lordships's estimate of the accused's character was based on evidence on record and how far it was influenced by extra-judicial elements. Was any evidence adduced by the Public Prosecutor to warrant the presumption that the accused was a fool and a knave? If not, what justification the Chief Justice had for prostituting his high and privileged position and depicting the accused in such a thick colour? The vilification of the helpless accused does not seem to be the only art in which the learned Chief Justice indulged. His lordship thought fit to utilise his judicial position to do a bit of propaganda in favour of British imperialism and proceeded to make a little critical examination of the psychology of the mind of the accused. "The type of mind exemplified by the author of this article is one which will arise and has arisen in all times under any form of Government, whether the most tyrannical or the most benign. It is, in short, a biological product and is not the result of political conditions." To establish the guilt of such a man was an easy task for the Chief Justice. "The meaning of the article is clear and obvious. It is an attack upon the Government and also upon the personnel which constitute the Government because the Government cannot be carried through any agency other than human beings, and it attributes to the Government and to the personnel of the Government a deliberate policy of fomenting the communal strifes which are a marked feature of this country at the present moment".

The sting in the Chief Justice's judgment did not evidently exhaust itself in the dismissal of the appeal and in the attempt at belittling the accused. It seems to have pursued Babu Jagat Narain Lal even in his prison. "The sentence of twelve months' simple imprisonment is not in the least severe and will give him time to make up his mind, perhaps to improve such journalistic talents as he possesses and apply them to some useful form of literature." But it is at a severe cost that the Chief Justice would improve the journalistic talents of the accused. Such exhibition of unbalanced temper by the head of the judiciary in a province is a serious reflection on the whole system of administration of criminal justice in the country. But that consideration did not evidently trouble the equanimity of the soul of the august head of the Bihar judiciary.