

FAST INDIA (BALADHAN MURDER CASE)

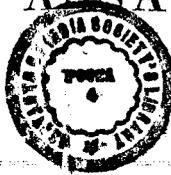
Baladhan Murder Case Assam.

PAPERS

115

RELATING TO THE

BALADHAN MURDER CASE
IN ASSAM.



Presented to both Houses of Parliament by Command of Her Majesty.
1894.



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EAST INDIA (BALADHAN MURDER CASE)

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Letter from the GOVERNMENT OF INDIA, HOME DEPARTMENT, JUDICIAL POLICE (No. 21 of 1894), to the RIGHT HON. H. H. FOWLER, Her Majesty's Secretary of State for India.

SIR,

Simla, June 5, 1894.

WITH reference to correspondence ending with our telegram, dated the 22nd ultimo, regarding the report called for on the "Baladhan murder case" by the Earl of Kimberley in his despatch, No. 5 (Judicial), dated the 24th January last, we have now the honour to forward for your information a copy of the papers mentioned in the annexed list, containing the explanation of the District Magistrate (who committed the case to the Court of Sessions), together with the results of the Chief Commissioner's Inquiry, and the orders of the Government of India issued after a careful consideration of all the points, relating to the conduct of the Magistracy and of the police, which were raised in the judgment of the High Court. We do not consider that any further investigation is required on these points. We regret that the papers could not reach the India Office by the time mentioned in our telegram dated 29th March 1894. The Chief Commissioner's report, however, did not arrive in Simla till the 11th May. As intimated in our telegram of 29th March, the present report relates only to the conduct of the police and Magistrate. We have again telegraphed to the Chief Commissioner to expedite the submission of the explanation by the Sessions Judge of those points in his conduct of the case which came under the animadversion of the High Court; and on its receipt such further orders as may seem requisite will be issued by us without delay, and will be communicated for your information.

2. A copy of the letter from the Home Department, No. 46, dated 27th January 1894, to the Chief Commissioner, and of the questions and answers in the Legislative Council therein referred to, is also enclosed.

We have, &c.
(Signed) ELGIN.
G. S. WHITE.
A. E. MILLER.
H. BRACKENBURY.
C. B. PRITCHARD.
J. WESTLAND.
A. P. MACDONNELL.

From P. G. MELITUS, Esq., C.I.E., Deputy Secretary to the Government of India, No. 46, dated Calcutta, the 27th January 1894, to the CHIEF COMMISSIONER OF ASSAM.

I AM directed to forward a copy of the papers marginally noted, regarding the Baladhan murder case, and to request that the Government of India may be furnished with a report of the action taken by you in the matter.

1. Questions asked by the Hon. Dr. Rashbehary Ghose at a meeting of the Council of the Governor-General for making laws and regulations.
2. Answers to the above questions.
3. Telegram from the Secretary of State, dated the 22nd January 1894.
4. Telegram to the Secretary of State, dated the 27th January 1894.

Dated the 25th January 1894.

Questions and Answers.

The Honourable Dr. Rashbehary Ghose asked:—

(a.) Whether the attention of the Government of India has been drawn to the case of *Empress v. Sagal Semba Sajow, Chorba Singh, Duffadar, Nasipa Ningthamba, Madan Hijupa, Chanbangbang Sajow, Amu Filem, and Sarba Singh* (known as the Baladhan

murder case), which came before the High Court of Calcutta on appeal and also on reference, and in which all the prisoners were acquitted by Prinsep and Amir Ali, JJ.

(b.) Whether, as suggested by the honourable Judges, any inquiry has been made into the charges of misconduct preferred in the course of the trial against Khedam Singh and one Gosain, who were apparently employed by the Inspector, Bhoirub Chunder Dutt, during the police investigation, and one of whom, namely, Khedam Singh, was also employed as an interpreter to the Magistrates, Mr. Howell and Mr. Lees.

(c.) Whether, as suggested by the honourable Judges, any notice has been taken by the local Government of the facts mentioned in their judgment, relative to the proceedings in the case of the police, the several Magistrates concerned, and the Sessions Judge, which have called forth a strong expression of opinion from the honourable Judges.

(d.) Whether, having regard to the numerous and serious irregularities in the course of the proceedings before and during the trial of the case, the Government of India do not deem it expedient, in the interests of justice and good government, to take measures for preventing a recurrence of such irregularities, and as a step in that direction to see that inexperienced officers may not be appointed to positions and invested with powers involving grave responsibilities.

(e.) Whether a money reward was offered for the detection of the offenders in the case; whether any police officer or officers have been allowed to participate in it; and, if any police officer or officers have been so allowed, whether Government do not regard such participation on the part of the police as extremely undesirable.

The Honourable Sir Anthony MacDonnell replied :—

In answer to clause (a.) of the honourable Member's question I have to state that the Government of India have noticed the report of the case in the newspapers, and have perused the judgment of the honourable Judges as published therein, but their attention has not been officially drawn to the case. The remarks of the Court, made in the course of the judgment, on the conduct of the officers concerned, were intended for the information of the Chief Commissioner of Assam, from whom the honourable Judges thought they would no doubt receive proper notice.

Clauses (b.) and (c.) were referred to the Chief Commissioner of Assam, who reports that some time ago he called upon the District Magistrate of Cachar, who committed the accused, to submit any explanation he might have to offer on the subject of the irregularities committed by the police and himself in the course of the police investigation into the case, and also in the course of the proceedings before himself after the police had sent up the case for trial and prior to committal.

In regard to the trial proceedings before the Sessions Judge, the Chief Commissioner has sent for the trial record, and also called upon the Officiating Sessions Judge who tried the case to submit any explanation he may desire to offer on the remarks of the High Court so far as they referred to the proceedings at the Sessions trial. On receipt of the explanations of the District Magistrate and Officiating Sessions Judge the Chief Commissioner will pass such orders as he considers to be called for.

When the Chief Commissioner has seen the trial record, which he has not yet received, he will determine what action should be taken on the suggestion of the honourable Judges that certain serious charges brought against the persons named Khedam Singh and Gosain in the course of the Sessions trial should be inquired into. At present the Chief Commissioner has no information as to the nature of those charges.

In answer to clause (d.), I have to say that the officer who committed the case to the Sessions was of 10 years' service, and not inexperienced. The Judge who tried the case had less experience, being of seven years' service; and his temporary employment during the absence on three months' privilege leave of the experienced permanent Judge was in part due to the fact that the European element in the Civil Service of Lower Bengal has for some years past been kept at a minimum.

The Government of India will consider, in communication with the Chief Commissioner, in what manner it is possible to obviate the employment of junior and inexperienced officers in positions of difficulty and responsibility.

In answer to clause (e.), the Chief Commissioner reports that no police officer has participated in the rewards offered in connexion with this case.

From THE OFFICIATING SECRETARY TO THE CHIEF COMMISSIONER
OF ASSAM, No. ^{480 Misc.}/₂₆₆₁ J., to the SECRETARY TO THE GOVERNMENT
OF INDIA, HOME DEPARTMENT.

SIR,

Shillong, May 4, 1894.

With reference to your letter, No. 46, dated the 27th January 1894, and telegram No. 144 Police, dated the 24th March, I am directed by the Chief Commissioner to submit the following report on the subject of the question asked in Parliament regarding the Baladhan murder case.

2. I am to explain that the delay in submitting this report is due to the non-receipt of the explanation which the Chief Commissioner had thought it necessary, after perusing the judgment of the High Court, to call for from the officer, who, as Sessions Judge, tried the persons accused of having committed the dacoity and murders. The Chief Commissioner had intended to pass orders on the case in a complete form after receipt of this explanation. Acting, however, on your telegraphic reminder, he has now considered and passed orders on the case as far as the conduct of the police and magistracy is concerned, leaving the Sessions Judge's explanation to be dealt with separately after it has been received. A communication has recently been received from this officer, stating that he is unable to submit the required explanation without referring to the original records, which had, in the first instance, to be sent to the Deputy Commissioner of Cachar, and by him re-submitted to the Chief Commissioner, with his explanation. These records have now been sent to the Sessions Judge, and he has been asked to submit as soon as possible any explanation he may wish to offer on the remarks made by the High Court in their judgment, so far as they refer to the proceedings in the Sessions Court.

3. The facts of the case, briefly stated, are as follows: On the night of the 11th, or morning of the 12th, April 1893, a dacoity with murder was committed on the Baladhan tea garden in the Cachar district. The house of one Mr. Cockburn was broken into by a number of men armed with deadly weapons, and Mr. Cockburn and his watchman were murdered, and a woman who lived in the house mortally wounded. She expired a few days afterwards. An iron safe in the house was broken open, and some Rs. 778 taken therefrom; a gun and some other articles were also stolen from the house. The local police were employed in investigating the case from the 12th April to the 6th May, and, though certain Manipuris, including a Manipuri contractor (Chowba Singh), who worked on the garden and was subsequently placed on his trial, were suspected almost from the beginning of the investigation, no satisfactory result had been obtained. On the 7th May Inspector Jay Chandra Bhadra, an experienced and trustworthy officer, was specially deputed from the adjoining district of Sylhet to take up the inquiry. Meanwhile a reward of Rs. 1,200 had been offered on the 25th April for information which would lead to the detection of the offenders; this was raised to Rs. 2,000 on the 1st May. This offer of reward was widely circulated in the villages of the locality. A pardon was also offered to any one of the minor participants in the crime, not themselves guilty of murder, who would disclose the truth. Further inquiry made after the 7th of May went to confirm the suspicion against the Manipuri contractor and other Manipuris. On the 27th June Sagal Semba Sajow (one of the accused), who had long been suspected, and who had absconded after the murder, was arrested in hiding. On the 2nd July he made a confession to Mr. Carnac, the District Superintendent of Police, and Mr. Lees, Assistant Commissioner and first class Magistrate, was sent out by the Deputy Commissioner to record the confession on the 3rd July. This confession the accused adhered to in the preliminary inquiry before the District Magistrate on the 3rd August; but he was not admitted to pardon, inasmuch as his statement was found by the police to be untrue in substantial particulars, and he was considered to have been one of the ringleaders in the dacoity and murders. Meanwhile, the truth of his statement was tested, and he was detained in police custody for purposes of identification, and in order that the police might follow up the inquiry according to the new light thrown on the case by his statement. In consequence of the further investigation which followed, several other arrests were made, including those of the two approvers, Mukta Singh and Mohan Singh, who were arrested on the 6th July. On the 29th July these persons, in the presence of Mr. Carnac, offered to give a full account of the dacoity and murders if they would receive a pardon. Their statements were tested by the police, and, at the instance of Mr. Carnac, the Deputy Commissioner deputed Mr. Lees to proceed to the spot and make a memorandum of their statements. This was done on the 1st August. The case

was sent up by the police for trial on the 3rd August. The preliminary inquiry was held by the District Magistrate himself, and on the 9th August the case was committed to the Sessions Court. The Sessions trial commenced on the 13th September and ended on the 29th September 1893. The assessors gave their opinion that the accused were not guilty; but the Sessions Judge, differing from them, convicted the accused of dacoity with murder, and sentenced four of them to death and the remaining three to transportation for life. The sentences of death had to be confirmed by the Calcutta High Court in the usual course; and all the convicted persons also appealed against the sentences passed on them. The High Court (Prinsep and Amir Ali, JJ.), in their judgment dated the 11th December 1893, a copy of which is enclosed for the information of the Government of India, acquitted all the accused, and remarked on certain irregularities in the proceedings during the investigation into the case by the police, during the preliminary inquiry before the Magistrate, and finally during the trial in the Sessions Court.

4. As already observed, any explanation the Sessions Judge may have to offer will be separately considered by the Chief Commissioner. The remarks of the honourable Judges on the irregularities committed by the District Magistrate are summarised in paragraph 6 below. I am now to communicate the following observations of the Chief Commissioner on the whole case.

5. Dealing first with the conduct of the police, I am to say that the Chief Commissioner, after a careful examination of the judicial record and of the papers now submitted by the District Magistrate showing the proceedings of the police up to the date when the accused were sent up to the Magistrate for trial, has been unable to discover any ground for imputing improper conduct to any police officer. It is true that the accused and two or three of the witnesses, who were obviously the friends of the accused, testified at the Sessions trial to the tutoring of witnesses and other malpractices on the part of the police. But, as already stated, the Sessions trial did not commence till the middle of September, up to which time no complaint had been made by any one, although from April onwards the inquiry had been under the supervision of the responsible European officers of the district, to whom the accused had access at various stages of the proceedings. Under the circumstances the Chief Commissioner can attach little weight to the charges made against the police. Such charges are common enough, and are as often preferred without as with reason. They are especially common, and generally reserved for the Sessions or High Court, in cases like that now under consideration, in which almost the sole evidence against the accused is either that afforded by their own confessions or by statements made to the police or Magistrate by accomplices in the crime charged in the hope of obtaining pardon. The evidence, moreover, brought forward by the accused in the Sessions Court to prove acts of oppression, was disbelieved by the Sessions Judge, and the honourable Judges of the High Court have not, in the Chief Commissioner's opinion, shown any sufficient ground for supposing that the Sessions Judge was wrong in the conclusion he came to, or that any special inquiry into the conduct of the police is called for. As already stated, the inspector deputed to the inquiry, Jay Chandra Bhadra, was a trustworthy officer, specially selected for the purpose by the Inspector-General of Police, and the explanation now submitted by Mr. Herald, the Deputy Commissioner, shows that every stage of the police investigation was under the close supervision of the District Superintendent of Police and of the District Magistrate and his European assistants. Apart, therefore, from the long detentions of some of the accused in police custody, which are referred to below in paragraph 7, and which were sanctioned by the District Magistrate, and for which, consequently, he must be held responsible, the Chief Commissioner has come to the conclusion that there was nothing in the conduct of the police which calls for disciplinary action.

6. Turning now to the conduct of the magistracy, the Chief Commissioner finds that the District Magistrate was censured by the High Court in regard to the following matters as set forth in their judgment:—

- (1.) The accused Sagal Semba Sajow was on arrest not sent in to Silchar for examination by a Magistrate as he should have been, but was detained in police custody for more than one month, no special reason for such detention having been recorded, as required by section 167, Criminal Procedure Code.
- (2.) The approvers, Mukta and Mohan, and others were also similarly detained.
- (3.) The confession of Sagal Semba Sajow was recorded by Mr. Lees at Baladhan four or five days after his arrest by the police, while the prisoner was still in police custody; also the English and the Manipuri records of the confession do not agree.

- (4.) The approvers were examined as witnesses on 1st August by Mr. Lees while still in police custody, when the police investigation had been practically completed, and only two days before the inquiry before the Magistrate commenced, Mr. Lees being a Magistrate not competent to deal with the case itself.
- (5.) The District Magistrate commenced the judicial proceedings irregularly on the 3rd August by examining accused Sagal Semba Sajow, and his examination was of the nature of a cross-examination.
- (6.) The District Magistrate refused to allow the accused to instruct and consult their pleaders.
- (7.) He also refused to allow the pleader for the defence to cross-examine the witnesses for the prosecution.
- (8.) The witness, Tamra Singh, was required to give bail to appear when called upon, and, not being able to furnish bail, was detained in custody till the Sessions trial, or for about a month and a half.

I am now to forward a copy of Mr. Herald's letter, No. 5,321, dated the 28th February 1894, explaining his action, and to state the Chief Commissioner's opinion on each of the points mentioned above in paragraph 6.

7. The circumstances of Sagal Semba Sajow's arrest and detention by the police are explained in paragraphs 3 and 4 of the Magistrate's letter and at pages 13 and 14 of the attached memorandum. It will be seen that this accused was actually sent before a Magistrate immediately on arrest as required by law; he was then remanded to police custody for purposes of identification by the witnesses who had described him, and subsequently after he had tendered a confession to the District Superintendent of Police, and his statement had been recorded by Mr. Lees, it was considered necessary that he should remain on the scene of the investigation in order that the police might be able to follow up the clues obtained from it.

The Chief Commissioner can find nothing irregular or improper in this procedure. In difficult cases like that under consideration, where evidence is not forthcoming, it is frequently necessary for a Magistrate to remand to police custody a person arrested on grave suspicion, and who is likely to give the police important information, and to put them on the right track in the course of their investigations. Having regard to the distance from Silchar of Baladhan, the scene of the murder, and of Lakhipur, the headquarters of the police officers who were conducting the investigation, and the difficulties of communication at that time of the year, it would have been impossible for the police to carry on their investigation with any prospect of success if Sagal Semba had been confined in the lock-up at Silchar immediately after he had been sent in to the Magistrate. In the opinion, therefore, of the Chief Commissioner, the first remand of Sagal Semba for ten days to the police by the District Magistrate was fully justified by the circumstances.

The honourable Judges of the High Court have stated that the Magistrate recorded no special reason for allowing such detention as required by section 167, Code of Criminal Procedure. The Chief Commissioner has had some difficulty in ascertaining how the honourable Court was in a position to ascertain what orders the Magistrate had actually passed in regard to the detentions of any of the accused, as, after a careful search, he has been unable to find any such orders on the judicial record. It may here be mentioned that, in reply to a telegram sent to Mr. Herald, he has admitted that he is wrong in stating in the 5th paragraph of his letter of the 28th February that his orders for the detention of the accused appear on the record; nor was it to be expected that they would be found there, as section 167 refers to police investigations only, prior to an accused being sent up to the Magistrate for trial, or for a judicial preliminary inquiry with a view to committal to Sessions; and it is a well established rule that police diaries and reports, with the orders passed thereon by the Magistrate in his executive capacity as head of the police in his district, should never form part of the judicial record, except in the few cases where a police officer, when giving evidence in the case, refreshes his memory by reference to his diaries, and is therefore liable to cross-examination upon them (see section 172, Code of Criminal Procedure); a Magistrate also in the course of a trial or preliminary inquiry may call for and examine a police report or diary, but an accused is not entitled to see it, unless a police officer is cross-examined upon it. Notwithstanding, however, that the Deputy Commissioner's orders granting remands of the accused to police custody under section 167, Code of Criminal Procedure, were not on the judicial record, and that the accused were therefore not entitled to take out copies, it has been ascertained by the Chief Commissioner that Mr. Herald granted to the accused copies of all such orders, and it is possible that the honourable Judges of the

High Court may have made use of these copies as forming the basis of their remarks, although they were not upon the record of the case. However that may be, the Chief Commissioner now finds that the orders referred to are recorded on the back of formal applications sent up from time to time by the Inspector under section 167, Code of Criminal Procedure, and are dated 22nd May, 26th May, 31st May, 8th June, 30th June, 6th July, 8th July, 13th July, 17th July, 24th July, 29th July, and 2nd August. The first four orders relate to the detention of Chabongbom Sajow Singh (the uncle of Sagal Semba), who was arrested on the 18th May, and who implicated his nephew in a statement he made to the police, thereby leading the police to suspect that he himself was also implicated. These four orders granted various periods of detention, varying from seven to five days, on the ground that other accused, for whom warrants of arrest had issued to Manipur, and who, apparently on their way to Cachar, had not yet arrived, the inspector evidently wishing to confront these men with Chabongbom Sajow to test the truth of the latter's statement, which was ultimately found to be quite unreliable. On the 28th June Sagal Semba, who had been proclaimed an absconder in May, was arrested, and after being sent up to the Magistrate, as already stated, was remanded to police custody for ten days by the Deputy Commissioner's order of the 30th June, and three further remands—two of ten days each and one of five days—were granted by the Deputy Commissioner's orders of the 13th July, 24th July, and 2nd August. The detention order passed by the Deputy Commissioner on the 6th July refers to two accused, Dharma Singh, not sent up for trial, and Sarba Singh, who arrived in Cachar from Manipur under arrest on the 4th July. This order allowed a single detention by the police of seven days only. Lastly, the detention orders of the 8th July, 17th July, and 29th July referred to three other accused, including the two approvers whom the inspector reported that he had arrested on the 6th July on the statement made to him by Sagal Semba. Mr. Herald in the case of these accused granted on each occasion ten days' detention.

Mr. Ward assumes that it is to these various applications by the inspector to detain in his custody the persons he had arrested, and to the orders recorded on the back of them by Mr. Herald, that the honourable Judges of the High Court refer as disclosing no sufficient recorded reason for any detention of the accused in police custody, and there is no doubt that the honourable Court is perfectly correct. Mr. Herald, however, now explains that, besides these formal applications of the inspector for permission to detain the accused, he was at the same time receiving confidential reports from him which disclosed good and valid ground for granting this permission, and that his orders were passed with special reference to these confidential reports, and purposely did not record the grounds on which the various detention orders were passed by him as he did not wish the facts disclosed in the confidential reports of the inspector to become known to his office and thence possibly communicated to the public. The Chief Commissioner accepts this explanation as sufficient. As has already been stated, in cases like that under consideration, it is often necessary, in order to assist the police in their investigation, to allow persons arrested on suspicion to be retained in their custody beyond the ordinary prescribed period of 24 hours, and the reasons which must have induced the police inspector to apply to the Magistrate for orders of remand can easily be understood by any one who has had any experience in India of the difficulties which surround the police in their investigations of cases like that under consideration, where not only do the people exhibit a total absence of any desire to assist the police, but actually combine to save offenders from being brought to justice. The police, of course, have a bad name all over India, and it is well known that the Superior Criminal Courts are for that reason disposed to presume much against them. More especially is this the case where the whole, or nearly the whole, evidence for the prosecution is that obtained from confessions or the statements of approvers. It behoves therefore every District Magistrate to be especially careful not to remand to police custody persons arrested on suspicion for longer periods than is absolutely necessary, and the Chief Commissioner is bound to say that Mr. Herald has not in this respect been as careful as he should have been; for, although in his letter he says he has given his reasons, the Chief Commissioner has been unable to discover that he has explained anywhere why he thought it necessary to leave Sagal Semba in the hands of the police for over a month. The first remand of this accused was undoubtedly quite justifiable for reasons which Mr. Herald has fully explained, and which did not appear, nor was it necessary that they should appear, on the judicial record. There also might have been some good reason for a second order of remand for a short period; but Mr. Herald has not given any reasons for granting more than two remands, and the only conclusion the Chief Commissioner can come to is that he failed to see how much his action in granting frequent remands must necessarily prejudice the case for the prosecution when it came before the superior courts. On the other

hand, it must be remembered that Mr. Herald was fully aware that the investigation into the case was not left entirely in the hands of the inspector, and that, apart from the fact that the inspector himself was a reliable officer, his proceedings were being carefully watched by the District Superintendent of Police, who was frequently on the spot, and who could not have failed to hear of any malpractices on the part of the inspector. It was probably these considerations that led Mr. Herald to grant more frequent remands than he would otherwise have done.

8. The circumstances under which the approvers, Mukta Singh, Mohan Singh, and others were detained in police custody will be found at pages 17 and 21 of the Magistrate's memorandum. As already stated in the last paragraph, these men were arrested by the inspector on the 6th July and remanded three times by the Deputy Commissioner to police custody for 10 days on each occasion, viz., on the 8th, 17th, and 29th July; but as the case was sent up for trial on the 3rd August, they were actually detained in police custody up to that date only, or nearly one month altogether. It would appear that it was not until the 26th July, or nearly three weeks after his arrest, that Mohan Singh offered to turn approver, and on the 29th both he and Mohan Singh agreed to disclose all the facts on the condition that both would be pardoned. Mr. Herald has, however, not explained clearly why he allowed these men to be so long detained in police custody. The true explanation can only be gathered from the papers sent up by him. It will be seen that Sagal Semba implicated the two approvers in a statement he made to the police on the 2nd July. It was on this statement that the approvers were arrested on the 6th July. It was necessary, however, to test the statement of Sagal Semba, who had endeavoured to exculpate himself as far as possible, and, in order to do this, he had to be taken to Baladhan and elsewhere, as the abstracts of the police diaries submitted by the Deputy Commissioner show. The approvers, before they confessed, had doubtless shown the inspector soon after their arrest that they knew more about the case than they were at first willing to admit, and it can readily be understood that the inspector wished to keep these men in his custody in order to test their statements against that made by Sagal Semba. In the absence, however, of any explanation given by Mr. Herald, the conclusion cannot be avoided that the Deputy Commissioner was not justified in allowing the police to have custody of the approvers for so long a period as one month; ten days at the utmost should have been sufficient, and the Chief Commissioner is not surprised that the honourable Judges of the High Court should have regarded with grave suspicion the evidence given by the approvers, which was not offered by them until after they had been three weeks in police custody.

9. The facts connected with the confession of the accused Sagal Semba and the recording of his statement by Mr. Lees are described in paragraph 4 of the Magistrate's letter and at page 14 of the Memorandum. The Government of India will observe that, at the time the confession was recorded, the accused was not in the sole custody of subordinate police officers, but that the European District Superintendent of Police, Mr. Carnac, whose presence was a guarantee against malpractices, was himself supervising the investigation at the time. It will also be seen that the Manipuri record of the confession, which was found to disagree with Mr. Lees' English Record, apparently related not to this confession, as supposed by the High Court, but to the subsequent confession of this accused, on the 3rd of August, before the District Magistrate. The Chief Commissioner also notes that when this confession was recorded there was no reason to suppose that the accused Sagal Semba would not be accepted as an approver in pursuance of the pardon which had been offered to any one not being one of the murderers. Subsequent inquiries, however, led the district authorities to believe that this man's statement was untrue, and that he had been a ringleader in the dacoity and murders which had been committed.

10. As regards the recording of the statements of the approvers by Mr. Lees on the 1st August, I am to invite a reference to paragraph 7 of the Deputy Commissioner's letter, and to pages 17 and 21 of the Memorandum. The Chief Commissioner has no remarks to offer on the point beyond again drawing the attention of the Government of India to the fact that Mr. Carnac was at that time personally supervising the police investigation.

11. The honourable Judges of the High Court have expressed their opinion that the examination of Sagal Semba by the Deputy Commissioner at the commencement of the proceedings in his Court was not a proper exercise of the discretion vested in the Magistrate by section 342 of the Criminal Procedure Code. In paragraph 8 of his letter, and at page 22 of the Memorandum, the Deputy Commissioner explains his action in this

matter. The mistake of not observing that section 191 applies only in cases in which it is found desirable to give an accused an opportunity of explaining facts proved in evidence against him in the course of a preliminary inquiry or trial is not an uncommon one among Magistrates in this country; but in the present instance Mr. Herald points out that Sagal Semba's statements to Mr. Lees were on the record in evidence against him, and that he was examined with a view of giving him an opportunity of making any explanation he wished to offer with reference to that statement. The honourable Judges have characterised this examination as a cross-examination of the accused, made to substantiate and supplement the statement made before Mr. Lees. The questions put at the examination and the answers given will be found at page 15 of the Memorandum. The Chief Commissioner can find nothing in this examination to justify its being characterised as a cross-examination, and only one question (the last) can, Mr. Ward thinks, be looked upon as indicating any desire on the part of Mr. Herald to supplement the statement made before Mr. Lees.

12. In paragraph 9 of his letter, and at page 22 of the Memorandum, the Magistrate explains that the statement made before the High Court that he refused to allow the prisoners to instruct and consult their pleaders was not correct. What he refused was to allow the case, which was then proceeding before him, to be postponed in order to enable the accused's pleaders to have a private interview with their clients. The meaning of the order "no delay necessary" had reference to the application of the accused to have the case postponed in order to enable them to have the private interview applied for. This order was, the Chief Commissioner finds, recorded on the back of the application. Mr. Herald was willing, however, to allow the accused to have the interview they wanted before they were called on for their defence. It is not very clear whether Mr. Herald gave the accused to understand that they could have this interview, as they were entitled to have it, out of the hearing of a police officer or gaoler, although in their presence. However this may be, the Chief Commissioner has no reason to believe that Mr. Herald ever refused to allow the accused to consult their pleaders.

13. In paragraph 10 of his letter and page 23 of the Memorandum, the Deputy Commissioner explains why he refused to allow the prisoners' pleader to cross-examine the prosecution witnesses. The Chief Commissioner thinks that this explanation is entitled to some consideration. Mr. Ward's judicial experience entitles him to say that in practice cross-examination is rarely resorted to at preliminary inquiries conducted by Magistrates in cases triable by the Court of Session; and, without presuming to dispute the High Court's view of the law on this point, Mr. Ward is bound to say that the law, as it stands, raises some doubt as to whether the practice referred to is wrong. It will be observed that section 192 of the old Code of Criminal Procedure (Code of 1872), which came into force on the same day as the Evidence Act of that year, contained an express provision that in preliminary inquiries before Magistrates in cases triable by a Court of Session, the accused shall be permitted to cross-examine the complainant and his witnesses. Section 214 of the old Code made a similar provision in "warrant cases" triable by a Magistrate. Turning to the new Code of 1882, it will be seen that, while section 256 of that Code repeats the provision of section 214 of the old Code, that the accused shall at any time be allowed to recall and cross-examine any witness for the prosecution in warrant cases, section 353, which is the corresponding section to section 191 in the old Code, omits to say that he can do so in preliminary inquiries by Magistrates. Mr. Herald explains that the omission on the part of the Legislature to include in section 353 of the new Code the second paragraph of section 191 of the old Code gives rise to the presumption that the Legislature did not wish to lay down that in preliminary inquiries the accused should have a right of cross-examination of the witnesses for the prosecution; and in support of this view he quotes Phillips' "Manual of Indian Criminal Law," page 365, where, in a note on section 208 of the present Procedure Code referring to preliminary inquiries, Mr. Phillips says:—

"Magistrates should note that they are not bound to permit cross-examination in inquiries preliminary to commitment. The Legislature have intentionally omitted to re-enact the 2nd paragraph of section 191 of the former Code. When a case is very clear, and a Magistrate knows that he must commit, the public time should not be wasted in permitting cross-examination, which is not required by the law. District Magistrates cannot justly complain of the insufficiency of their staff when they permit their subordinates gratuitously to waste the public time by converting preliminary inquiries into protracted trials."

The Chief Commissioner is not concerned to defend Mr. Phillips' view of the law, though he thinks that there is much to be said in support of the opinion that where

there is a clear *prima facie* case against Mr. Ward ventures to think there was in the present instance), a Magistrate conducting a preliminary inquiry into a case triable by a Court of Session should not be required by law to allow cross-examination of the witnesses for the prosecution, seeing that the accused will have full opportunity to cross-examine in the Session Court. The High Court have now ruled that the right of cross-examination by an accused of the witness for the prosecution in preliminary inquiries is given in the Evidence Act. The judgment of the High Court does not quote the section of the Evidence Act referred to, but the Chief Commissioner presumes that the honourable Judges had in view section 138, which says :—

“Witnesses shall be first examined in chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.”

There is no doubt that this section is perfectly general, and may rightly be held as applying to both preliminary inquiries and trials; at the same time, in view of what has been stated above, the Chief Commissioner thinks that Mr. Herald's mistake in having overlooked this section of the Evidence Act is an excusable one. The High Court has declared that the right of an accused to cross-examine a witness for the prosecution during a preliminary inquiry is “in accordance with the elementary principles of judicial procedure,” and has therefore expressed surprise that the accused in this case should have been deprived of this right. The Chief Commissioner, however, is inclined to think that there are many able and experienced Magistrates in India who have hitherto shared with Mr. Herald the *bona fide* belief that this elementary principle does not apply to “preliminary inquiries.” It goes without saying that, if the Magistrate has any doubt in the course of such an inquiry of the truth of the charge laid against the accused, he ought, in the exercise of a wise discretion, to allow the witnesses for the prosecution to be cross-examined, and should even cross-examine them himself in cases when the accused is undefended; but in this case the Magistrate saw no reason to doubt, in the face of the statements made by the two approvers and the accused, Sagal Semba, the truth of the charge; no complaints were at that time preferred to him of the misconduct of the police, and, being well aware of the grounds on which some of the accused were kept in police custody for more than 24 hours, he had no reason to draw inferences against the police, such as the honourable Judges of the High Court have done, and therefore to suppose that the statements of the approvers and of Sagal Semba had been extorted from them by torture or obtained under undue influence. It may perhaps be urged that no Magistrate can properly decide whether a *prima facie* case has been established against the accused unless he allows all the witnesses to be cross-examined; but this view, the Chief Commissioner thinks, is open to question, as cases can easily be conceived where cross-examination at a preliminary inquiry would be sheer waste of time. He is bound, however, to say that in an important case like that under consideration, confident though Mr. Herald may have been that the police had obtained the statements of the approvers and of Sagal Semba by fair means, and that those statements were reliable, he would have exercised a wise discretion if he had allowed the cross-examination asked for by the pleader for the accused. He no doubt knew that it had been frequently laid down by the High Courts of India that it was dangerous, though quite legal, to convict on the uncorroborated testimony of approvers; he must also have seen that the corroborative evidence offered in this case for the prosecution was exceedingly weak. It was therefore of the utmost importance that he should not do anything which might bear even the semblance of illegality, and thereby further weaken the case for the prosecution. On the whole, therefore, the conclusion come to by the Chief Commissioner on this part of the case is that, although Mr. Herald cannot be censured for having, as the High Court have now ruled, acted illegally, he is to blame for not having exercised wisely the discretion, which he must have known he had, of allowing the pleader for the accused to cross-examine any witness he pleased.

14. Referring to the witness Tamra Singh, the High Court has recorded the following remarks :—

“The proceedings of the Magistrate in respect of the witness Tamra Singh also appear to us to be arbitrary and illegal. Because this witness did not depose as the police inspector said he had spoken to him, he was declared to be a hostile witness, and was cross-examined by the inspector for the prosecution, and finally he was ordered to give Rs. 200 bail to appear when called for.”

Mr. Herald's explanation will be found in paragraph 11 of his letter, and pages 13, 18, 22, and 23 of the Memorandum may also be referred to. The Chief Commissioner finds that the order referred to by the High Court was recorded somewhat carelessly at the foot of this witness' deposition before Mr. Herald, and was in the following terms :—

“Witness to give Rs. 200 bail to appear when called on.”

This order should have been recorded that section 41 of the Cr. P. Code, and shown, as Mr. Herald has now shown, on what ground these are proposed to be given security to appear. Had this been done, the Chief Commissioner of Police, Calcutta, would have held that the order was either arbitrary or illegal, but in the present case

15. Summing up the remarks of Mr. Lees upon the above, the Government of India will observe that the conclusion which the Chief Commissioner has come to upon the whole case is that, so far as the police reference to the Magistrate is concerned, there is no ground for suspecting that they at any time acted improperly or irregularly during their investigation into the case. They also cannot be held responsible for detaining any of the accused for long periods in their custody, as they had full authority from the Magistrate for doing so. As to the Magistrate, there is also no reason for supposing that at any time, from the commencement of the police investigation up to the date of the committal of the accused to the Sessions Court, he acted from any improper motive. The Chief Commissioner also thinks that Mr. Herald has sufficiently explained most of the irregularities which have been charged against him in the judgment of the High Court. The only point which has not been satisfactorily explained is the necessity for the frequent orders of remand to police custody made by him in the case of Sagal Semba and the two approvers, Mukta Singh and Mohan Singh, and, as already stated, the Chief Commissioner also thinks that he should have allowed the pleader of the accused to cross-examine the witnesses for the prosecution during the preliminary inquiry before him, though he has given good reason for believing that he was not legally bound to do so.

16. In conclusion, I am to say that the Chief Commissioner agrees with Mr. Herald in thinking that all the accused sent up by the police for trial were more or less concerned in the Baladhan murder. They have all been acquitted by the High Court, because the evidence against them was not legally sufficient. Mr. Ward desires to say that, except in the case of Sagal Semba, he does not see how the High Court could on the evidence possibly have upheld the conviction of any of the accused. It is now a well-established rule, recognised, Mr. Ward believes, by all the High Courts of India, that it is extremely unsafe, although it is not illegal, to convict on the uncorroborated evidence of one or more approvers; and it must be admitted that against six of the accused there is no legally admissible corroborative evidence on the record of the statements made by the approvers. Added to this, the statements made by the approvers were not volunteered until after they had been three weeks in police custody, thereby naturally raising a reasonable doubt as to whether these statements might not have been offered under undue influence or improper pressure put upon them by the police. The honourable Judges of the High Court had not the police diaries before them, as the Chief Commissioner has now had, by which they could trace the successive steps of the police investigation; they were also totally ignorant of the grounds upon which the Magistrate allowed the police to retain the accused in their custody; they also thought they saw on the record indications of arbitrary and illegal action on the part of the Magistrate, which action has now been explained; lastly, the accused were defended in the High Court by one of the ablest barristers in Calcutta, who, judging from the reports of his address to the Court, published in the Calcutta papers, made the most of the occasion, and pressed the Court strongly to presume everything against the police as well as against the Magistrate. Under all the circumstances, the Chief Commissioner is not surprised at the result of the appeal to the High Court, except only in the case of Sagal Semba.

The case, however, against this accused stands on much firmer ground than that against the other six. It has been shown above that the honourable Judges of the High Court were entirely mistaken in thinking that this man was not sent in to the Magistrate immediately he was arrested, and at page 14 of his memorandum Mr. Herald has shown clearly how impossible it was for the police at any time to have put undue pressure on him to make the statement he did on the 2nd July, only four days after his arrest, a statement which he repeated before Mr. Lees on the 3rd July, and finally confirmed before Mr. Herald on the 3rd August. With all due respect to the honourable Judges of the High Court, the Chief Commissioner must submit that Sagal Semba should have been convicted of the offence of dacoity on his own statement before Mr. Herald. The grounds on which the honourable Court have rejected this statement are, as has been shown above, based on a total misapprehension of the facts connected with the arrest of this accused, and the circumstances under which the statement was first volunteered to the police and afterwards recorded by Mr. Lees and confirmed in his examination before Mr. Herald. The honourable Court has also referred to Sagal Semba's complaint before the Magistrate that he did not understand why he had not been pardoned, as indicating that undue pressure must have been put on him, or improper inducements must have

been held out to him to say what Mr. Ward ventur'd, however, has fully explained the facts. As has been already stated, a preliminary cross-examination was only offered to anyone who disclosed the whole truth, and Sagal Semba took part in the murder of Mr. Cockburn. Sagal Semba will have full opportunity to make out, as accused persons invariably have now ruled, that he took only a minor part in the affair. The police very properly prosecuted his statement by further inquiry, and by taking him to the scene of the crime; and the conclusion they came to, with the approval of the Magistrate, Chief Commissioner Semba had not disclosed the whole truth, and that he was in fact the leader of the attack on Mr. Cockburn. Whether this conclusion was right or wrong, it is not necessary to discuss; but it fully explains why Sagal Semba was not pardoned; and his complaint against the police on that account is, the Chief Commissioner submits, clearly no ground for presuming that his statement, so far as it went, was not a perfectly voluntary statement, made, no doubt, in the hope of obtaining pardon, but not on that account inadmissible or open to suspicion because his hopes were not realised.

I have, &c.

(Signed) P. G. MELITUS,
Officiating Secretary to the Chief Commissioner of Assam.

From JOHN L. HERALD, Esq., I.C.S., Deputy Commissioner of Cachar, No. 5321, dated Silchar, the 28th February 1894, to the SECRETARY TO THE CHIEF COMMISSIONER OF ASSAM.

WITH reference to your letter No. 1 Misc.—281 J., dated the 9th January 1894, calling for an explanation on the proceedings in the Baladhan murder case, I beg to submit the enclosed report on the case. I beg to note shortly here the arguments laid before the High Court, with my explanation how far I admit these arguments are correct.

2. *Date when Manipuris were suspected first.*—Mr. Howell's report shows that within a few days after the occurrence, when the scare of a Cachari raid had died down, it was suspected that Manipuris were concerned, and the sub-inspector's diary of 17th April shows the same suspicion. This, in spite of Sadi's statement to Mr. Howell, which was entirely discountenanced by her previous remarks to the bearer that "the men who attacked the bungalow were Cacharis or Manipuris," as she inferred "from their speaking in some such language." Other reasons given were that it was proven that no Manipuris had come near Baladhan since the night of the occurrence; that Manipuris were working at Baladhan bungalow just before the occurrence, and were well acquainted with the internal details of the bungalow, and, most of all, that it was impossible for Sadi to distinguish between Manipuris and Cacharis.

3. *Sadi's dying Deposition.*—I allowed this to be put in the record in my Court. The Government pleaders acted against my instructions in objecting to it in the Sessions. By doing so they lost the opportunity of explaining it, of showing that the descriptions given by Sadi were self-contradictory, that this statement was made after some days' delirium, and that when first questioned she had made no mention of her own countrymen being concerned, but said Manipuri or Cachari-speaking people.

4. *Circumstances of Sagal Semba's Arrest and Confession.*—This has been entirely misrepresented. He was proclaimed an absconder in May, traced from village to village, but always hidden away in the Manipuri villages. A reward was offered for his arrest, and he was then arrested by some Manipuris on 28th June at Jaffirbund; was en route to Silchar on 28th to 30th; produced before me on 30th June, and, as he seemed to answer the description of the man wanted, sent on by me to Lakhipur for identification on 1st July; reached Lakhipur on 2nd July, and handed over to the District Superintendent of Police and Inspector there. The same day he tendered a confession to the District Superintendent of Police, who wired me to send out a Magistrate to record the statement. Mr. Lees went out and recorded the statement on 3rd July. His motive for confessing was because I had publicly proclaimed a free pardon to any of the dacoits who was not an actual murderer, if they would inform me who the murderers were. This proclamation was issued in May, and was known to all the district.

5. *Reasons for detention in Police Custody.*—These reasons will be found in the daily confidential report of the case. The orders for detention which appear in the record are merely formal orders, which the office and the public might read. It would have

defeated the ends of justice to have allowed the results of the investigation to be heralded by the public during the course of the inquiry; and since the inquiry terminated Mr. Had not been called upon by any superior authority to produce these reports. I give the reasons in my report now, and I consider they afford sufficient justification for the detentions.

6. *Complaints of Misconduct on the part of Police.*—The whole inquiry was conducted upon the so much in the hands of Mr. Carnac and myself that any improper conduct on the part of the police would have at once come to light. The inquiring officer, Inspector to the Chandra's rank and reputation is known to Government.

7. *Statements of Approvers.*—When the investigation was practically completed towards the end of July, I considered it would be satisfactory if we could get thoroughly at the full facts of the crime and the motives that induced it. Accordingly, Mr. Carnac went out again to Baladban. He says:—

“On the morning of 29th July the inspector came and reported that, although he was pretty certain that Mukhta and Mohan knew all about the dacoity and were concerned in it and had been made aware of my offer of pardon to the minor offenders, they had informed him they had resolved to say nothing. I went to Simla where the men were that evening and had a talk with them. They confessed that night to the inspector after I had left, and confirmed what they had said before me the following morning.”

I received a wire from Mr. Carnac that day, and sent out Mr. Lees to let these two prisoners understand that I had the power and was prepared to pardon them if they spoke the truth. I acted promptly, lest they should become frightened and back out of their former statement (valueless as made before a police officer), and hoping at the same time that some further clues would result in consequence of these statements, which would involve further investigation. Nothing not already discovered was forthcoming however, and I ordered the case to be sent up at once.

Mr. Lees recorded their statements for my information, but his record could not have been used against them as prisoners under the circumstances detailed above.

8. *Commencement of Proceedings in my Court.—Examination of Sagal Semba.*—I acted under section 342, Criminal Procedure Code. He had made a statement before Mr. Lees, which was evidence against himself. I asked him if he had made a statement. He said he had. I read over the statement as recorded by Mr. Lees, translating it into Manipuri. He said the statement was properly recorded by Mr. Lees. (I knew that no attempt had been made by Mr. Lees to have Sagal Semba's statement recorded in Manipuri, as Manipuri writers were not available.) My question to the prisoner removed any doubt as to the accuracy of the statement recorded by Mr. Lees in English. Then Sagal Semba proceeded to say that the statement recorded by Mr. Lees and read over to him in Court was true. This in spite of my refusal to accept him as Queen's evidence. He was known to be one of the ringleaders and one of the murderers and at no time was any hope of pardon held out to any one who was a murderer.

9. *Refusal to allow the Prisoners to consult their Pleaders.*—This is entirely untrue. What the pleader asked for was a special privilege to instruct or consult with his clients out of the presence and hearing of an officer. I told him that at this stage of the case he could talk with them only under the ordinary rules (in presence of the Court sub-inspector or gaoler), but that I would sanction his special request to this extent, namely, that before the prisoners were called upon to make any defence they could have a private interview with him. All this was said openly in Court. Mr. Carnac was present, and heard it.

10. *Refusal to permit cross-examination.*—This refusal was based on a mistaken view of the intention of the framers of the Criminal Procedure Code of 1882 in omitting the second paragraph of section 191 of the Code of 1872. I understood this was to prevent waste of time in cases where a Magistrate must commit to the Sessions to avoid the conversion of preliminary inquiries into protracted trials. I would refer to a note at page 365 of Mr. Phillips' "Manual of Criminal Law" as representing a similar opinion. I did not find anything in the objects and reasons given by the framers of the Act of 1882 to show that the paragraph was struck out as redundant. I thought it was to allow some discretion to the Magistrate. My reason for not permitting cross-examination in this particular case was because I thought the case was one which should go before the Sessions, and also because the prolongation of the inquiry in my Court for a few days longer would have involved a period of nearly five months elapsing between the date of commitment and the trial at the Sessions (in January Sessions instead of September Sessions).

been by *Proceedings regarding Tamra Singh, Witness.*—When this witness was examined facts. I had the record of his statement before the inspector of police before me. He closed statements before me contradictory and opposed to his statements before the Cockburn. He therefore rendered himself liable to prosecution and punishment under as accused, Indian Penal Code, on the alternative charge of having given false evidence by taking bail to appear when called on, in order that I might pass orders for his prosecution with section 193, Indian Penal Code, at a future date. He could not conveniently be prosecuted till after the Sessions trial, and he was not able to furnish the small amount of bail ordered till six weeks later on, which shows that his friends did not trust him to appear when called on. The bail was afterwards given under circumstances that showed he was more or less under the surveillance of the Manipuri headmen.

Other points will be noticed in the detailed report. I am strongly of opinion that we got the right men in this murder and dacoity. The inquiry eliminated all others likely to be concerned in the occurrence. The inquiry extended over three and a half months, an officer of great experience devoting his whole time to it, and the inquiry receiving the daily attention of district superintendent and myself. We know that on 29th July the approvers had resisted any attempts by the native police officers (had any such been made) to confess or assist the police; and that when they were assured by Mr. Carnac that pardon would be granted to any minor offender giving evidence, they made the further condition that as they were "friends," they must both be pardoned, otherwise neither Mukhta nor Mohan would say a word to save himself. After the pardon they explained their motives freely, and to some extent could not conceal their gratification at the deed. "They were Manipuris, and the Sahib had insulted them, so they resolved the Sahib should die." "When they attack a fort they kill the sentry and then put everyone therein to death." This was the gist of a conversation with Mr. Carnac. This agrees with what we know of the treacherous and unscrupulous conduct of these hill Manipuris. They lived under no law till lately, except that of their village custom. Their conduct in the Manipur rebellion in 1891 brought into the strongest light their savage disposition, and their lawless conduct in this district have necessitated the quartering of a small punitive police upon their villages near Baladhan and in South Cachar, where Sagal Semba was hidden away for many weeks.

II. THE BALADHAN CASE.

1. The PROCEEDINGS from the DATE of OCCURRENCE (10th April 1893) till the DAY on which the ACCUSED were sent up for TRIAL (2nd August 1893).

During this period of three and a half months the case was under inquiry and investigation.

Mr. Cockburn, his chaukidar, and the woman Sadi were attacked on the night of 11th or morning of 12th April. Sadi lived till 17th April.

12th April 1893.—The report of the occurrence reached Lakhipur thana at 9 a.m. on the 12th April.

Two telegrams stating the murders and saying that the deed was probably a raid by Cachari or other hill tribes reached me at 1 p.m. on the same day.

The sub-inspector of Lakhipur reached Baladhan at 10.30 a.m. on the 12th. Mr. Howell, sent by me, arrived at 10.30 p.m. Mr. Shuttleworth, district superintendent of police, reached early the following morning.

The inquiry was held—

- (1.) By the local police, viz., the sub-inspectors, between 12th April and 6th May.
- (2.) By Mr. Howell between 12th and 17th April.
- (3.) Secret inquiries by spies, notably by Labai Cachari (who had detected the murderers of Major Boyd), which continued till Labai's death from over-exposure on this work about 25th July.
- (4.) The inquiry by Inspector Joy Chandra Bhadra between 7th May and 1st August.

2. The INQUIRY by the LOCAL POLICE.

12th April 1893.—The Sub-Inspector Abhay Charan Sen went to the spot, inspected the bodies of the deceased, examined the woman Sadi, and noticed the state of the bungalow.

He formed an opinion that 15 or 16 Cacharis with daos had attacked the bungalow, killing the chaukidar first, then Cockburn, and attacking Sadi. They are said to have had a gun by Sadi's story.

The examination of Sadi eliminated any but Cacharis or similar people from the occurrence. She also said they had a gun.

13th April 1893.—Sub-inspector examined witnesses; found a Cachari had threatened to sue Cockburn in court for money due. It came to light that a Cabuli was amongst the culprits. A Cabuli was seen with a Cachari on the garden the day before the occurrence.

It was ascertained that Sadi's husband had been turned out of the garden a year previously, when Mr. Cockburn took her into his bungalow.

14th April 1893.—Cachari punjis searched in company with District Superintendent of Police and Mr. Howell. The Cabuli seen in the garden was Shamsher Khan. He was brought before District Superintendent of Police, and released, as he could fully account his movements on the date of occurrence.

15th April 1893.—Inquiries made regarding Kukis and Gurkhas who had been ill-treated by Mr. Cockburn. He had abused and beaten hill people who passed through his garden, and kept two powerful mastiffs, which he used to set on intruders within the garden boundaries.

16th April 1893.—My first offer of Rs. 200 reward for information circulated among the garden and neighbourhood. Many witnesses examined, but no clue obtained. Sadr Sub-Inspector Sibgati Kar arrived.

17th April 1893.—Sub-Inspector Sibgati Kar formed an opinion that Manipuris who had been working on the bungalow and on the garden were the probable culprits. Sadi died at 3 p.m.

18th April 1893.—Further inquiries among garden coolies, Nagas, and Cacharis made by Lakhipur sub-inspector.

19th April 1893.—In order to prevent Chowba Singh Manipuri perceiving that the police suspected them, constables and spies employed to trace their movements secretly, and to see where the men who worked on the garden were on the night of occurrence and afterwards.

20th April 1893.—Further inquiries.

21st April 1893.—Inquiries made regarding some Nagas who were daring characters.

22nd April 1893.—Inquiries made regarding some Nagas who were daring characters.

23rd April 1893.—Further inquiries.

24th April 1893.—Open inquiry suspended, and spies engaged to report on Cacharis.

25th April 1893.—Chowba Singh, daffadar, examined. The names of the Manipuris who worked under him in the garden ascertained.

26th April 1893.—No fresh information.

27th April 1893.—Inquiries made regarding movements of the Manipuri who had left the garden a few days before the occurrence. Some Dums of Jaipur of bad character inquired into.

28th April 1893.—Inquiries about Manipuri suspects made. Chowmocha Singh examined as witness. Ascertained he had worked in garden 20 or 25 days, but had not been paid.

29th April to 3rd May 1893.—Secret inquiries and reports of spies only. Spies sent to trace out stolen property.

4th May 1893.—Further inquiries made regarding garden servants and coolies. Ascertained that some garden coolies had run away a day after the occurrence.

5th May 1893.—Offer of reward of Rs. 2,000 and free pardon to any one not an actual murderer issued by me, circulated throughout whole district.

Ascertained names of several workmen (outsiders) employed on the garden.

Information received that a Manipuri prince had recently arrived in the district, and was going from village to village, being joined by some Manipuris of bad repute. Spies employed to trace him and his followers.

6th May 1893.—Constables deputed to trace the Manipuris who were employed in Baladhan.

The inquiry by local police then stopped, and the case put in the hands of Inspector Joy Chandra.

This report shows that at first suspicions were strong against Cacharis, but that the sub-inspector had received information openly and secretly, which led him to suspect that Manipuris were the culprits.

3. INQUIRY by Mr. HOWELL.

Mr. Howell went out to Baladhan on 12th April, being deputed by me immediately on receipt of the telegrams. He examined several witnesses, including the woman Sadi, and made the report which was submitted to the Chief Commissioner. He was of opinion that the crime was committed by Manipuris.

4. SECRET INQUIRIES by SPIES.

Very soon after the occurrence I employed Labai Cachari to make an inquiry among the villages on the north-east Cachar frontier, where Baladhan is situated. Labai Cachari was the most influential hillman in the district, knowing all the different races thoroughly and having sources of information which were beyond the reach of anyone else. He has been of great service to Government for many years, and was believed to be thoroughly honest. His ambition was to become a landowner in the settled district, and the understanding was that should he be successful in tracing the murderers as he had previously been successful in tracing Major Boyd's murderers in 1881, his reward would take the form of a grant of Government land. I had great expectation that Labai Cachari would prove of much assistance to us. At this stage the sub-inspector's inquiry had pointed to Manipuris as the probable culprits, but had shown clearly, I thought, that no direct evidence of the crime was possible. It remained then to try the effect of the offer of a large reward to obtain what evidence was possible, more especially the discovery of the stolen articles. The offer of free pardon circulated among the villages also would tempt some of the suspected offenders, who at this stage were being closely watched, to inform on their companions.

I had not applied for the services of any other detective for above reasons.

I am able to put on record now that Labai was very successful in his inquiries. He returned after wandering among the punjis for a month, and reported that from information which he could trust the dacoity was committed by the Manipuris. He said that the idea was suggested by one or two of the ex-sepoys of the Manipuri Raj, who had come into the district as loafers, and who had boasted how they had dealt with the Europeans in the Manipuri rebellion. He said that Mr. Cockburn had become hated by all the hill people owing to his bad treatment of them. He had shut up their roads through his estate, obliging them to make a long detour to the bazars. When he found them trespassing, he had abused and assaulted them, and had set his savage dogs at them. He had not paid them for work done, and had burned down a hut in which some of them were living, because it was within his boundaries.

As regards the actual culprits, Labai said that he had traced some of them as having gone back to the Manipur punjis with some of the stolen articles. He had learnt that two or three Manipuris were in the Kuki country buying rubber, and that these men had been offering a gun and a pistol (the stolen weapons) for money or in exchange for rubber. He said that the Kukis had promised him that, if he brought an authority from me, they would arrest these men and bring them into this district.

I gave Labai the warrant for arrest, and he left. I did not hear of him for a good many weeks. Finally a report was made that he had been taken very ill in the hills and had come back to his native village, where he lay in a dying state.

He was seen by the inspector (who had up till this time been entirely unaware of this secret inquiry), and gave the latter all the information he could. Labai died a few days thereafter.

So much time, however, had been lost in the meantime that the spies deputed to follow up the inquiry reported that the men with the gun and pistol had left the hills, or, at any rate, could no longer be traceable.

Labai was an illiterate man, for this reason no report of his inquiry appears in the record.

I considered his reports afforded strong presumption that the inspector was following up the case in the right direction.

Village gossip and bazar talk affords valuable clues, though not in itself evidence; and it was in consequence of similar clues that the inspector, by questioning all the neighbouring villagers on the points raised, was able to obtain direct evidence in the case—the witnesses who remembered having noticed the accused had not attended the village festivities on the night of the occurrence or had gone away at an unusually early hour contrary to all custom and with no ostensible reason, and the witnesses who could certify that Chabongbom, the man of no visible means of livelihood, was lending money largely and buying a buffalo for Rs. 100.

III. THE INSPECTOR'S INQUIRY.

The Inspector Joy Chandra Bhadra reached Baladhan on the evening of 7th May and took up the local inquiry. He submitted a special diary every day to me, describing in full the evidence of witnesses examined and an account of his proceedings. His investigation and proceedings were thus under the immediate control of the District Superintendent of Police and myself, and at important points in the investigation the District Superintendent of Police went out to the scene of inquiry. The daily reports number 88 from 8th May to 2nd August, the date on which he sent up A. Form. It is hardly possible to give a detailed account of this inquiry except by reproducing these daily reports *in extenso* so far as they deal with the Manipuris.

Diary No. 1, dated 8th May 1893.—The bearer of Mr. Cockburn was examined. He said that no Cacharis were ever allowed to enter the verandah of Mr. Cockburn's bungalow, but Manipuris had worked, thatching the roof for one and a half months. On the day previous to the murders, Chowba Singh (convicted in Sessions) with three or four other Manipuris worked up to 5 or 6 p.m. There were 10 or 12 Manipuris employed then in the garden. They lived in the garden bazar, and must have been aware that only the manager, the woman, and one chaukidar remained at night in the bungalow. Next day he saw only Chowba Singh in the garden; the other Manipuris had disappeared.

The garden Doctor Babu and the garden muharrir said that Mr. Cockburn never allowed Cacharis to get into the verandah. In November and December some 30 Manipuris worked in the garden, in January to March about 15 worked, and in April four or five worked. The native doctor asked Chowba Singh four or five days before the occurrence why so few Manipuris were working. Chowba Singh said that they had not been paid for work done, and had gone to Jaipur village to work for food. The Sahib made them pull down a coolie line they were constructing three times. Some of the Manipuris had recently arrived from Manipur.

The garden mali (Tilak Kurmi) says that three Manipuris visited Chowba Singh about 3 p.m. on 11th April, and they sat together for some time on the road behind the bungalow. These men were not employed then in the garden. The inspector sent to-day for Chowba Singh to ascertain from him who these three men were and why they came into the garden (outsiders were not allowed into the garden without permission).

The inspector's inquiry showed that the crime was committed by persons well acquainted with the bungalow and Mr. Cockburn's arrangements at night,—either garden people or people who had worked on the bungalow. Sadi's statements showed that no garden people were engaged in the affair.

Diary No. 2, dated the 9th May 1893.—Raidhan Cachari corroborates yesterday's statement that Cacharis were not allowed up on the verandah when they went for money.

Search made for the three Manipuris in Jaipur village. List of Manipuris who worked on the garden repairing houses prepared. It gives 19 names. Some other names could not be ascertained. Villagers of Jaipur sent for. A great number appeared but none of those who worked on the garden attended.

Ascertained that three or four Manipuris lately arrived from Manipur had lived with Khela Singh, and had worked under Chowba Singh in the garden.

Ascertained from the garden manager that the Manipuris to whom the garden owes Rs. 123 had never up to date come for their dues.

Diary No. 3, dated the 10th May 1893.—Chowba Singh, examined, stated:—On Tuesday, 11th April, two Manipur Manipuris (Nithokhamba Warrikipam Chowba, Noeba Singh) and himself worked at the garden bungalow. No Manipuris visited him at 3 o'clock.

On the night of occurrence these three above named were in the garden. Noeba went away, but the others remained 10 or 11 days in the garden after the occurrence.

He told the inspector that "he fears to say." The inspector kept him under surveillance.

Atomocho says that he worked with Chowba Singh and two Manipuris from Manipur whose names he did not know, on the bungalow. They were all four in the garden on the night of occurrence. The two strange Manipuris were ill at the time. He went home next morning. Witness's father, Noeba, was not there on the night of occurrence (contradicts Chowba Singh, who says that this witness was not there but Noeba was on night of 11th in the garden). His son returned next morning. Noeba, father of last

witness, contradicts Chowba Singh on the same point. He said he did not remain at night on the garden, but his son did.

Noeba's wife contradicted her husband and her son by saying that her son Atomocha returned 10 or 12 days after the occurrence.

Examined some of the Manipuris who worked in the garden. They all stated that they were not paid for work done, and that several of their number had left the garden, giving up all hope of being paid.

Diary No. 4, dated the 11th May 1893.—Accused, Chowba Singh, examined again, said that the tall, stout, strong Manipuri, with a dark complexion, who was seen by Tilok Mali with two others, talking with Chowba Singh behind the bungalow on 11th April, lived with one Anjow Singh. Chowba Singh said that he did not know his name,* though he worked under him for some four months in the garden. He was a sepoy in the Maharaja's army. He went for his money to Chowba Singh, who informed him that he could not pay until the Sahib paid him. Anjow Singh contradicted Chowba Singh by saying that this man never lived with him.

Atomocha Singh said that this man had stopped with Anjow Singh; that he was a sepoy of Manipur, who had worked for three or four months in Baladhan. He had not seen him after the murder.

Guru Dayal Sarma says that a contract for Baladhan dak bungalow repairs was given to seven Manipuris from Manipur who lived at Kamranga. The names of two of these men were entered in his account book, as they took provisions from him, viz., Heinu Nachipa and Modon Singh Hijapa (accused). They got an advance of Rs. 35. The balance, Rs. 65, has not been paid them, as they went away after the occurrence and had not claimed the money.

Chowba Singh, examined again, stated that the six (not seven) Manipuris who worked in the garden, were Pambei Oinam,† Nitho Khamba,‡ Modon Singh Hijapa,‡ Modon's father, Heimo Nachipa, Ningthowpa Nachipa.‡ These men disappeared just after the occurrence. Chowba owes them Rs. 22 for work done for them by him.

Mr. Cockburn's bearer said that the hut erected by these men, who took contract for dak bungalow, was burnt down by Mr. Cockburn's orders, as it had been erected within the garden boundaries.

These men had afterwards been engaged in the garden buildings. They had been compelled by Mr. Cockburn to erect huts three times over.

Abong Singh, of Kamranga, now admitted that four Manipuris of Manipur who worked in the garden had lived in his house. He mentioned Modon Singh Hijapa ‡ and his father, Maichne Nitho Khamba § and a person whose name he did not know—a Kut,|| who lived now at Nowagram. Two other men lived with one Ananda Singh, viz., Ningthowba Nachipa ‡ and Heinu Nachipa.‡

He said Rs. 30 were still due to these men who went off on the 12th April, except Heinu, who went off before the occurrence.

Diary No. 5, dated the 12th May 1893.—Chowba Singh, further examined, said that some time before the occurrence, the tall, stout Manipuri, with a dark complexion, had boasted that he was a sepoy in the Maharaja's army, and had fought a battle with the English and killed many of them. This man had gone through the garden with his umbrella up, and had as usual been stopped for doing this, as Mr. Cockburn did not allow persons to use umbrellas inside the garden (this is quite correct).

Mukhta Singh Nowram (approver), examined as a witness, said that he worked in the garden for three months along with Amu Singh, Ananda Singh, Gunamani Singh, and a sepoy, aged about 27 or 28, who disappeared after the murder. Mukhta says that he was fully paid up, and left the garden 10 or 12 days before the occurrence.

Gunamani also saw this sepoy work.

Two of the six Manipuris, reported in yesterday's diary, were produced. They had been found hiding in the Lydiacherra jungle. They were Modon Singh Hipaja¶ and Ningthowpa Nachipa.¶

The evidence of the previous day showed that they had disappeared the day after the occurrence, leaving money due to them. The witness Abong had first denied all knowledge of them, and afterwards admitted, when contradicted by Chowba Singh, that they had lived with him.

The men had made two sheds and beds of *Tara* leaves in the Lydiacherra jungle. This jungle is private land. No one was at liberty to trespass on it. The only possible motives for erecting huts would be for purposes of concealment. The jungle was close to the Manipuri villages, where they would be supplied with provisions, and find shelter when required in rain or storm.

Ningthowba (one of the men) said that for four months he had been in this district working. He had lived two months with Abong Singh. Ningthowba, accused, examined. He and five others took a contract to build the dak bungalow for Rs. 60, which they had received in full 15 or 16 days before the murders. (This is entirely false. The contract was shown to be for Rs. 100.) They had not gone off, leaving Rs. 40 still due. A Raj Kumar (prince) of Manipur had told them to hide themselves three days after the murders (a most remarkable order). He admitted that Mr. Cockburn had burned down their shed which they had, through ignorance, erected within the garden boundaries. After finishing the dak bungalow contract, they had contracted to build garden coolie houses for Rs. 16. They had worked five weeks in the garden and received the full amount, and then left the garden. (This is directly contradictory to the known facts of the case.)

Modon Singh Hijapa,* found in the jungles, said that after the murders he had disappeared from fear four or five days afterwards. The contract for the dak bungalow was for Rs. 70, of which Rs. 40 was paid, and the balance received as advance for diet expenses. (This again contradicts known facts.) Their shed had been burnt down by Mr. Cockburn. Afterwards four of them worked in the garden for five weeks. They got Rs. 6 in full payment. (The garden books showed the men were still due Rs. 16 by the garden.)

Khela Singh (a witness won over by the defence) said that he was a brother of Abong Singh, with whom these two men found in the jungle had lived. The witness did not see them in the village on the night of the occurrence. After daybreak they had disappeared, and were found on this date hiding in the jungle in the Lydiacherra hills, where they had made sheds.

From this evidence it appears that these men had disappeared before daybreak, whereas the murder was not known in the garden till 7 o'clock.

The statements of the two men were sufficiently incriminatory to justify detention.

[*Note.*—On this date, 12th May, Mr. Dryberg's Memorandum on the Manipuri crime of the district was published.]

I sent warrants to Manipur for the arrest of the six Manipuris who had worked in the garden and at the dak bungalow, and who had disappeared from the district.

It was after issue of these warrants that two of the men wanted were found in the Lydiacherra jungle.

Diary No. 6 of 13th May 1893.—Anjow Singh's wife denied that the tall stout man lately a sepoy in the Manipur army ever lived with them, contradicting other witnesses.

Abong Singh gave evidence that a Gurkha,† retired sepoy, son-in-law of Ningthowba, visited Ningthowba eight or ten days before the occurrence. Under the inspector's orders, this witness had searched for the missing Manipuris, and found that Ningthowba and Modon Singh were living in the Lydiacherra jungle. He sent his brother, Khela Singh, to have them produced before the police.

Ningthowba admitted that he had a son-in-law by name Chapra Singh, who was a Nepali ex-sepoy. The son-in-law had come about a month and a half ago, and lived two days with Abong Singh and the witness. He had come to get money from his father-in-law for the children in Manipur. Witness had given the son-in-law the Rs. 10 received for building the dak bungalow (in part payment).

The Nepali had stayed on in Abong Singh's house till four days previous to this evidence, when he had gone off with Modon Singh.

Kali Charan Chaulkidar says that he met in the garden a Manipuri who was accompanied by a very strong,‡ stout, tall, and somewhat dark complexioned Manipuri, who could not speak Bengali. The former asked him whether the *hundi* had been received.

This man was the ex-sepoy or *kut* in the Manipur army. His address was ascertained, and wired to Manipur for his arrest.

Diary No. 7, dated the 14th May 1893.—The inspector noted to-day the result of his inquiries as far as the garden people were concerned. He says:—"I do not think the coolies have committed the murder and dacoity. I was some four or five days in the garden, and inquired confidentially in course of conversation with the coolies; and

* Accused, Modon Singh, examined.

† Sarba, or Chapra Ghurkali, convicted by Sessions.

‡ Sagal Sembra Shajow, accused.

“ from the dialogues of the coolies between themselves I am inclined to believe that the commission of such an offence by garden coolies cannot be kept concealed by them. Even for trifling matters I heard there were always quarrels among them, people of different districts and of different nature assembled in one place, and there cannot be a combination of a trying nature amongst them to keep an occurrence of such a description concealed. And, again, the temptation of reward is very great, which could not have been resisted by coolies not to disclose the information.”

[*Note*.—Rs. 1,200 reward offered on 25th April, and increased to Rs. 2,000 on 1st May. I agree with the inspector's remarks, and a thorough inquiry by the local police had shown that the garden coolies could not possibly have been concerned in the affair; besides, the fact that Sadi never hinted that any garden people were concerned, and she could not have failed to note their presence.]

Chowba Singh (accused) was examined again as a witness. He said that a Gurkha went to Baladhan seven or eight days before the occurrence and told him that Modon Singh (accused found in the jungle) owed him Rs. 10. The Gurkha stayed in the garden three or four days with Modon and Ningthowba.

Ningthowba said that a Gurkha visited him in order to get some money that Modon owed him. His name was Dharma Singh.

[As the Gurkhas are not unlike Cacharis and similar hillmen but are of stronger build, it was and is quite possible that Sadi mistook the Gurkha for a Cachari, and this clue was worked upon. However, as Dharma Singh was not implicated by any of the confessions, he was released without trial.]

Note.—This day Modon Singh and Ningthowba were arrested and sent in to me. They were put in Silchar gaol. The extracts from the diaries just given show that these two men were found under very suspicious circumstances sufficient to warrant their detention. They were kept in gaol till the trial, except on 20th and 21st May, when they were examined by the inspector.

Diary No. 8, dated the 15th May 1893.—Chowba Singh (accused) examined for the fifth time by the inspector as a witness. (It will be noted that when new facts were discovered by the inspector, Chowba Singh did not contradict them, but that he never gave any information himself until questioned on these facts.)

Chowba Singh again examined as a witness. He said that after the murder he stayed 10 or 12 days in the garden with Atomocha and others, but was not asked any question. (*Vide* my remarks on the inquiry by local police on this point. The local police wished to keep the suspicion that the Manipuris were concerned quiet.)

He now gave a further list of the Manipuris who worked on the garden, 40 in number.

Diary No. 9, dated the 16th May 1893.—From Hira Singh the inspector obtained the following information. The name of the sepoy who worked at Baladhan was Shajow Singh (Sagal Semba Shajow, accused). He was four months with Anjow Singh, and then disappeared about a month ago (*i.e.*, about time of murder).

Khamdol Singh said that he knew the sepoy. They worked in Baladhan together. Statement of Khamdol Singh, He saw them in the bazar the day previous to the *sankranti* witness gained over by defence. day. After that Shajow Singh disappeared.

Shajow Singh Chabongbom* said that Sagal Semba Shajow was his nephew. He arrived from Manipur in *Baisak*. In *Sraban* he went to Jaipur, where they worked together at paddy cultivation. First examination of Chabongbom (accused) as a witness.

In *Agrahan* the sepoy worked in the garden, and worked for some months there. He complained to witness that he was not being paid on the garden, getting hardly enough to live. Anjow then offered to employ him in cultivating his land, which was agreed to.

In *Chaitra* witness asked the sepoy if his account had been squared in the garden. He said the *daffadar* had told him that the money had arrived, and the Sahib would pay him and others on the Friday before the *Chaitra sankranti*. On the Friday† the sepoy went to the garden. He came back and said that he had not been paid. He stayed a few days at Anjow Singh's house, and then went away and never returned.

Howjow Singh, witness, said that he suspected Chabongbom Shajow,‡ Sagal Semba Shajow,‡ and Oinam,‡ who travels with Sagal Semba, were concerned in the murders. † Convicted by Sessions Judge.

[*Note*.—This is the result of confidential inquiries through the spies in the Manipuri villages, officers deputed to arrest Shajow and Oinam. Shajow was not

arrested till 20th June, though traced frequently in different Manipur villages. He was always concealed.]

Ningthow Singh said that on the night before *sankranti*, he, Khamdol, Khela Singh, Anjow, Noeba, Gokul Singh, Amu Singh, Hera Singh, Shajow Singh Mukhtar, * Dice. Shajow Singh, nephew of Anjow, Racin, and Chowba Singh Mukhtar began playing *pasha*,* and some played the whole night (as is usual on this festival). However, Shajow Singh's nephew (Sagal Semba Shajow, accused) and Howjow Singh disappeared at about midnight. He did not see the nephew again, but saw Howjow Singh the next day.

Chowba Singh Mukhtar was examined, and stated that on the night before *sankranti* (11th April, the night of the murder) it was their custom to keep awake all night; and on that night he, Khela Singh, Khamdol Singh, Anjow Singh, Noeba Singh, Amu Singh, Gokul Singh, Ningthowba, Hera Singh, Shajow Mukhtar, Golap Singh Raj Kumar, were playing at Shajow Mukhtar's house. Shajow Singh, Chabongbom's nephew, disappeared from the play that night, and has not been seen since then.

[Note—This is the first evidence of the disappearance of the accused persons of the village from the gambling, which went on all night on this special night of the year. The men disappeared, contrary to all custom, at midnight from the gambling and without giving any explanation. When the attention of the villagers who were present was directed to this occurrence, they readily recollected the incident, but these villagers were all gained over before and during the trial at the Sessions.]

Diary No. 10, dated the 17th May 1893.—More evidence as regards the *pasha*-playing all night on the night of 11th April taken, leaving it beyond doubt that the disappearance by Sagal Semba and Khamdol from the gaming-room was noticed and commented on at the time. These witnesses were gained over later on, and “explained away” their previous statements.

Diary No. 11, dated the 18th May 1893.—Women of the village were examined by the inspector regarding the movements of Chabongbom's nephew and the occurrences of the night of the murder. They would not give any definite information.

Khambol Maichnam was re-examined, and made an important statement, which was taken down by Mr. Lees the following day (19th May). On receiving a wire that this witness had made statements which were of the utmost value, I sent out Mr. Lees to have

the statement recorded on oath before any attempt to gain over the witness could be made. He stated before Mr. Lees that Sagal Semba Shajow worked at the garden, but as he did not get any money for his work he came again to live in the village. Every Friday Sagal Semba used to go to the Sahib for his money. On the Friday before the Sahib was murdered the witness was going along the road, and met Shajow Howjow, Tonjow, Modon Atamba, Goluk, Ninglak, and two or three others crossing the river.† They were saying that they would “show”‡ the Sahib for not paying the money due them.

On the Tuesday (11th April) witness went to Jaipur. He met Sagal Semba, Modon Singh, Atamba Singh, and Golab Singh. They said they were then going to the garden that day. The same night about 8 or 9 o'clock, at the time people cook their rice, witness was going to ease himself at the ghat. He saw Sagal Semba, Modon Singh, Atamba Singh, Golab Singh, Howjow Singh, a second Atamba Singh, Tonjow Singh, Ninglan Singh, and two or three others, whose names he did not know, cross the river. They had *khesh* on their bodies. These men had *daos*. It was a dark night. Witness did not see any of them the following day.

This witness was examined before me on 7th August at the preliminary inquiry. He repeated most of what he said before Mr. Lees, but said that he only recognised Modon Singh and Sagal Semba Shajow among the two men who crossed the river. There were 14 or 15 in all; some had *khesh* on their bodies.

Before the Court of Sessions this witness said that on the night of the occurrence he saw Sagal Semba and another man he did not recognise go down into the river. He saw only two men, and did not know if they crossed the river, and did not know anything of the 14 or 15 persons crossing the river, and did not see any *daos* in their hands.

The witness said before the Sessions that his deposition before me was read over to him in English§ by a Babu. He was told by Khedan Singh Manipuri in my presence and to say “m—m—mas” as the Babu read it out. Witness hearing.—J. L. H. said to the Magistrate whatever he was told by Khedan Singh and the Gossain to say. He admitted that he was not told what he said before

Mr. Lees (almost identical to what he said before my Court). He admitted that the Gossain and Khedan Singh were not present before Mr. Lees, and that the translation was made by a Manipuri Baba.

Before the Sessions Court the witness freely admitted his perjury. His evidence as given before Mr. Lees shows that Sagal Semba and the other persons named by him crossed the ghat in the direction of the garden instead of remaining with the other villagers in the gambling room; and under such circumstances the investigating officer was justified in effecting the arrest on suspicion of the persons named by him.

It is a noticeable fact in connexion with this case that when the approvers named 14 men they should have named only two out of the nine men named by this witness. At the time when the approvers made their statement the evidence of Khamdol was the strongest evidence in the case (except Sagal's confession), since it furnished circumstantial evidence to strengthen Sagal Semba's confession. If the approvers were tutored to give a false account of the occurrence, it is remarkable that an account so different from the statement of this witness was concocted. I give here the list of persons named by each, the witness, the accused Sagal Semba, and the approvers:—

Named by Witness Khamdol Singh.	Named by Sagal Semba Shajow.	Named by the Approvers.
<ol style="list-style-type: none"> 1. Sagal Semba Shajow. 2. Howjow Singh. 3. Tawnjow Singh. 4. Modon Singh. 5. Atamba. 6. Golap Khairipa. 7. Selam Ningthowba. 8. Unknown 9. Unknown. 	<ol style="list-style-type: none"> 1. Sagal Semba Shajow. 2. Laisung. 3. Kaisamacha Caste. 4. Modon Singh. 5. Chabongbom. 6. Khamdol (witness). 7. Howjow and Shajow. 8. Mukhta Singh. 9. Oinam Pamhei. 10. Ningthowba (not named to Mr. Lees). 11. Chowba Singh. 12. Mohan Singh. 13. Phelem Amu Singh. 14. Ningthowba Caste. <p>Five men with faces tied up; was told they were Cacharis.</p>	<ol style="list-style-type: none"> 1. Sagal Semba Shajow, tried. Not named. Not named. 4. Modon Singh, tried. 5. Chabongbom, tried. Not named. Not named. 8. Mukhta Singh, approver. 9. Oinam Pamhei, not caught. 10. Ningthowba, tried. 11. Chowba Singh, tried. 12. Mohan Singh, approver. 13. Phelem Amu, newly named, tried. <p>1. Howai Mutha, not caught. 2. Nitho Kumbu, not caught. 3. Hirammo Singh, not caught. 4. Chowba Waripa, not caught. 5. Sarba Singh, tried.</p>

In Khamdol's list Nos. 1, 2, and 4 agree with Shajow's lists; 1 and 4 with the approvers. None of the others agree. In Sagal Semba's list nine names agree with the approver. Sagal Semba mentions four names that are not mentioned by the approvers, and also says that five Cacharis were present.

The approvers mention 14 names, including nine men that agree with Sagal Semba and five that are not found in his list.

It has been shown how unreliable the evidence of Khamdol Singh in the Sessions was. He mentioned two names about which there could be little doubt, as there was already hue and cry against them, and mentioned other names, which may be correct, but which depend entirely on his unsupported evidence. Sagal Semba confessed, and in his confession included Khamdol's name, Khamdol being the witness who informed against him, and Howjow and Shajow, who had traced him when a fugitive. With these exceptions, his statement agrees nearly with that of the approvers, but excludes a number of names on the pretext that they were wrapped up, and he could not name them. He included the names of persons in custody with these persons against whom he had a grudge, and adds to his list by naming persons who cannot be traced by these names, or by saying that, owing to their being wrapped up, he could not recognise all of the dacoits. The approvers omit all mention of the three persons whom Sagal Semba had reason to believe were deeply concerned in arrest. They make no mention of names of three persons then in custody (who were accordingly released), and they mention five persons, of whom four are still absconders from their houses.

The discrepancies would hardly occur in a case got up by the police. The approvers' statements thoroughly discredit Khamdol's evidence and Shajow's confession.

Diary No. 12, dated the 19th May 1893.—Chabongbom (accused) examined again as a witness on the points disclosed in the evidence of Khamdol Singh. He had not been named by Khamdol. He said that four or five Manipuris of Manipur used to visit Sagal Semba. He saw two of them go out with Sagal Semba after sunset on 11th April. Sagal Semba returned alone later on in the evening. Sagal Semba went out after eating, and did not return again. This day two of the men implicated by Khamdol's statement, viz., Howjow Singh* and Townjow Singh, were arrested.

* Afterwards released without trial.

Diary No. 13, dated the 20th May 1893.—This date was mainly occupied by a detailed examination of Chabongbom Shajow, the uncle of Sagal Semba Shajow, absconder. He made several contradictory statements. Finally he made the following remarkable statement. When he was playing dice at Shajow Mukhtar's house, he saw his nephew had disappeared. He went out to ease himself at the ghat, and saw ten or twelve men sitting below the ghat. He was frightened and startled. His nephew shouted out to him "mama." He asked him, "Where are you going?" His nephew told him they would go to the garden to rob the garden remittance. Witness then through fear turned back. He was at a distance of 12 *haths*. He could not ease himself through fear. He saw two Gurkhas, Sagal Semba Shajow,† Oinam Pamhei,‡ Noerambom Atomba, Minam Tonachow, Thoksem Chowba, Thelain Atomba of Manipur. As regards Townjow and Howjow (arrested on evidence given by Khamdol), they might have been there with the gang, but he is not sure. There were fifteen or twenty men in the gang, but he could not recognise the others.

† Convicted.
‡ Absconder.

This accused had up till then been frequently examined as a witness, and pretended to be entirely ignorant of everything. He now made a statement which was either pure invention on his part or an attempt to divert attention from his share in the proceedings by giving assistance to the inspector, who, he could clearly see, suspected him.

He was, however, careful to name persons not in custody or not arrested (most of them are now believed to be purely imaginary persons), lest those already in custody should depose against himself.

Khamdol Singh was shown the prisoners Modon Singh and Ningthowba (arrested while hiding in the jungle). He recognised Modon Singh, but was not sure about Ningthowba being in the gang that crossed the river.

Witness Khamdol Singh identified Modon Singh.

Diary No. 14, dated the 21st May 1893.—Search made for Sagal Semba Shajow (accused). The spies reported that he had been seen at various places in the district.

Diaries Nos. 15 and 16, dated the 22nd and 23rd May 1893.—Inquiries made regarding money due by the garden to Manipuris and regarding the appearance of the persons named by Khamdol and Chabongbom.

Howjow Singh deputed by inspector to search for Sagal Semba Shajow. (This man was named by Sagal Semba as one of the dacoits, but not by the approvers.)

Note.—Chabongbom Shajow had been arrested on 20th May, as by his own statement he showed he was an accessory before the fact in the dacoity, and there was every reason to disbelieve his statement that he did not join in an enterprise conducted by his nephew Sagal Semba Shajow. Chabongbom Shajow was a well-known bad character in the district. He seemed disposed to save his own neck by informing on the other members of the gang. By this time it had become certain that the only hope of detection and conviction was by one of the gang accepting my tender of pardon; but before that pardon could be tendered to any one member, it was necessary to discover which of the members of the gang had taken a prominent part in the occurrence, and which were actual murderers, who could not be pardoned.

The inquiry was being conducted at Baladban, 24 miles distant from the gaol, and the floods were so excessive during this year that all communication could only be made with the greatest difficulty, partly walking and partly swimming across breaks in the road. Some suspects had been arrested, and others were being arrested in Manipur who would pass through Lakhipur, close to Baladhan, on their way to Silchar. These suspects had been named by Chabongbom Shajow, and it depended on his identification of them whether they were proceeded further with or released. There were already as many Manipuri prisoners in the Silchar gaol as could be safely watched and at the same time kept from communicating with each other (which was of the utmost importance to the detection).

For these reasons I considered it advisable that the prisoner Chabongbom should be kept under a police guard at Laklipur, where he would be close to the inspector and available when required by him without losing three or four days before any reply could be received.

Chabongbom Shajow was in police custody from 20th May to 14th June. When his account of the affair was shown an entirely fictitious one, he was sent back to Silchar gaol to be kept in the common *hajat* ward. He was kept apart from the other prisoners while in custody.

Diaries Nos. 17-23, dated the 24th to 29th May 1893.—Waiting for prisoners coming from Manipur, who would be identified by Khamdol and Chabongbom Shajow. Search made all over the district for Sagal Semba Shajow. He had been seen at several places, but always managed to evade arrest.

Mr. Carnac was at the thana on 26th to 29th May, and went through the evidence, both open and confidential, with the inspector.

Diary No. 24, dated the 30th May 1893.—Chabongbom Shajow, prisoner, further examined, said that on the night of occurrence he saw 10 or 12 persons, including Sagal Semba Shajow, crossing the river, and “that he will make full disclosure in the matter if Tamrodhaj Singh of Banskandi would tell him to do so. Tamrodhaj told him that the inspector was a man of one word, and he (Chabongbom) trusted him when the inspector told him that we would make him a witness for the Empress if he is not an actual murderer, so if Tamrodhaj will tell him, he will make the full disclosure in the matter.” On this statement the inspector sent for Tamrodhaj, and informed me of this probable disclosure.

Diary No. 25, dated the 31st May 1893.—Tamrodhaj appeared before the inspector to-day, and was allowed to converse with the prisoner Chabongbom Shajow. Chabongbom Shajow then repeated to the inspector almost exactly what he had said before, saying that his nephew asked him to accompany him, but he did not go. He said he could not identify anyone except Sagal Semba Shajow (contradicting his former statement). The inspector wrote, “What I believe is that Tamrodhaj has stopped him not to disclose further in the matter. From my personal knowledge I know Tamrodhaj is looking after him. This man (Tamrodhaj) came to me about four days ago to stand bail for Chabongbom Shajow with assurance to arrest Sagal Semba Shajow, but I declined to grant his request, and told him to bring Sagal Semba first; I shall then see whether I can let Chabongbom Shajow go on bail.”

This diary throws light on the inspector's procedure, and shows to what extent he put pressure on a prisoner who had more than half confessed. He had my strict orders that to no principal actor in the occurrence was any assurance of pardon to be held out, and he carefully refrained from holding out any inducement to this prisoner, but at the same time gave the prisoner every opportunity to decide whether he would risk pardon by confession or risk conviction by remaining silent.

Diary No. 26, dated the 1st June 1893.—Notes (said to have been stolen) traced; ascertained to have been cashed before the dacoity.

Diaries Nos. 27 to 38, dated the 2nd to 13th June 1893.—Waiting for arrival of Gurkha prisoners from Manipur and for arrest of Sagal Semba Shajow. Descriptive rolls of Sagal Semba and Oinam Pamhei circulated over the province. He had been seen in Cachar and Sylhet districts since being proclaimed.

Diary No. 39, dated the 14th June 1893.—The inspector came to Silchar to consult with me, and examined the prisoners Modon Singh and Ningthowba (found in jungle), who were kept in gaol.

They gave information regarding the connexions and conditions of the missing suspects, but said nothing about the occurrence.

Diary No. 40, dated the 16th June 1893.—A Manipuri, who was engaged by the inspector to assist in the search for Sagal Semba, agreed to do so only after promise of reward. He stated his objection to be this—that he and other Manipuris consider it a sin to arrest a man who is likely to be hanged. [This man was of no assistance, but he was candid in describing the well-known social (and religious) prejudices of the Manipuris. They would not assist in the inquiry or in the arrest. They successfully concealed Sagal Semba for two months till, under promise of a reward of Rs. 500, some of them risked the “sin.” They subscribed large sums for the defence at the trial, and they terrorised the Manipuri witnesses who had given statements bearing on the case into withdrawing these statements and perjuring themselves.]

One Sarba Singh* described by Khamdol was arrested in Manipur on 17th June. He did not reach this district till 4th July, which will give some idea of the difficulty of communication during the floods of this year.

Diary No. 45, dated the 20th June 1893, to Diary No. 55, dated the 30th June 1893.—Nothing important; further traces of Sagal Semba Shajow, but no arrest.

We now come to a most important point in the inquiry, the arrest of Sagal Semba Shajow and his confession.

On 20th June the inspector engaged one Tanu Sarma to effect the arrest of Sagal Semba. He went to the village of Jafirbund on the 27th June, and with the help of some villagers arrested Sagal Semba Shajow. He sent to the nearest thana (Hailakandi), and informed the local sub-inspector. The sub-inspector went to the village and took the man into custody.

On the 28th June 1893 the sub-divisional officer recorded the following order:—“Head Constable Annoda Charan Sen to have the man brought in here at once.”

On the 29th June the man had been taken from Jafirbund to Hailakandi. The sub-divisional officer recorded the following order on 29th June:—“Forward in custody of police to Deputy Commissioner for orders.”†

On the 30th June the prisoner was brought before me at Silchar, and examined by me to see if his appearance agreed with the descriptive roll of the absconder. The marks seemed to agree. I therefore sent him out to be handed over to the custody of the inspector, in order that the inspector might produce him before the witnesses who had described Sagal Semba Shajow. My order granting ten days' police custody for this purpose is dated the 30th June. He was kept in Silchar under armed guard all night. He was sent out to the inspector next morning, and reached the inspector at Lakhipur thana at 11 a.m. on the 2nd of July.

In the afternoon of that Sunday he made his confession, first to the inspector and, on Mr. Carnac's arrival at the thana late in the afternoon, to Mr. Carnac, district superintendent of police. Mr. Carnac wired to me, and I deputed Mr. Lees, who reached the thana on the 3rd, and immediately recorded the statement made by Sagal Semba.

Sagal Semba was sent to a Magistrate, the sub-divisional officer of Hailakandi, within 24 hours of his arrest. He arrived within the time necessary for the police to go to Jafirbund and return to Hailakandi. He was sent from Hailakandi to Silchar, and took no longer on the journey than was necessary. He was detained by me one night in Silchar, and sent out by me to Lakhipur taking no longer time than was necessary for the journey. He made a statement within a few hours of his arrival there, both to the inspector and Mr. Carnac.

It is absolutely certain that no pressure was used to him to confess, because there was no opportunity for such pressure. The statement made by Sagal Semba to the Sessions Judge is, “that he was ill-treated by the inspector at the thana for two or three nights, and then confessed to him. Afterwards, under the tuition of Khedon Singh and the Gossain, he made a statement before me in Court.” He altogether ignored his statements before Mr. Carnac and Mr. Lees in this statement before the Sessions Judge.

The inspector in his evidence said that he had informed Sagal Semba of my offer of pardon to any one not a murderer. This offer of pardon had been widely circulated throughout the villages in which Sagal Semba had been concealed. Every man in the district had heard of the rewards and pardon offered. Sagal Semba's statement shows clearly that in order to earn this pardon he made a statement giving a plausible account of the occurrence, assigning to himself a very minor share in the proceedings, and including in the list of names of offenders those who had already been arrested, others who were proclaimed absconders, and for his own satisfaction the names of the witness Khamdol Singh who had informed against him, and the two brothers, Howjow and Shajow, who had been actively employed in tracing him.

On the 30th June I had sent Sagal Semba to Lakhipur for police custody, because this was the only manner in which the investigating officer could procure his identification as the person wanted.

When I received a wire from the District Superintendent of Police to send out Mr. Lees, I had no hesitation in doing so. A confession meant working up the case from an entirely new point of view, and the inspector would require Sagal Semba's presence for some days to give him all the information he required in prosecuting the inquiry. The inspector was working practically three days' journey from the station, and could not possibly make timely references.

The prisoner having confessed, the inspector could not be suspected of improper conduct towards him. His aim was to arrive at a conviction by using the information volunteered by this prisoner. The prisoner was told that no murderer would be pardoned, therefore no illegal inducement was held out to him. If he knew himself to be a murderer, the inducements of pardon did not apply to his case.

From the copy of the judgment sent me it would appear that the High Court was of opinion that Mr. Lees had a Manipuri record made of the statement of Sagal Semba: "His first statement to Mr. Lees was also recorded in Manipuri. That record, however, is very different from the English record."

Mr. Lees in his evidence says that only the prisoner, the interpreter, and himself were in the room in the thana when the confession was made; no attempt at recording the confession in Manipuri was made. It was most important that the nature of Sagal Semba's confession should be kept secret. There was not a literate Manipuri near Lakhipur at that time whom we could trust with the secret. The few Manipuris in the inspector's employ were illiterate men.

The only Manipuri deposition I can find in the record is the statement made by Sagal Semba before me in Court.

A Manipuri who could write was found in Court; and he was instructed to put down exactly what the prisoner said to me. This document is not very intelligible in itself, and it has been very badly translated into English; but with this explanation it can be easily followed. I give the record of Sagal Semba's statement before me as recorded by me and as recorded by the Manipuri writer:—

Question.	Answer recorded by me.	Answer recorded in Manipuri as translated by Khelendra Singh.
1. Did you make any statement before the Magistrate at Lakhipur?	I made a statement	I made my statement before the Magistrate at Lakhipur, that I was repairing the houses. The Sahib paid Rs. 50 to Kalong Thikadar. I said to pay the remaining amount to the Thikadar.
2. Stop! Did you make the following statement? [The statement as recorded by Mr. Lees translated to accused in Manipuri.]	Yes.	—
3. Are these words as recorded correct and true?	Yes	What I told the Magistrate on Friday (?) is correct.
4. Do you wish to say anything more?	No.	—
5. Which (if any) of the six other accused persons were present that night?	Yes.	—
6. Who?	Chowba, Nacipa, Felem, Chabongbom Hijapa. I cannot recognise Sarba Singh as having been present. The night was dark.	I know (evidently means "identify"). The man standing here Nanya Bakpa Chowba Singh and Nashipa Ningthowba I know (=identify). I also know Phelem Ama Singh, Chabongbom Shajow, and I know (=identify) Hijapa Modon Singh. I do not know perfectly well Sarba Singh.

To return again to the circumstances of the confession, it must be noted that if Mr. Carnac had sent the prisoner into Silchar to have his statement recorded in Court two days would have been lost and the statement might have been withdrawn. With the guarantee of Mr. Carnac's presence at the thana, I could conclude that some very urgent motives for sending out Mr. Lees existed.

The police detention of Sagal Semba, which had been granted in order to secure his identification as a man against whom there was great suspicion, was now necessary as indispensable to the further investigation of the case.

It is also to be noted that on the 2nd July the inspector distinctly records his suspicion that Sagal Semba was not telling the truth. The inspector refrained from arresting some men implicated by the confession, though these men were at hand, in fact, present at the thana.

Had the confession been taken at Silchar, and the police, on the strength of that confession and without the knowledge of the facts disclosed by the further inquiry, sent up the persons named by Sagal Semba, there was no legal bar to these men being convicted on the strength of this confession and Khamdon's statement, but there would have

been a serious miscarriage of justice. The inspector by further inquiry was able to detect the untruth contained in the confession; and to show Sagal Semba in a true light, not as an unwilling and minor participant in the dacoity and murders, but as a ringleader and as a person who did not hesitate to include in his confession perfectly innocent men who had assisted in his capture.

Diary No. 58, dated the 3rd July 1893.—In this day's diary Sagal Semba made a further statement before the inspector.

He said that after the murder he went to Jaipur, then to Binnakandi, to Mongulpur, to Jaifrbund, to Goalipar, Badrigram, Protapgarh (Sylhet), Rajbari, to Nandari (Independent Tippera), to Protapgarh (Sylhet), and then to Jaifrbund, where he was arrested. This shows that he was concealed by the villagers.

He said that whilst at Jaipur he wanted to surrender himself, but was dissuaded by some of the others, as they would be put in trouble and made to disappear.

Diary No. 59, dated the 4th July 1893.—On the statement of Sagal Semba Shajow and the very suspicious manner in which he had given his statements as witness in the inquiry, it was resolved to arrest Chowba Singh* Daffadar, the contractor at Baladhan, under whom the Manipuris worked in the bungalow. There was also the evidence of the garden *mali* that Sagal Semba and two other Manipuris, who had no business in the garden, had visited Chowba Singh on 11th April, and conversed with him behind the bungalow.

The Manipur authorities had arrested some Gurkhas, who were said to have been at the garden and disappeared immediately afterwards. These men arrived on this date. They were Sarba Singh (convicted in Sessions), Dharma Singh, and Dhanbir Singh (both released without trial). Sagal Semba† told Mohan Singh (approver) that it was the duty of everyone to confess, but Mohan Singh denied all concern in the affair.

Diary No. 60, dated the 5th July 1893.—Dharma Singh (arrested in Manipur) was examined. He said that he left this district for Manipur before the date of the murders (about 24th March). This contradicted the statement of Ningthowba (accused), who had said that Dharma Singh did not leave till after the occurrence. (This man was afterwards released, his statements proving correct.)

Sarba Singh, *alias* Chapra Singh,‡ was also examined. He was the son-in-law of Ningthowba (accused).§ He said he came to the district occasionally with dry fish to sell at Lakhipur bazar. He went to his father-in-law's house for money, as the family were starving in Manipur. His father-in-law, Ningthowba, told him he had no money, but that Abong Singh would go to Silchar for money, and when Abong returned he would pay Sarba something for his wife and children. Four days afterwards Ningthowba brought Sarba Rs. 10. The day he received this he left for Manipur. Ningthowba told him that Abong had not gone to Silchar, so he had had to borrow Rs. 10 from someone for him. [Ningthowba said (13th May) that Abong had paid Rs. 10 to him for work done on the dāk bungalow.]

Dhanbir Gurkha, another prisoner sent from Manipur, was also examined. He had been arrested, as, when his house was searched at Manipur, some clothes believed to correspond with the description of the stolen clothes were found in it. The clothes were not identified as Mr. Cockburn's property, and this man was released.

Sagal Semba Shajow (confessing accused) was further examined. He said that Sagal Semba made further statements. Chabongbom|| (accused) owed him Rs. 10 before the occurrence, which he was not in a position to pay, but that after the occurrence Chabongbom gave money loan to four men whom he named (Rudra Singh, Chargol Singh, Golap Singh, Pathen Singh), and bought a buffalo for Rs. 100 from Bhabi Singh.

He said that if all the persons whom he named were produced before him, and if they refused to speak the truth, he would tell them "to their face" what he knew of the matter. He said he had repeatedly advised them not to murder, and told them that nothing would be kept concealed, but that one day the matter was sure to come to light. In spite of this expostulation, Chabongbom Shajow and others "turned mad" to commit the dacoity from temptation of the money, and said that the three persons in the bungalow were not worth caring for.

Chabongbom Shajow, who was in the Silchar gaol, was sent for, so that he might be confronted with Sagal Semba Shajow, as the latter desired. Police detention of Chabongbom Shajow was sanctioned by me for this purpose for a period of four days (7th to 10th July).

* Convicted in Sessions.

† Now energetically assisting the inspector.

‡ Convicted at Sessions.

§ Convicted.

|| Convicted.

Diary No. 61, dated the 6th July 1893.—¹ haicha Pathen (Pathen Singh mentioned above) was examined as a witness regarding a loan from Chabongbom Shajow. He said that two months before he had borrowed Rs. 40 from Chabongbom. He said that (previously) Chabongbom had no buffaloes, cows, or cattle, and no *bari* to live in. He had constructed a shed in Anjow Singh's compound to live in. Last year he cultivated Anjow Singh's land (dividing the produce) with Anjow's old buffalo. He had never given loans before to any one.

Rudra Singh (also mentioned above) said that two or three days before the inspector took up the inquiry, Chabongbom gave witness a loan of Rs. 40, and he had heard that Golap took a loan eight or ten days previously of Rs. 20 or Rs. 25. He repeated Pathen Singh's description of Chabongbom's want of means previous to this.

Sagal Semba Shajow said that he had seen Sarba Singh (convicted) in company with Ningthowba at the garden and at the village; also that he used to visit Ningthowba at the garden for money. He could not say if Sarba Singh was one of the dacoits.

Chabongbom Shajow arrived at the thana. He totally denied having stated anything previously. It appeared that he had received advice in *hajaj* to deny everything. (Chabongbom made most important statements of a compromising nature on 16th, 17th, 19th, 20th, and 31st May, saying that he saw Sagal Semba and others leave the gambling-room and cross the river, and was told that they were going to loot the garden *hundi* and was invited to come, and was so frightened that he could not perform the call of nature.

Next day, 7th July, he admitted lending money, and said that the money was given him by his sister.

It is a regrettable incident that Chabongbom's statements in May were not recorded in the presence of a Magistrate. His statements being given before the police could not be proved in Court. It appeared likely at one time that Chabongbom would be offered pardon to become approver, but I was not prepared to make any tender to him till the inquiry was completed.

Up to this date the investigation had proceeded on the clues furnished by Chabongbom's statements (which he now withdrew).

(On this date (6th July) Phelem Amu,* Mukhta Singh,† and Mohan Singh‡ were

* Convicted at Sessions. arrested on the strength of the confession made by Sagal Semba Shajow.
† Approvers.

Phelem Amu was kept at—
Lakhipur 6th to 11th July.
Barthal 12th to 19th July.
Lakhipur 20th July to 1st August.

‡ Approver. Mohan Singh‡ was kept at—
Lakhipur 6th to 11th July.
Barthal 12th to 19th July.
Baladhan 20th to 31st July.
1st August taken to Silchar *via* Lakhipur.

§ Approver. Mukhta Singh§ was kept at—
Lakhipur 6th to 26th July.
Baladhan 27th to 31st July.
1st August taken to Silchar *via* Lakhipur.

Mohan Singh said on 26th July that if Mukhta and he were both pardoned he would admit anything. Mukhta was at this time at Lakhipur.

Mukhta was taken to the inspector at Baladhan, and informed of this the next day 27th July. He said he would consider the matter.

On 29th July Mukhta and Mohan said that, as they were promised pardon and had been assured that the Magistrate would pardon them if they confessed by the district superintendent, Mr. Carnac, and were further assured that they would both be pardoned (not one only), they agreed to tell everything.

I have put the dates together to show that the two approvers were kept 10 miles apart up till 27th. Mr. Carnac was at Baladhan with the inspector on the 28th July. The prisoners made their statement to him on 29th. Mr. Carnac says:—

“As regards keeping the prisoners together or apart, I should note that it was our endeavour to prevent all communication between prisoners, but for want of accommodation and sufficient police to guard the prisoners, had occasionally to be kept in the same building; and while this was so it is impossible to certify that absolutely

no communication took place between them, though every endeavour was made to prevent such."

From this reservation the approvers must be excluded. It is impossible they could communicate whilst 10 miles apart. They may have been "tutored" * between the 27th and 29th July, when they were at Baladhan together (being seen frequently by the District Superintendent on 28th and 29th).

Diary No. 62, dated the 7th July 1893.—Shajow Singh Mukhtar stated that Chabongbom had lent Rs. 40 to Rudra Singh and Rs. 40 to Charzol. He said that Sagal Semba and Chabongbom both disappeared from Anjow's gambling room about 11 p.m. on the night of the occurrence.

Diary No. 63, dated the 8th July 1893.—Ajak, Chabongbom's wife, examined. She said that she had only seen Sagal Semba one day, when he came and begged for rice at her house. She had never lent money to Chabongbom Shajow.

Sagal Semba Shajow † described where Chabongbom had purchased the buffalo. The inspector sent for the Cacharis who had sold this buffalo.

Diary No. 64, dated the 9th July 1893.—Bhabi Singh, brother of Chabongbom, said that two or three days after the occurrence his brother took 16 *kyars* of land *ijara*. The witness got a loan of Rs. 30 from his brother Chabongbom (accused) and Rs. 70 from Chowba Singh (accused) and Thambol Singh. (Witness had previously been examined by the local sub-inspector, and stated Chabongbom and Chowba Singh's names, but not Thambol's. He now explained that he did not mention Thambol's name before because he did not know his name.) This money was got without a bond. (Chowba Singh had previously denied lending any money to this witness. The introduction of Thambol Singh's name was evidently a got up statement to divert suspicion from the prisoners.)

Chabongbom Shajow's sister said that she had lent Rs. 100 to her brother to take land in *ijara*. Her brother was very poor, had no means. She now and then helped him by giving one or two rupees in the absence of her husband.

Diary No. 65, dated the 10th July 1893.—Uzuram Cachari described how Chabongbom and another man, said to be his brother, went with him to Anjow (the village Mukhtar) and bought a buffalo for Rs. 100 about three months previously.

Several other witnesses gave similar evidence.

The Cachari witnesses gave very different account to the Manipuri witnesses, who were evidently giving a prepared story. The Cacharis agree with Sagal Semba's statement, and disagree with that of Chabongbom's friends.

The inspector wrote:—

"I find keeping Chabongbom here is no good. Keeping him rather encourages the others. He was telling my head constable to-day that he and Sagal Semba will get off. From this I infer that he is trying to induce Sagal Semba to withdraw his statement. As the number of constables I have got with me (11) is not sufficient to guard six prisoners in separate places, I shall leave behind two men, Mukhta Singh (approver) and another prisoner, under charge of Mr. Anley, inspector of Punitive Police, and shall take three prisoners [Sagal Semba, Phelem Anu, and Mohan Singh (approver)] to Barthal tea estate, where I am going to shift my inquiry to-morrow. I shall send Chabongbom to Silchar gaol. Mr. Tailbot has written to me that he will be able to give accommodation for my prisoners at Barthal tea estate."

I make this extract in the interest of the inspector. It shows that on 10th or 11th July he had no intention of "tutoring" the two approvers.

He left one of them in the custody of Mr. Anley, European inspector, at Lakhipur, and took one for separate custody to Barthal tea garden, where the European manager would be aware of all that happened. As stated before, he remained at Barthal till the 19th, and then went to the Baladhan tea garden.

Diary No. 67, dated the 12th July 1893.—The inspector told the villagers of Jaipur that he would remain for months in their village, if necessary, till he got at the facts of the case. He said that Sagal Semba's statement clearly showed that the villagers were aware of the facts. The villagers said that they would consider what they would tell him. (From the information of spies it was certain that they could give a great deal of information, but they had leagued together not to tell anything, and to prevent others giving information.)

The villagers said that those who knew anything of the case were afraid to say anything for the following reasons. They were afraid that if they said they knew anything they would be taken as accused by the inspector. They had concealed the matter

so long, and would get into trouble if they now said anything for this concealment; (This style of argument is not what would be expected from people anxious to bring offenders to justice.)

Diary No. 69, dated the 14th July 1893.—The Inspector's exertions with the villagers of Jaipur and assurances that he would prosecute the inquiry as long as necessary produced some effect this day. With the consent of the villagers, Tamrodhaj Singh came forward, and made the following important statement. He worked in the garden for two months with Sagal Semba (accused) under Chowba Singh. He received only subsistence allowance. The garden is due him Rs. 10 still, but he got ill and left the garden and could not go back for his due. Two or three days before the *sankranti*, he went to Chabongbom's house after sunset for fire. He saw Chabongbom, Sagal Semba Shajow, Oinam Pamhei, and Nowren Mukhta Singh (all accused) sitting together. They said that they had worked long in the garden and not got paid. The coolies were being paid, but not they. They would loot the *hundi*, even though they died or killed the Sahib in the attempt. They asked the witness if he would go with them. He said he was ill, and feared to do such a thing. He would not go, and they should not make such suggestions. After the occurrence these three disappeared from the village. Chabongbom and Sagal Semba lived together in the village, and were of one heart. Chabongbom Shajow was a man of very poor condition, but after the occurrence he lent some money and bought a buffalo. When asked, he used to say that he got the money for this from his sister. Witness lived next door to Chabongbom.

Hera Singh, another villager, said that 10 or 11 days before the occurrence he heard Sagal Semba and Mukhta Singh and some other Manipuris talk about taking the money themselves, since the Sahib did not pay them. One said they would loot the treasure, another proposed to kill the Sahib. These men were Manipuris of Manipur (looked down on by district Manipuris as uncivilised and low in the social scale).

Diary No. 70, dated the 15th July 1893.—Several other villagers gave evidence of the accused persons living at the village at the time of occurrence.

Diary No. 71, dated the 16th July 1893.—The inspector then went to Kamranga village, where some of the accused had lived. Babu Singh, of Kamranga, said that he saw some five or six men at 2 or 3 in the morning going along the road when he went out to ease. He went up to them and recognised Ningthowba (accused) and Mukhta Singh (accused). He did not know the others, but they said that their names were Phelem Amu and Oinam Pamhei, and some others not named. They said they were going from Baladhan, where they worked, to Lakhipur. He recognised Modon Singh by his voice among them.

Tonjow Singh said that he heard Modon Singh, Mukhta, Amu, Ningthowba, and four or five other workers in the garden talking abusively of the Sahib, because he had not paid them, though he was always promising to do so. They were saying that the day they got angry they would get his head. On the *sankranti* day Modon, Amu, Mukhta, and Ningthowba suggested to him to join them in robbing the Sahib, who had lots of money but would not pay. He refused. They said to witness, "You are good for nothing, you Manipuris of this place, so the Sahib does not care for (respect) you, and oppresses you. We are Manipuris of Manipur, and do not dread Sahibs."

(Whether this witness spoke the truth or not, there can be no mistaking the exact manner in which he described the sentiments of hill Manipuris.)

Dairy No. 72, dated the 17th July 1893.—Chowbi Nauvem, widow, said that Mukhta Singh (accused) used to visit her house, but never stopped there. If he said he stopped on the *sankranti* night at her house (see Mukhta's statement on arrest), this was quite false.

Mukhta Singh (accused), however, repeated that he used to live sometimes with Chowbi, and was at her house on the night of the occurrence.

Phelem Amu Singh (accused) said that at 8 or 9 a.m. after the morning of the occurrence, the leading villagers of Kamranga told him, Modon, Hijapa, Ningthowba, and Oinam Pamhei, to leave the village. They said, "You Manipur people are a bad lot, and our village people do not like that you should stop in our village." (This shows that the villagers suspected these men of being the murderers.)

Accordingly he, with Modon, Ningthowba, and Oinam Pamhei, left the village, and concealed themselves in the jungle, where they remained one night. Next day Ningthowba learned from Abong Singh, the village mukhtar, that the woman Sadi had said that Cacharis had committed the murder. On hearing that Cacharis were suspected,

they came out of the jungle and stopped at Kamranga. After two days Ningthowba, Modon, and Oinam left the village, and he also left and went to Jaipur.

Along Singh, the village mukhtar, denied that he told these men to conceal themselves.

The inspector notes in this day's diary that he learnt that two Manipuris of a village near Silchar had been to these villages and induced the villagers not to disclose anything, telling them that if they disclosed anything they would be put in difficulties. These two men were Chowba Singh and Khoidol Singh (who afterwards were assisting the defence at the trial).

Diary No. 73, dated the 18th July 1893.—Information was received from a Cachari that two Manipuris went with a gun and pistol and some other property to two or three Cachari *punjis* in the hills to sell them. Men deputed to trace up this property.

Diary No. 74, dated the 19th July 1893.—Chandra Singh, of Jaipur village, also volunteered a statement that he heard Chowba, Chabongbom, Sagal Semba, Mukhta, and six or seven others discussing that they would rob the treasure. This was on the Sunday before the murder (Tuesday). They agreed to rob the bungalow on Tuesday night, because the coolies were to be paid on Wednesday. The morning after the occurrence he saw Chabongbom, Sagal Semba, and Mukhta about 7 a.m., and did not see Sagal Semba or Mukhta after that. Chabongbom gave out that if any one wanted a loan he could give it and take *ijara* of land. He had lent money to Rudra Singh. Witness suspected that the murder was committed by those he saw consulting on the previous Sunday, and when he saw Chabongbom lending money and buying a buffalo his suspicion was confirmed.

On this day the inspector submitted a brief statement of the witnesses for the prosecution for my orders as Deputy Commissioner, whether the accused persons should be sent up for trial in the present state of the case.

Instructed the district superintendent, Mr. Carnac, to go out again to the place and look thoroughly into the whole matter, and also determine whether it would be possible to obtain the statement of any one of the prisoners as an approver. We had come to the conclusion by this time that the ringleaders were Chowba Singh, Sagal Semba, and Chabongbom Shajow, and that it would not be proper under any circumstances to offer direct pardon to one of these. The same objections did not apply to the other prisoners, and it was essentially necessary for the peace of the district that a case of this nature should be thoroughly determined. The offence was to some extent political, a raid by hillmen on a bungalow with intent to murder and rob.

Diary No. 75, dated the 20th July 1893.—The inspector took Sagal Semba Shajow to Baladhan garden to point out the position of the dacoits at the occurrence.

The account book showed that not more than Rs. 780 was stolen. If the money was equally divided among the 15 or 16 men that were engaged, each would have got Rs. 50 or a little more. If the ringleaders got the larger share of the plunder, the other members of the gang would get very little. (The approvers said they had got only Rs. 10 each.)

From the manner in which Sagal Semba pointed out the incidents in the bungalow, the inspector inferred that he must have been one of the principal actors in the tragedy. He had said that he remained outside on the watch, but he was able nevertheless to point out what happened inside the bungalow.

Diary No. 77, dated the 22nd July 1893.—From confidential information the inspector ascertained that the gun and pistol had been sold for Rs. 60 to some hillmen by Manipuris* He deputed men to search (the search was unsuccessful).

* He also heard that one shirt with gold studs and two shirts used by women (Sadi's) were also sold by Manipuris.

The inspector reported that owing to sickness among the constables he found it difficult to arrange for guarding the prisoners, who were kept apart. He therefore sent back two to the thana (from Barthal garden).

Diary No. 80, dated the 25th July 1893.—Heremdao Cachari informed the inspector that he saw the double-barrelled gun in the house of a Kuki hillman on 20th July, who had bought it two months previously from two Manipuris. The inspector wrote:—

“I would postpone sending up the case in A. Form for a few days till I could know for certain if there is any hope of recovery of the double-barrelled gun.”

Diary No. 81, dated the 26th July 1893.—Heremdao said that he thought he could manage the recovery of the gun within five days. He required Rs. 20 and some food as a present for the Chief. (These villages are in the hills nominally, but not really, under the jurisdiction of Manipur; practically the Chief is the only authority.)

Mohan Singh informed the inspector that if Mukhta Singh and he were made witnesses for the Crown, then both of them would say what they knew. Mukhta Singh at this time was at Lakhipur, 10 miles away from the inspector, and in charge of

Inspector Mr. Anley. Mohan Singh further stated that—

“If both of them be made witnesses, he had no objection to be made a witness, otherwise he had resolved not to say anything, and he will deny any knowledge of the matter, and take his chance of being convicted or discharged.

Diary No. 82, dated the 27th July 1893.—Mukhta Singh (approver) was brought from Lakhipur to Baladhan. He said that he would consider whether he would accept the offer of pardon. Mr. Carnac went to Baladhan.

Diary No. 83, dated the 28th July 1893.—Mohan Singh and Mukhta Singh declined to become witnesses for the Crown. Mr. Carnac wrote on the diary—

“I have directed the inspector to send up the case for trial, lest delay should cause the loss of some of the evidence we have got. I have fixed the 3rd August for hearing. Eight persons will be put upon their trial, and there is evidence also against another man who has not been yet arrested. There is just a chance of two of the prisoners turning Queen’s evidence before the case comes on for trial, but not much.

“The recovery of the gun and other stolen property seems very doubtful. I will return to Silchar on the 31st. Camp Baladhan, 29th July 1893.”

At this period the following were the persons under arrest, who were to be sent up for trial :—

The nine men actually tried—

Howjow Singh	} Arrested on the statement of Chabongbom Shajow, Khamdol Singh, and the confessions of Sagal Semba Shajow. Released after the approvers had given a full account of the occurrence, mentioning the names of the nine men tried and the names of five men not arrested, and stating these four men were not engaged in the affair.
Laitem Singh	
Dharma Singh	
Bhabi Singh	

Diary No. 84, dated the 29th July 1893.—The accused persons Mukhta Singh and Mohan Singh, under promise given by Mr. Carnac that if they told the truth and gave a full account of the occurrence before the Magistrate they would receive a pardon, made a statement giving a full account of the dacoity and murder.

The previous day they had refused the inspector to tell anything, evidently not trusting him or believing that he was speaking the truth in saying they would be pardoned. They were then interviewed by the district superintendent, Mr. Carnac, who assured them that they would be pardoned, and then only they agreed to make a full statement. Their statement was not a confession in the legal sense, because it was made under promises and inducements. My reason for instructing these officers to hold forth such promises and inducements at that period and not delaying the tender of pardon till the trial was because I wanted to have the case thoroughly investigated on the lines disclosed by these statements, so that the statements might be tested by independent evidence, and any points not already known to the inspector inquired into. This procedure had been adopted in the case of the confession volunteered by Sagal Semba, and it had been discovered that Sagal Semba had not made a full or true confession. He had described that he had remained outside the bungalow and taken a very minor part in the dacoity, but he had betrayed himself by pointing out what had actually occurred inside the bungalow to the inspector. He had also included persons as members of the gang of dacoits who had been proven not to have been members, but who were persons whom Sagal Semba wished to revenge himself on for assisting in his capture and giving information regarding him.

It was quite possible that any of the accused who might be offered pardon would make a similarly misleading and inaccurate statement. I judged it therefore advisable to be informed of their narrative before the case came on for trial. I was prepared for a certain degree of reticence in the statements of an approver, and a strong tendency to minimise the individual share in the proceedings. The prisoners were ignorant semi-savages. They looked upon revenge as a natural consequence of ill-treatment. (Even after the trial they could not conceal altogether their gratification at the murder. See Appendix—Further examination of Mukhta Singh).

On 29th, 30th, and 31st July, the statements of the approvers were tested. They were taken to the bungalow, and in the presence of a number of witnesses they pointed out the different spots where each portion of the night’s proceedings took place. The

description they gave and the places they showed exactly agreed with the state of the bungalow as it was seen by the Doctor Babu and garden Bala (who were present at this examination) on the morning of the murder. They showed where they all assembled behind a small *tila* well screened from observation, at a distance of 478 feet from the entrance to the bungalow compound. They showed the place where they shared the money under a big tree opposite the hut where Chowba Singh Daffadar and two others of the accused used to live.

On receipt of intimation from Mr. Carnac that two of the prisoners would become Queen's evidence, I sent out Mr. Lees to ascertain what statement they had actually to make, for the reasons I have just mentioned, to follow up the statements and test their truth. Mr. Lees took a memorandum of their statements in the form adopted for examining witnesses. This was entirely for my information, so that I might decide what course was to be adopted, whether to have the case sent up then or to go further on with the inquiry. On a consideration of this report, I considered a Court would be justified in convicting the persons named as murderers and dacoits, and I ordered the prisoners to be sent up at once in A. Form.

Except Chabongbom Shajow, a notorious bad character, without any visible means of livelihood, and living, by his own statement, on money given by his sister, and Chowba Singh, the contractor for the work in the garden, who were both residents of this district, all the other accused were residents of Manipur, who had come down to work as day labourers in the district for the cold weather. Five men not arrested were named by the approvers. Four of these men are still untraced.

Diary No. 92, dated the 7th August 1893.—The men sent in search of the gun returned. They had received information at Chengjur Punji that one and a half months previously two Manipuris were in possession of a gun.

There is no doubt the gun has been converted—altered beyond identification.

IV. PROCEEDINGS IN MY COURT.

I commenced the proceedings by putting the statement made by Sagal Semba Shajow before Mr. Lees on the record. Then I put certain questions to Sagal Semba Shajow about this statement. Did he make any statement? Was the following statement (translated and read to him) the statement he made? Were the words as recorded correct and true? He had mentioned 10 or 12 names. Were any of the prisoners (who bore similar names and whom he saw now for the first time as co-prisoners with himself) the persons he meant (not to elicit names of any others)? His answers were carefully recorded by me and also recorded by the only Manipuri-writing person obtainable at the time as carefully as his stupidity and ignorance of such work would permit. I have already described the contents of this Manipuri record, which was apparently mistaken for a Manipuri record of the statement made before Mr. Lees. I submit I was entitled to ask these questions under section 342, Criminal Procedure Code. The statement to Mr. Lees was evidence against him, and for the purpose of enabling an accused to explain any circumstances appearing in the evidence against him, the Court may at any stage of the inquiry, without previously warning the accused, put such questions to him as the Court considers necessary.

Supposing the fact of being in the police custody had in any degree influenced Sagal Semba to make the statement he did before Mr. Lees, such circumstances no longer existed in my Court when he was being examined. He had been sent up as a prisoner and excluded from pardon, yet he persisted in declaring that his confession was true; that he unwillingly, and only in a very minor degree, took part in the occurrence; but still that he was an accomplice in the dacoity. From his statement before me, if that before Mr. Lees was insufficient, he might have been convicted of dacoity.

The next proceeding in Court has not been correctly represented. The pleader for the defence said he had not consulted with his clients. I said he might do so. He said he wanted a private consultation. I said he might have a consultation in the presence and hearing of the Court sub-inspector or the gaoler in the usual manner. He said that would not serve his purpose; he wanted a consultation out of the hearing of anyone. I said that he would, as a privilege, have this special interview before the prisoners were called upon to make any defence. Then the conversation ceased. I endorsed on the petition, "No delay necessary." Mr. Carnac was present in Court at the time, and distinctly remembers these proceedings. The pleaders made no further application to speak to their clients during the rest of the inquiry.

The hours when the Court was sitting were between 12.30 a.m. to 5 p.m. daily. The pleaders made no attempt within my knowledge, to see the prisoners in the gaol or in the court room lock-up where they could have interviewed them (before or after court) in the ordinary manner in the presence and hearing of the officers in whose custody the prisoners were. On the 4th they put in a second petition, saying they were not getting a full opportunity of consulting together.

This referred again to a private interview. I wrote on that petition in continuation of my previous verbal promise—"The accused, have not been called upon to make any defence yet." "They will have an opportunity (for this private consultation) to-morrow." My relaxation of the rules regarding the custody of prisoners, so far as concerns interviews with prisoners in favour of these accused, has been grossly misrepresented as a denial of the ordinary right of prisoners to consult with their friends and legal advisers. I have never on any occasion denied this right of any prisoner.

I examined the witnesses on the 3rd to 8th August. When I had examined Mukhta Singh, approver, on the 3rd, it was too late to commence the examination of Mohan Singh, approver. For this reason the offer of pardon, though actually read out on the 3rd, was not formally accepted by him till the 4th. This did not really matter, and I was under an agreement to pardon both of the approvers as formerly explained, as a preliminary condition to obtaining the evidence of any one of them.

On the 5th August I examined Tamra Singh. In examining each witness I had before me the record of the statements each had made before the police. I perceived this witness was making statements before me entirely inconsistent with, and contradictory to, the statements made before the police. In other words, I had strong reasons to believe that he had committed perjury either before me or before the inspector. He could be tried and punished under section 193, Indian Penal Code, on the alternative charge. I had to deal with him, not as a witness in a case, but as a criminal. It was not advisable at that time to order him to be prosecuted and sent in custody to a Magistrate for trial. The ordinary course is to refrain from passing such an order till after the proceedings against the present accused were closed. I took the ordinary precaution for securing his attendance when necessary for the purpose of passing such an order, by calling on him to give Rs. 200 bail to appear when called on.

I believe that this man, who knew, or had reason to think, that he would be prosecuted for perjury, who was an immigrant labourer into the district with no property to speak of, would have disappeared into the Manipur jungle, where there was very slight chance of being traced, had I not called upon him to give security. It shows how little he was trusted by his friends and countrymen that they would not give bail for him till the Sessions trial when he was required for the purposes of the defence. I examined the inspector on 8th August, which closed the case for the prosecution, with the exception of the dying deposition of Sadi. This I found had been sent to Shillong. I informed the parties that it was being sent for, and I then drew up a charge, and recorded shortly my reasons for commitment as required by law.

Knowing, as I did, every step in the investigation, I believed the crime had been committed by these prisoners and five others not then captured. One was captured afterwards in Manipur and sent down; four of them are still untraced absconders.

I have no explanation to offer with regard to my refusal to allow cross-examination in the preliminary inquiry before me beyond the fact that I have always believed, since the Code of 1882 came into force, that the words "take all such evidence as may be produced in support of the prosecution," and the omission of the words with regard to cross-examination, which appeared in section 191 of the Code of 1872, mean that the inquiring Magistrate has power to stay cross-examination. Mr. Phillips, I find, took the same view in his Manual of Indian Criminal Law, second edition, 1887. He says, "Magistrates should note that they are not bound to permit cross-examination in inquiries preliminary to commitment. The Legislature has intentionally omitted to re-enact the second paragraph of section 191 of the former Code, &c." I only mention this as showing that a senior Magistrate, who has paid great attention to comparative jurisprudence, had formed an opinion similar to my own as to the effect of the omission of the clause which ordered cross-examination as part of the preliminary inquiry. I should probably not have refused the pleader's request to be allowed to cross-examine in this case had the Sessions not been close at hand, and any further delay in commitment would have meant an adjournment of the case till the Sessions in January instead of having it disposed of in September. It was desirable that a case of this nature, already long pending, should be disposed of as speedily as possible.

V. PROCEEDINGS IN THE COURT OF SESSIONS.

I have to refer to several points in the Court of Sessions and statements of evidence therein referred to in the judgment of the High Court.

(1.) *The Purpose of the Attack.*—There is every reason to believe that revenge formed the principal motive in the minds of the ringleaders; that the men went there with every expectation of losing some of their numbers in attacking a European, physically very powerful and known to possess fire-arms, not in order to steal a sum of money, but to murder Mr. Cockburn. With my experience of five years of the people of this district, I cannot imagine it possible that a body of some Bengali Musalmans, with a Cabuli and some Cacharis (a remarkable association of classes who do not ordinarily associate), or even a body of Manipuris, formed the resolution that it was necessary to murder the three people to carry off the money. They could have waylaid the money a few days previously, and carried it off from the garden coolies in the Lydiacherra jungle, through which the garden road passes. This form of dacoity is well known in this district. The garden remittance was carried through the jungle from Lakhipur to Baladhan every month with no guard to protect it.

(2.) *Sadi's Statement.*—Before the Sessions Court the bearer deposed that Sadi said to him, "Manipuris or Cacharis had done it." "The men who did it used some such languages." This statement of Sadi to the bearer was on the 12th or 13th. Then it must be noted that though Mr. Howell reached Baladhan on the evening of the 12th, he was not able to get any statement from Sadi till the 14th. The Doctor Babu and Doctor Dundee deposed that she was for these three days, *i.e.*, 12th, 13th, and till the evening of 14th (when Mr. Howell thought that she was sufficiently rational to make a statement) in a state of semi-consciousness and more or less delirious. It was after passing through these stages and after giving birth to a dead child, and when she was in a state which the Doctor Babu in his evidence deposes as (*pagal kariya amar bodh pailana*) "not delirious," that she made the statement which, in my opinion, was the creation of a diseased mind acted on by the conversation of her friends who were tending her.

She says before Mr. Howell:—

- "(1.) They were Musalmans who attacked the bungalow—Bengalis and a Cabuli.
- "(2.) I came out of the bed-room, and was standing quite close to the Sahib when he was cut down.
- "(3.) Some Musalmans, not belonging to the garden, cut him down.
- "(4.) After that I ran out to the front verandah where I saw some people.
- "(5.) I then turned and ran down the *tila*.
- "(6.) The men I saw in the verandah pursued and cut me.
- "(7.) I saw 12 or 13 men.
- "(8.) The Cabuli came inside the house.
- "(9.) The Sahib was cut down at once.
- "(10.) Several men then came into the bed-room, and said they would cut me if I did not hand over the keys at once. [Contradicts (2) above.]
- "(11.) I then managed to get out of the room.
- "(12.) There was a light burning in the bed-room.
- "(13.) There were Cacharis among them too. [Contradicts (1) above. Cacharis are not Musalmans. It was impossible for her to distinguish between Cacharis and Manipuris.]
- "(14.) I could identify them on seeing them.
- "(15.) I don't know the names of any, or whether they worked here or not.
- "(16.) The Cabuli was fair, with beards and moustaches, and not old. (She seems to be referring to the Gurkhali.)
- "(17.) He had on a black coat and baggy black trousers (a most extraordinary costume for a Cabuli).
- "(18.) Four men entered the bed-room.
- "(19.) It was a Bengali and a Cabuli who asked for the keys.
- "(20.) There were no Manipuris, Kukis, or Nagas among them that I saw, nor any garden coolies. [We know that few people in this district, more especially the class to which the woman belonged, could distinguish the hill Manipuri (such as the prisoners) from the Cachari. This assertion eliminates Nagas, Kukis, and the plains Manipuris, perhaps, from the occurrence, and leaves Bengalis and Cabuli and Manipuris or Cacharis as the possible assailants.]

"(21.) The tea-house engine was working when the attack was made. The time was about 11 o'clock.

"(22.) The Cabuli came but to the front verandah with a wall-lamp in his hand.

"(23.) I have never seen any of these men before, not even the Cabuli. (They must have been men well acquainted with the bungalow, and therefore the woman shows that she had no proper opportunity of seeing them sufficient to identify them either by name or class.)

"(24.) They all had coats and *dhotis* of sorts, black and white.

"(25.) The Cabuli cut me down with a *dao*. (The Cabuli turns up at every incident, the lasting impression on her mind was of being attacked by someone who appeared to be a Cabuli.)

"(26.) I did not give the keys to anybody.

"(27.) The four men lifted up the curtain on the near side. I got out in the side opposite the door. (Then she must have passed them to get out of the door.)

"(28.) The Cabuli dropped the light in the verandah. (No dropped lamp found.)

"(29.) The chaukidar was cut first. He made no noise.

"(30.) When the Sahib was cut first, he cried out "*Pagli*,"* call the Doctor Babu."

"(31.) The Sahib went out, hearing the dog bark (the dog was inside the bed-room).

"(32.) He came out calling the chaukidar, Chetri, but got no reply.

"(33.) I did not see him cut down. [Contradicts (2).]

"(34.) When he was cut, he turned to come back."

If we compare this statement with that made to the bearer as being her first impression of the occurrence, it is impossible, had her statement, as here recorded, been true, she would have said to the bearer they were Manipuris or Cacharis, as they used some such language, which exactly describes the impression that seeing and hearing persons who were one or other of these races would make on her.

Objection of the Government Pleaders to allow the Statement of Sadi to be admitted.—I regret very much that the pleaders for the prosecution should have adopted this course. It was done against my instructions and without my knowledge. It is all the more to be regretted, since the prosecution pleaders refrained from discussing the statement, and undue weight has been attached to it, which could be explained away. The woman could not first remember the assailants were "Manipuris or Cacharis," and afterwards remember they were Bengali Musalmans, her own countrymen.

The Evidence as to the manner in which the Chaukidar was killed.—The High Court's judgment says that there was only one wound on the chaukidar's head. The doctor (Dr. Dundee) says that he saw only one wound on the head, which might have been the result of two blows (but not probably so), and that he made no further examination of the body, seeing the man was quite dead. I did not allow Dr. Dundee any fees for this examination, as it was not such an examination as would give any proper idea of the state of the deceased. The Doctor Babu is stated by the Sessions Judge in his note to have been nervous.

He says:—"I saw something like two wounds on the chaukidar's head or back of the neck. I may have said to the committing Magistrate that he had two on the back of the neck and one on the head." (This he did depose to me.) The *post-mortem* report shows the deceased is said to have died from the effects of wounds on the neck and right cheek caused by *dao*. This describes the appearance as seen by the sub-inspector.

The approvers say he was struck by two men, so their evidence on this point does not disagree with the other evidence.

The money in the safe would be in bags placed in boxes in the usual manner. The boxes were thrown down, and the bags and money carried off. I do not understand why the apparent discrepancy between boxes and bags was not cleared up at the Sessions.

These are the only two points where discrepancies between the approvers' statement and other evidence are pointed out in the judgment.

I may point out that the defence's cross-examination failed to shake the evidence of the approvers; that this examination was very prolonged, and conducted with great skill.

I have already mentioned my reasons for thinking that these approvers took advantage of my offer of pardon for the same reasons as would induce any accused to accept tender of pardon.

I mention all the above reasons as inducing me still to hold that the approvers spoke the truth on material points, with the obvious tendency throughout to show a very minor

degree of participation in the occurrences, which would not in itself render their evidence entirely untrustworthy.

There is one other point in connexion with the proceedings of the prosecution in the Sessions trial which I must notice. The pleader informed the Court that he could prove facts which tend to show that the witness Shajow Singh has probably been got at apart from the difference in his evidence. With the Court's permission, he cross-examined the witness to show these facts to which he referred. He elicited from the witness that he went to the house of a prisoner's brother-in-law with one of the witnesses for the defence; that this house was the temporary residence of 10 or 12 witnesses for the defence; and that he had a conversation with the man who was conducting the interests of the prisoner Chabongbom Shajow. I think that conduct of this kind certainly tends to show that the witness had been gained over, and with his contradictory statements in the evidence, would justify the prosecuting pleader declaring the witness hostile.

This was not the only witness won over.

Khela Singh (witness) says that he assisted one Golap Singh to collect Rs. 300 quietly one night from the village, because Khedon Singh said that otherwise their women would be ill-treated; and this money was given to Khedon Singh. This man says that he found the two prisoners who were got in the jungle, and arrested them without resistance. He did not explain how these men could have had any honest motive or purpose in jungle which belonged to the Lydiacherra tea estate, and which outsiders were not allowed to cut.

Khamdol Singh, another witness, says that his evidence before me was read over to him in English by a Babu, and by Khedon's advice he said "m—m—as." These perjured witnesses show the corrupt nature of the class of persons with whom this inquiry had to deal, the low class Manipuris, and explains why the corroborative evidence collected by the inspector was not available at the trial.

J. L. HERALD,
Deputy Commissioner of Cachar.

APPENDIX I.

INFORMATION ON WHICH ACCUSED WERE ARRESTED.

(1.) Chowba Singh, *daffadar*, on the statement of Sagal Semba and on the corroborative evidence of Tilok, who stated that he saw Sagal Semba and two others consulting him behind the bungalow eight or nine hours before the occurrence (*vide* inspector's diary of 4th July 1893).

(2.) Ningthowba Singh, (3.) Modon Singh, on account of their having been found in the jungle under suspicious circumstances (*vide* diary of 14th May 1893).

(4.) Chabongbom Shajow was arrested on account of his having made various compromising statements as a witness, and the evidence that Shajow Singh and he both disappeared from the gaming room on the night of the occurrence, and the evidence that, though he was a man of no means previous to the occurrence, and a notorious bad character, he had been largely lending money and on mortgage of lands and buying a buffalo for Rs. 100 to cultivate.

(5.) Sarba Singh was arrested on account of his being the son-in-law of Ningthowba, and on account of his having been visited by the latter at Lakhipur on the morning after the occurrence, as well as on account of his having left Lakhipur for Manipur on the same morning (*vide* inspector's letter attached to his diary dated the 13th May 1893).

(6.) *Sagal Semba Shajow*.—The suspicion of inspector fell upon him from the beginning of his inquiry from the statement of Tilak, which was strengthened by the statement of Khamdol and Chabongbom Shajow and other circumstances.

(7.) Phelem Amu, (8) Mukta Singh, (9) Mohan Singh were arrested on the confession of Sagal Semba (*vide* diary dated the 6th July 1893).

APPENDIX II.

MUKHTA SINGH, Approver, examined by Mr. CARNAC after the Case was committed.

Why did you not loot the *hundi* on its way from Lakhipur to the garden?—We did not want the money so much; we wanted to be revenged on the Sahib.

Why did you want to be revenged on the Sahib?—He troubled us much; he made his coolies break down work we had done, and made us do it over again two or three times, and said that he would not pay us until we did it. Most of us left Manipur because we had no food, and we could not get food for our work here. Therefore we are all very angry with the Sahib. Some of us said we would like to bury our teeth in his throat.

Who among you was most angry with the Sahib?—Sagal Semba Shajow; he said many things.

Had there been any talk about killing the Sahib previous to the Sunday?—There had been talk, but it was all settled on the Sunday.

Did you know that the Sahib had guns and dogs?—We knew that; we were prepared to die. Why should we fear dogs?

If you had aroused the coolies in the lines, what then?—We had come to fight; those whose fate it was to die would have died.

Why did you come to the back verandah?—We knew that the Sahib would come out into the back verandah if anything happened outside. Only in the daytime would he go into the front verandah.

Did no one remain in the front verandah?—Yes, Gurkhali, Madan, Hijapa, Oirekpa, Chowba, and Oinam Pamhei.

What were they there for?—The Sahib might run out into the front verandah; they were to do their duty.

Why did you kill the chaukidar?—When we attack a fort we first kill the sentry, then we enter inside.

How was the chaukidar killed?—Nasipa Ningthowba struck him with a *dao*, but the blow did not fall fair, and he rolled right over against the wall with a loud groan. Then Mima Nithokhamba gave him another cut; then the chaukidar's legs commenced kicking (in death agony).

What happened then?—The Sahib came almost immediately, opened the half-door, and put one foot out and looked. He may have seen the chaukidar's legs kicking, or he may have seen us. I don't know which, but he turned to go back; then five men rushed on the Sahib with *daos*, and he fell. He uttered a cry as he fell, but I don't know what he said. Those five men were—(1) Sagal Semba Shajow, (2) Chabongbom Shajow, (3) Chowba Daffadar, (4) Hawaii Mathal, and (5) Amu Singh. The first three were standing on either side of the door, which the Sahib opened; the other two rushed forward from the top of the verandah steps. I can't say who struck the Sahib first. It is not possible at such a moment.

Was there a light in the verandah?—There was a lantern, and we could see.

What happened after the Sahib fell?—A woman came running out from the bedroom and got out into the front verandah by opening the door. Then Gurkhali, Madan, Hijapa, and Oirepa Chowba ran after. Then Oinam Pamhei opened the other half of the door she got out by, so that all might come and go freely.

How could you see that?—There was a lamp on the table in the hall, *kamra* (front room), and everything could be seen. I could see right through the house.

What else did you see?—Chowba Daffadar and others searched for the key on the Sahib's body; they felt about his body for it. Hiranno Singh and others ran into the bedroom and searched about the bed. Then Chowba Singh said, "I have got the key." Then they went and opened the safe.

Why did you kill the woman?—Because she would have informed against us.

Suppose the Sahib had not come into the verandah, how would you have acted?—There were many doors and windows. We would have broken in somewhere.

Then some of you would have got shot?—I have already said we were many, and two or three of us got killed, then no matter; but we would have killed the Sahib.

Why did Chabongbom Shajow join you?—He did no work in the garden, and had a grievance against the Sahib?—Chabongbom Shajow is a gambler, and always wants money. Besides, he is a great friend of Sagal Semba Shajow, and had heard all about the Sahib.

What did you do on the days following dacoity?—What became of Sagal Semba Shajow?—So many Sahibs came that we all went about in different directions, and

no one looked after another. Therefore I cannot say what became of Sagal Semba Shajow.

The above was recorded by me this forenoon, the questions and answers being translated by Khedon Singh of Lakhipur and the Gossain of Jaipur.

Silchar, August 9th, 1893.

J. T. JIVETT-CARNAC,
District Superintendent of Police, Cachar.

APPENDIX III.

DETENTION OF PRISONERS.

(1.) *Ningthoba Nachipom*, (2) *Modon Hijapa*.—These two men were produced before the inspector on the 12th May from Lydiacherra jungle. They disappeared just after the occurrence (*vide* inspector's diary No. 5, dated the 12th May). They were arrested by inspector on the 14th May at 4 p.m., and sent to the Silchar gaol on the 15th May.

(3.) *Chabongbom Shajow*.—Was arrested on the 20th May at 6 p.m. By his own statement (*vide* diary No. 13, dated the 20th May) he was suspected to be an accomplice. Under Magistrate's orders, dated 22nd May 1893, custody under police was allowed for seven days.

Under Magistrate's order, dated the 26th May, five days.

Ditto ditto 31st May, seven days.

Ditto ditto 8th June, seven days.

Pending the arrival of Gurkhali prisoners from Manipur and for completion of investigation of the case, the detention of prisoner under police custody was allowed; and as there was delay for sending Gurkhali prisoners from Manipur, prisoner Chabongbom Shajow was sent to Silchar gaol on the 14th June 1893.

From 20th to 23rd May he was under police custody at Jaipur and Kamranga villages, and from 24th May to 13th June he was at Lakhipur in police station, and after the Gurkhali prisoner Sarba Singh's arrival from Manipur he was again sent to Lakhipur from Silchar gaol on 7th July; and he was from 7th to 10th July in Lakhipur police station, and was sent back to Silchar gaol on the 11th July. He was kept at Lakhipur police station apart from other prisoners, and he was from 11th July in gaol till the trial began.

(4.) *Sagal Semba Shajow*.—Was arrested at Jafirhand in Hailakandi on the 23th June 1893, and arrived at Silchar on the 30th June, and on that day 10 days' police custody was allowed by Deputy Commissioner for identification, and from Silchar arrived at Lakhipur on the 2nd July at 11 a.m., and made his confession on that day in the afternoon (*vide* diary No. 57, dated the 2nd July), and confession was recorded by Magistrate on the 3rd July; and for the purpose of completion of investigation of the case, the fact of his confession being kept secret, further detention in police custody was allowed by Magistrate as follows:—

Under order of Magistrate, dated the 13th July, 10 days, from 11th.

Ditto ditto 24th July, 10 days.

Ditto ditto 30th July, 5 days.

From 2nd July to 11th July at Lakhipur in police station.

From 12th to 19th July at Barthal.

From 20th to 31st July at Baladhan.

1st August, at Lakhipur in police station.

2nd August, Lakhipur to Silchar by boat, and 3rd August produced before Deputy Commissioner. He was kept apart from other prisoners, but in same house.

(5.) *Namairkepom Chowba, Daffadar*.—Was arrested on the 4th July at 8 p.m., and sent to Silchar gaol on the 5th July 1893.

(6.) *Phelem Amu*, (7) *Nowrem Mukhta Singh, Approver*, (8) *Howaibom Mohan Singh, Approver*.—Were arrested on the 6th July at 8 p.m. Detention under police custody for completion of investigation of the case was allowed by Magistrate on the application of police as follows:—

Under order of Magistrate, dated the 8th July, 10 days.

Ditto ditto 17th July, 10 days.

Ditto ditto 29th July, 10 days.

From 6th to 11th July they were in Lakhipur police station.

Phelem Amu and Howaibom Mohan from 12th to 19th July were at Barthal, and on the 20th July Phelem Amu was sent to Lakhipur police station, where he was up to 1st August, and on the 2nd August he was sent to Silchar gaol.

Howaibom Mohan Singh was at Baladhan from 20th July to 31st July 1893, and was kept apart from other prisoners.

Nowrem Mukhta was at Lakhipur in police station from 12th to 26th July (from 6th to 26th July). On the 27th July he was taken to Baladhan from Lakhipur, where he was up to 31st July. While at Baladhan he was kept apart from Sagal Semba Shajow and Mohan Howaibom till he disclosed everything.

On the 1st August Nowrem Mukhta and Howaibom Mohan were at Lakhipur in police station, and on the 2nd August by boat they were taken from Lakhipur to Silchar, and on the 3rd August they were produced before the Deputy Commissioner.

(9.) *Sarba Singh, alias Sarbajit, alias Chapra Singh Gurkhali.*—Was arrested at Manipur on the 17th June 1893; arrived at Lakhipur on the 4th July (with one Dharna Singh and Dharmabir Gurkhali; the former Dharna was arrested at Manipur on the 17th May 1893 on suspicion as an accomplice), and sent to Silchar gaol on the 11th July. Order under police custody for seven days was obtained from Magistrate on the 6th July 1893. This man was in custody in Lakhipur police station.

JUDGMENT.

CACHAR.

Reference No. 43, Appeal No. 868 of 1893 and Appeal No. 880 of 1893.

Mr. Woodroffe, Mr. P. L. Roy, Babu Boidonath Datta, Mr. Syud Shums-ul-Huda, Babus Sarat Chandra Ray Chaudhuri, Atul Charan Bose, and Joy Govind Shome - - - - - *For Prisoners.*
Mr. Hill - - - - - *For the Crown.*

Heard on the 23rd, 24th, 27th, 28th, 29th, and 30th November 1893.

Judgment delivered on the 11th December 1893.

Sagal Semba Sajow and others - - - - - *Prisoners.*

Six Manipuris and one Gurkha have been convicted by the Officiating Sessions Judge of Cachar under section 396, Indian Penal Code, of having jointly committed dacoity, in which three persons were murdered. The Assessors were for the acquittal of the prisoners, disbelieving the evidence of the approvers, Mukhta Singh and Mohan Singh.

On the night of Tuesday, 11th April last, the house of Mr. Cockburn, a tea-planter of Baladhan, was attacked by a body of men, who first of all killed the chaukidar, who was sleeping in the verandah, then killed Cockburn, and afterwards pursued the coolie woman with whom he was cohabiting, and mortally wounded her in an adjoining jungle, so as to cause her death a few days afterwards, and finally they carried off a large sum of money and various articles from the house. About these facts there can be no reasonable doubt. On the 13th April the depositions of certain witnesses produced before him by the police were recorded by Mr. Howell, a Magistrate, at the place of investigation, and on the following day he recorded the dying declaration of the woman Sadi, who died soon afterwards. On the 8th May the police inquiry was taken up by Joy Chandra Bhadra, inspector of police of Sylhet, who was especially deputed for the purpose. The proceedings commenced before the Magistrate at Silchar on the 3rd August, and the prisoners were committed for trial by the Sessions Court on the 7th idem.

Four of the prisoners, Sagal Semba Sajow, Chauba Singh, Duffadar Nasipa Ningthambo, and Madan Hajiba, as having taken a prominent part in the offence, have been sentenced to death, and the other three, Chang-bang-bang Sajow, Amo Felim, and Sarba Singh, have been sentenced to transportation for life. The case is before us on the appeal of all these persons, and also on a reference made by the Sessions Judge for confirmation of the sentence of death. The offence is one of the most atrocious character, the attack by a body of men having taken place about midnight for the purpose of robbing a European tea-planter of money, which had recently come into his possession, and all those in the house—the tea-planter, his native woman, and his chaukidar—were killed by sharp, cutting instruments, probably *daos*, in that attack

The hearing before us has occupied several days, and we have the satisfaction of feeling that everything that could be said in the case has been said before us by Mr. Woodroffe, who appeared for the appellants, and Mr. Hill for the Government in support of the conviction.

The case for the prosecution depends entirely on the evidence of two approvers, Mukhta and Mohan, and it becomes our duty to determine how far they can be believed and how far their evidence is corroborated. It is much to be regretted that the difficulties in this case have been increased by serious irregularities in the proceedings in every stage of it—before the police; before two Magistrates, who at various times interposed during the police investigation; before the committing Magistrate; and at the trial in the Sessions Court. Madhab Baori, the bearer of the tea-planter, was the first to give the alarm. He went early in the morning of the 12th April, as usual, to attend to his master, and found the body of his master lying at the entrance of the house from the western verandah. A milkman arrived at about this time, who has not been examined. The bearer at once went towards the coolie lines, and met Bipin Bihari Baori, the garden clerk, and Chandra Kumar Shome, the garden doctor, who were going towards Cockburn's bungalow, because it had been arranged that the coolies were to be paid and Cockburn had not appeared. They went with the bearer to the bungalow, saw Cockburn's dead body as already described, then found the chaukidar's dead body covered by a blanket in a corner of the verandah, and, lastly, found the woman Sadi mortally wounded in an adjoining piece of jungle. She was removed to the cook-house and attended to. On information given, Dr. Dundee and Mr. Murray, a tea-planter, arrived. The safe in the bungalow was found to have been broken open, and its contents, a large sum of money, gone, and other articles were missing. Blood was also seen on one side of the mosquito curtain of the bed on which Cockburn had been sleeping. The local police arrived soon after.

It is not quite clear, but it would seem that in the first instance it was suspected that some Cacharis had committed the offence, and that it was not until long after, probably not until the Sylhet inspector had taken up the case, that Manipuris were proceeded against. The woman Sadi, in her dying declaration made to Mr. Howell, Assistant Commissioner and Magistrate, on the 14th April, stated that "they were Musalmans who attacked the bungalow and a Cabuli. Some of the Musalmans not belonging to the Bungalow cut him (that is, the Sahib) down. I saw 12 or 13 men; there were Cacharis among them too. I could identify them on seeing them. I do not know the names of any." (She then described the clothes worn by the Cabuli.) "There were no Manipuris, Kukis, or Nagas among them that I saw." We may here state in passing that in the Sessions Court objection on behalf of the prosecution was allowed to the reception of this statement as evidence, and that, although an application was immediately made on behalf of the defence to summon the Magistrate who had recorded it, so as to make it evidence, the Sessions Judge at first abstained from passing orders on this application, and eventually he refused it. The Sessions Judge, however, has himself considered and discussed that statement without laying it before the Assessors who with him formed the Sessions Court, and he has dismissed it as unreliable. As it is undesirable to interrupt the narrative of the evidence, it is sufficient here to say that this was a material piece of evidence to which the defence was entitled, and which it was the duty of the prosecutor in the Sessions Court properly to place before the Court at the trial, and that it has not been properly considered by the Sessions Court. In taking objection to the admission of this statement without doing his utmost to cure any technical defect, the public prosecutor has, in our opinion, failed in his duty, and we would direct his attention to the remarks of Wilson, J., in *Damunu Kaji*, "Indian Law Report," 8, Calcutta, 121, in respect of his duties. Mr. Hill, who appears for the prosecution in this Court, very properly makes no objection to the statement being laid before us. We may further state that we cannot in any way concur in the reasons given by the Sessions Judge for holding that if received that statement is useless, because it is incoherent and, on the face of it, unreliable. The statements made by the bearer and others, who spoke to Sadi, do not show that she ever gave a contrary account of this matter. It is, however, material only to show how the case was started and the impression made on the mind of the woman regarding the class of persons who attacked the bungalow.

The Sylhet inspector took up the case on 8th May, but he did not send it up to the Magistrate until 3rd August. Meantime many persons, including the prisoners now before us and the two approvers, were arrested, and many of these persons remained in police custody under special orders obtained from time to time from the District Magistrate for terms exceeding in some instances as much as one month. This will be again referred to.

The inspector had stated that Sagal Semba Sajow, one of those now under trial, was arrested on 28th or 29th July. What is described as his confession was recorded on 3rd July by Mr. Lees, Assistant Commissioner and Magistrate, at Baladhan; and Mr. Lees has stated that he went to Baladhan expressly for the purpose. No reason has been given why this man was not sent on to Silchar within 24 hours of his arrest as usual and according to law, or why that statement should not have been made to a Magistrate at Silchar instead of to a Magistrate brought to Baladhan to take it while he remained in police custody. We may add that no reason is given for his being kept for another month in police custody, except that one of the applications, dated 11th July, for a special order from the Magistrate for detention for a term of 10 days is made for "the completion of investigation." In none of the orders passed by the District Magistrate is any special reason given for sanction to the detention of this man, although the law (section 167, Code of Criminal Procedure) expressly requires this to be done. In the case of others, and notably the cases of the approvers, a similar course was taken and similar irregularities are to be found, except that in the application made on 7th July by the police in respect of sanction to the detention of Mukhta Singh, one of the approvers, and others. The reason stated is that "they are men of Manipur, have no house here, and there is every likelihood of their absconding from here." If any detention was under such circumstances necessary it should certainly not have been in police custody, but in the Magistrate's lock-up. The Magistrate, however, sanctioned a detention for 10 days without comment, and he extended that detention on similar applications which expressed no reason at all for making them. We shall refer to this matter again. We mention it now to show how little confidence can be given to the statements made by Sagal Semba Sajow and the approvers which have been obtained under such circumstances. It is also deserving of mention here that on the 5th August, that is, on the day after Mohan Singh had given his evidence on conditional pardon, it is recorded that "Sagal Semba Sajow, prisoner, says (voluntarily)—'I was told by the inspector that if I told the truth before the Magistrate I should be released, but I have been kept in *hajat*.'" From this we understand that he desired to intimate to the Magistrate that his statements had been made under promises of pardon which had not been kept, and that he desired to protest against the preference shown to Mukhta and Mohan. This matter is deserving of consideration, as there are complaints of pressure and misconduct by the police, to which the unusually prolonged detentions in their custody under authority of orders of a Magistrate, very improperly and illegally passed, give weight. The record next shows that on 1st August Mukhta and Mohan Singh were examined at the police thana on solemn affirmation by Mr. Lees. The Sylhet Inspector tells us that he cannot say on what day he first examined Mukhta Singh, and he declines to refresh his memory by referring to his diaries on the point. It is a matter of much regret that the Sessions Judge should not have insisted on full information of this. The examinations taken by Mr. Lees on 1st August were as incriminatory as the statements made by them as approvers. Consequently, if any statements were taken from them they should not have been examined as witnesses, but as persons confessing their participation in an offence then under police investigation. These men, moreover, had for some time previously been in police custody, and were still under detention. Lastly, there is nothing in the records to show why these men should have been so examined on 1st August by Mr. Lees, a Magistrate not competent to deal with the case itself, when the police investigation was practically completed, for the entire case was brought before the District Magistrate at Silchar on the 3rd idem.

The District Magistrate commenced his proceedings by examining Sagal Semba Sajow and the other accused, but did not examine Mukhta Singh and Mohan Singh. The statement of Sagal Semba Sajow was really a cross-examination as to the statement recorded by Mr. Lees on 3rd July, apparently to cure any irregularities in recording that statement and to elicit the names of others which had not been mentioned. Mr. Woodroffe, for the appellants, very properly protested against the inquiry before the committing Magistrate being opened in this manner. If any of the accused desired to make a statement, the Magistrate was competent to record it, but he clearly went beyond the law in proceeding as he did. The law merely empowered the Magistrate to put such questions to any of the accused as he might consider necessary to enable such person to explain any circumstances appearing in evidence against him. We may add that it certainly did not warrant the course taken in respect of Sagal Semba Sajow. The pleader, who defended these prisoners, appears to have unsuccessfully objected to this procedure. An application was at the same time made on their behalf that they should be given an opportunity to instruct and consult their pleader. This also was

refused, and we may here state that the prisoners were committed to the Sessions Court on evidence recorded on examination-in-chief and without any cross-examination being allowed. Mr. Hill has told us that this practice is not unusual; but it is one that has never yet come under the notice of either of us. The unfairness of such a course is so obvious that we cannot understand how it could be adopted or defended. The Magistrate then examined Mr. Murray and Dr. Dundee; and, after tendering a conditional pardon to Mukhta which was accepted, he examined that person also as a witness. On the same day the Magistrate offered a conditional pardon to Mohan Singh, but it was not accepted until the next day, when he also was examined as a witness. Bipin, the garden clerk, was also examined on the 4th August. On the 5th, 7th, and 8th, other witnesses were examined. A charge was also drawn up on the 8th, and on the 9th August the prisoners were committed to the Sessions Court for trial.

When the trial commenced the public prosecutor, as already stated, informed the Court that he did not intend to put in the dying declaration of the woman Sadi as recorded by the Assistant Magistrate, Mr. Howell. It was in the Magistrate's record, but it was contended that it had not been attached thereto until after commitment. We are surprised that such an objection could have been taken by any one representing Government as a public prosecutor. Objections were also taken to the form and character of the document. This has already been noticed.

Objection was next taken by the pleader for the defence to the commitment as invalid in law, and this was overruled by the Sessions Judge. In this respect, it is sufficient to say that however much we may regret the irregularities in the Magistrate's Court which have already been described, we are not disposed to disagree with the order of the Sessions Judge who overruled them, as the case had come on for trial.

It now becomes our duty to describe and consider the evidence on which the Sessions Judge, differing from the Assessors, have convicted all the accused,

The case for the prosecution is that the delay on the part of the tea-planter, Cockburn, in paying the prisoners' money due to them for work connected with some houses, and the recent receipt of money by Cockburn, suggested to the prisoners the idea of looting the bungalow so as to obtain what was due to them, and that from being employed on the premises, they knew that this money had recently been received by Cockburn. There is, however, an entire absence of proof that any money was due to these men. The statements of the approvers, Mukhta and Mohan, are not clear on this point.

The evidence of these approvers on which the convictions entirely depend has, as already stated, been obtained under circumstances of much irregularity tending to throw great suspicion on it. The Assessors, we observe, disbelieved that evidence, holding that the approvers had been tutored, and one Assessor has further stated that he noted that when being examined for the prosecution the approvers answered readily, but, when cross-examined, they had to think. The statements themselves are clearly not candid nor full. Neither of the approvers admits that he took any prominent part in the attack or plunder. They describe themselves as having accompanied the men who really committed the offence charged, and to have remained on guard so as to give warning of the approach of any interruption to the attack on the bungalow, and generally to have been at most spectators of what the others did. They do not even describe what they say they saw correctly, for they both state that the chaukidar was cut down by two of the prisoners, whereas his body shows only one wound on the head; and as the medical evidence describes that wound, it is impossible that two cuts should have been delivered on the same part of the head. One cut must have felled the chaukidar, so as to make it impossible that a second cut should have been delivered on the same spot, so as to give the appearance of one wound. Mukhta alone describes how Cockburn was cut down. Then they both say that the money was taken out of the safe in a bag; but the garden clerk has stated that the money was kept in the safe and inside a wooden box, and a broken wooden box was found on the premises; but neither of the approvers mentions any box. They also say that afterwards they stopped below the Haibang tree, and that they each received Rs. 10 and left. Whether the others, except Amu, received anything they cannot say, and it does not appear that there was any further distribution, though there was ample opportunity for this. So far, therefore, the statements of the approvers is very unsatisfactory. They do not fully describe what took place, and in some respects their statements are contradicted on very material points.

In the next place there is absolutely no real corroboration. There is some evidence that some of the prisoners were seen together in consultation before the offence, and also that some were seen together shortly afterwards. As to the first, we think that such evidence is of very little importance, even if it be believed. The men are all

Manipuri, and their being together may have been for a lawful and proper purpose. As to the second, we think that the evidence is altogether unreliable. It was obtained, the inspector admits, long after the commission of the offence, and it is impossible to believe that the witness (Babu Singh) should have recollected it as an extraordinary and unusual circumstance seeing twice the prisoners going along at this particular night, on which, in consequence of a festival every one was moving about and keeping late hours. Then there is some evidence that shortly after the offence one of the prisoners was possessed of money, and lent it on a bond. But there is nothing reliable to show that he was not honestly possessed of this money; that he had money before the commission of the offence now under trial is proved by one of the bonds on the record by which he, on a previous date, lent money. There is therefore not only an absence of all corroboration of the statements of the approvers, but those statements are in themselves very unsatisfactory, and in some respects opposed to facts about which there can be no doubt. The Assessors have disbelieved the evidence of the approvers, because it has the appearance of being tutored. The statements were, as already mentioned, first obtained after a detention in police custody for nearly one month, if not longer. They were recorded after such detention, not by the committing Magistrate, but by a Magistrate of inferior rank, and while they were still in police custody. They were recorded as made by these men as witnesses under solemn affirmation, and consequently without a certificate such as would have been made by the Magistrate if they had been properly recorded when the statements were voluntarily made. The Sessions Judge, however, accepts the evidence of the approvers as reliable, because the story told is "a long and detailed one," because it would be difficult to tutor these men who knew no Bengali, because they were kept apart, and because he does not consider that the inspector was capable of such misconduct. The Sessions Judge, however, has overlooked the length of time that these men were in police custody before they made any statement to a Magistrate, or the details of those statements on points in which they might have been corroborated, and were contradicted, apart from the long detention in police custody. We have no hesitation in agreeing with the Assessors that the evidence of the approvers is not reliable. That long detention seems to us unmistakably to show that those statements were obtained under pressure by the police,

In regard to Sagal Semba Sajow, we think that he cannot properly be convicted on his own statements. His first statement to Mr. Lees, which was made in Manipuri, was obtained through an interpreter, who translated it into Bengali, and thence it was re-translated and recorded by the Magistrate in English. It was also recorded in Manipuri. (That record, however, is very different from the English record.) The Manipuri document must be regarded as the proper record and the only evidence in this case, and on that he cannot be convicted. It is not improbable that he may have made the statement as recorded by Mr. Lees in English. But even on that statement he cannot properly be convicted. There are, however, serious objections to accepting that statement apart from the objection to its being inadmissible as contradicted by the Manipuri document. Moreover, the manner in which that statement was obtained after several days of police custody, and at the police station, would raise serious doubts in our minds whether it was really voluntarily made. The statements, obtained by the Magistrate on 3rd August by what cannot be regarded except as a cross-examination of the prisoner, so as to substantiate and supplement the statement recorded by Mr. Lees in English, are also open to serious objection. In addition to what has been already said on this subject, we think that there is every reason to believe that the statements were made in consequence of inducements or promises within the terms of section 24 of the Evidence Act. For all these reasons we cannot convict Sagal Semba Sajow on his own statements. We may add that if the Manipuri statement which, in our opinion, is the proper record, had not been made, the Magistrate would not have strictly complied with the spirit and intention of section 364 of the Code of Criminal Procedure in recording that statement in English. The statement was made in Manipuri and communicated in Bengali to the Magistrate through a sworn interpreter, and again translated by the Magistrate into English and so recorded. The law requires that ordinarily such a statement should be recorded in the language of the person making it, the object being to represent the very words and expressions used as to insure accuracy and prevent misrepresentation or misconstruction of what was said. If such a record is not practicable, the law directs that the statements shall be recorded in the language of the Court or in English. If, however, as in this case, a second translation be made, and the statement be recorded as so understood, the accuracy which the law contemplates is made more remote. This, we may observe, was done in the present case without any reason, since there must have been ample means ready at hand to render into Bengali the statement as recorded by the interpreter from

the prisoner's words in Manipuri. We must not be understood to hold in this case that if the Manipuri document had not existed, we should have held the English record to be inadmissible as evidence. We would merely caution the Magistrate against the repetition of such procedure as tending unnecessarily to affect the weight which might be attached to the accuracy of statement so recorded.

Reference has already been made to the circumstances under which the statement of Sagal Semba Sajow was recorded by Mr. Lees on 3rd July. He had at that time been in police custody since 28th or 29th June. We can find no reason on the record why he was so detained by the police beyond the term allowed by section 167 of the Code of Criminal Procedure. Mr. Lees has stated that he went to the place of investigation for the express purpose of recording that statement, so that it must have been known that the prisoner was inclined to make some statement. If such intimation could be made to the Magistrate so as to bring him to the spot, there was ample time to send him on to the Magistrate. This is the course usually taken, and it should in the present instance have been specially observed, seeing that the man had already been for several days in police custody. The statement was recorded at the police station, but we do not find that beyond this and the prolonged and illegal detention in police custody, and the conclusions necessarily arising from these circumstances and the objectionable course taken in sending for a Magistrate, instead of sending the prisoner to a Magistrate, there was any reason to suppose that the statement when made, whatever it was, was not properly made. Still, in drawing attention to all these points, we must strongly condemn the proceedings taken. Others were similarly detained in police custody for very long terms, but under authority of various orders of the District Magistrate improperly given and without any regard to the law which requires that before detention in police custody is sanctioned special reasons should be recorded by the Magistrate. Not only were no special reasons recorded, but, so far as the record shows, none could have been assigned. We observe, too, that in one instance the police asked for permission for a further detention of some men for eight days, and the Magistrate sanctioned a detention of ten days. It is, we trust, sufficient to mention these facts, for no doubt they will receive proper notice from the Local Government.

The refusal of the District Magistrate to allow the prisoners, when brought before him, to communicate with their pleader, so as to properly instruct him as to their defence, was also most arbitrary and improper, and his refusal to allow any cross-examination during the judicial inquiry in his Court before commitment is open to the same condemnation.

Mr. Hill, for the prosecution, without attempting to support the refusal to cross-examine, has endeavoured to show that the Magistrate may have been misled by the terms of the Code of 1882 when contrasted with those of the Codes of 1861 and 1872. Mr. Hill pointed out that, although the Evidence Act, 1872, provides for cross-examination after an examination-in-chief, the Code of 1872, passed simultaneously, expressly allowed cross-examination by the accused during an inquiry previous to commitment, but that the Code of 1882 omitted this, and that thus the Legislature has given some reasons for believing that it was intended to deprive an accused of such a right before commitment. Mr. Hill has also drawn our attention to the terms of section 210 of the Code of 1882, which directs a Magistrate to frame a charge, if, upon taking the evidence for the prosecution and such examination of the accused as may be thought necessary, he finds that there are sufficient grounds for committing the accused for trial, and that section 256 of the Code of 1882 gives an accused in a warrant case the right to recall and cross-examine a witness for a prosecution only after a charge has been drawn. Mr. Hill therefore contends that the Magistrate may not unreasonably have understood the Legislature to have intended to restrict the right of cross-examination by an accused until after a charge has been drawn, or until it has been found that *prima facie* an offence has been proved against the accused. We cannot, however, accept this view of the law, or agree in holding that it is in accordance with our experience of the practice of Magistrates or reasonable. If the law (section 342) allows a Magistrate to examine an accused in the course of an inquiry on trial, so as to enable him to explain any circumstances appearing in evidence before him, before a charge has been drawn, surely he has a right by cross-examination to show that those circumstances have been improperly made to appear in the evidence given. The express provision made in the Code of 1872 for a cross-examination in any inquiry and its subsequent repeal, in our opinion, are of little significance, seeing that the Evidence Act provides for a cross-examination as part of the record of evidence taken in a judicial proceeding. The fact that the Code of 1872 and the Evidence Act of the same year both simultaneously expressed that the same thing was no doubt considered by the Legislature in revising the Code as a redundancy. The

reference made by Mr. Hill to section 256 as to cross-examination after a charge has been drawn in warrant case does not really affect this point, for it does not prohibit cross-examination before a charge. As we understand the law, it permits a further cross-examination expressly directed to the case found and embodied in the charge, and would enable an accused person, if he has reserved his cross-examination, to exercise his right at that time, subject to a discretion given to the Magistrate by section 257. We are surprised to find that in this case the Magistrate should have deprived the accused of a right which is in accordance with the elementary principles of judicial procedure. It should have been allowed if only to avoid any appearance of unfairness in his proceedings. The prejudice to the accused has in this case been aggravated by the fact that the Sessions Judge has, under section 288, thought proper to treat the evidence so taken by the Magistrate without cross-examination as evidence on the trial, because some of the witnesses have, in his opinion, made contradictory or inconsistent statements to him. We do not at present refer further to this matter, because we are now pointing out irregularities only in the Magistrate's proceedings. The proceedings of the Magistrate in respect of the witness Tamra Singh also appear to us to be arbitrary and illegal; because this witness did not depose, as the police inspector said he had spoken to him he was declared to be a hostile witness, and was cross-examined by the inspector for the prosecution, and finally he was ordered to "give Rs. 200 bail to appear when called for." This witness, too, like the other witnesses examined by the Magistrate, was not tendered for cross-examination by the accused during the inquiry.

The Magistrate, too, readily accepted the statement of the police inspector on this point, and before he allowed this witness to be treated as a hostile witness, he should have had something substantial to contradict him. The Magistrate's order regarding bail for this witness to appear when called for is, in our opinion, unauthorised by law. It does not appear that the witness himself was in any way disinclined to appear when called for by the Magistrate, and therefore an ordinary recognizance should have been sufficient. We observe, too, that the consequence of this order has been that the witness has remained in confinement for more than a month and a half, that is, until the Sessions trial.

We are compelled, therefore, to come to the conclusion that the proceedings of the Magistrate have very materially prejudiced the accused.

In the Sessions trial, too, the prisoners have much reason to complain. They were suddenly deprived of the benefit of the dying declaration made by the woman Sadi and recorded by Mr. Howell; and when they asked to have the evidence of Mr. Howell taken to make that statement admissible in evidence, the Sessions Judge abstained from issuing process so as to obtain the attendance of Mr. Howell, and finally he refused to do so for reasons which are altogether untenable. He then proceeded himself to consider Sadi's dying declaration, and rejected it as unreliable, forgetting that the Assessors with him formed the Sessions Court, and that they equally with him were entitled to express any opinion on the weight to be given to any matter in the case affecting the result.

As to the witness Sajow Singh, the procedure of the Sessions Judge is also open to objection. Before the Magistrate this witness stated that two of the prisoners left his house at about 10 p.m. Before the Sessions Court he said that they remained all night. He accounted for this contradiction as due to a mistake. This contradiction was not in itself sufficient ground for treating this witness as a hostile witness. The Sessions Judge, however, allowed the prosecution to cross-examine him, because, as he has recorded, "I find on inquiry from the prosecution that they believe that they can prove facts which tend to show that the witness has *properly been got up*, apart from the difference in his evidence" (the italics are those of the Sessions Judge). The prosecution have not attempted to do this, and to act on such a ground was clearly improper.

The deposition of this witness to the Magistrate as well as those of other witnesses given before the Magistrate were under section 288 treated as evidence at the Sessions trial. We have already stated that, as those depositions were without any cross-examination by the accused, they should not have been so admitted in evidence. They were incomplete as they were without any cross-examination, inasmuch as the accused had not been allowed to cross-examine the witnesses. Section 288 permits a Sessions Judge to act in this manner if the evidence of a witness has been "duly taken." The evidence of these witnesses, in our opinion, was *not duly taken*, since the accused had not been allowed to cross-examine them. Section 288 requires that the evidence must have been duly "taken in the presence of the accused before the committing Magistrate." To require the presence of the accused merely to hear the *ex parte* statements of a witness without allowing him to show by cross-examination that the statements

are untrue or unreliable, defeats the real object of the law, for it deprives the accused of any substantial benefit from being present.

In the course of the Sessions trial serious charges of misconduct were made against Khedan Singh and one Gossain, who apparently were employed by the Inspector Bhairab Chandra Deb during the police investigation. Khedan was also employed as an interpreter to the committing Magistrates, Mr. Howell and Mr. Lees. It appears to us that these charges have not received sufficient attention. How far after this interval of time they can be substantiated (supposing that they are true) may be doubtful, but that they should be made the subject of proper inquiry is very necessary.

We much regret to find such numerous and serious irregularities in the course of the proceedings before and during this trial, all of which must have seriously prejudiced the prisoners. On the evidence, too, we think that none of the prisoners can properly be convicted. The convictions depend entirely on the weight to be given to the evidence of the approvers, and we have no hesitation in agreeing with the Assessors that the evidence is altogether unreliable.

All the prisoners are accordingly acquitted.

H. T. PRINSEP.
AMEER ALI.

The 11th December 1893.

EXTRACT from the PROCEEDINGS of the GOVERNMENT of INDIA in the HOME DEPARTMENT, (POLICE), under date, SIMLA, the 4th June 1894. No. 272/74.

Read the following papers regarding the Baladhan murder case—

Telegram from the Secretary of State, dated the 22nd January 1894.

Telegram to the Secretary of State, dated the 27th January 1894.

Letter to the Chief Commissioner of Assam, No. 46, dated the 27th January 1894.

Telegram from the Secretary of State, dated the 29th January 1894.

Telegram to the Secretary of State, dated the 31st January 1894.

Despatch from the Secretary of State, No. 5 (Judicial), dated the 24th January 1894, and enclosures.

Telegram from the Secretary of State, dated the 20th March 1894.

Telegram to the Chief Commissioner of Assam, dated the 24th March 1894.

Telegram from the Chief Commissioner of Assam, dated the 27th March 1894.

Telegram to the Secretary of State, dated the 29th March 1894.

Letter from the Chief Commissioner of Assam, No. 430 ^{Miscellaneous} ₂₂₈₁ J., dated the 4th May 1894, and enclosures.

RESOLUTION.

The facts of the case known as the Baladhan murder case, which has been the subject of comment in England as well as in this country, are thus stated in the letter from the Chief Commissioner of Assam, dated the 4th May 1894, read in the preamble :—

“ On the night of the 11th, or morning of the 12th April 1893, a dacoity with murder was committed on the Baladhan tea-garden in the Cachar district. The house of one Mr. Cockburn was broken into by a number of men armed with deadly weapons, and Mr. Cockburn and his watchman were murdered, and a woman who lived in the house mortally wounded. She expired a few days afterwards. An iron safe in the house was broken open, and some Rs. 778 taken therefrom; a gun and some other articles were also stolen from the house. The local police were employed in investigating the case from the 12th April to the 6th May, and though certain Manipuris, including a Manipuri contractor (Chowba Singh) who worked on the garden and was subsequently placed on his trial, were suspected almost from the beginning of the investigation, no satisfactory result had been obtained. On the 7th May Inspector Jay Chandra Bhadra, an experienced and trustworthy officer, was specially deputed from the adjoining district of Sylhet to take up the inquiry. Meanwhile, a reward of Rs. 1,200 had been offered on the 25th April for information which would lead to the detection of the offenders; this was raised to Rs. 2,000 on the 1st May. This offer of reward was widely circulated in the villages of the locality. A pardon was also offered to any one of the minor

participants in the crime, not themselves guilty of murder, who would disclose the truth. Further inquiry made after the 7th of May went to confirm the suspicion against the Manipuri contractor and other Manipuris. On the 27th June Sagal Semba Sajow (one of the accused) who had long been suspected, and who had absconded after the murder, was arrested in hiding. On the 2nd July he made a confession to Mr. Carnac, the district superintendent of police, and Mr. Lees, Assistant Commissioner and 1st Class Magistrate, was sent out by the Deputy Commissioner to record the confession on the 3rd July. This confession the accused adhered to in the preliminary inquiry before the District Magistrate on the 3rd August; but he was not admitted to pardon, inasmuch as his statement was found by the police to be untrue in substantial particulars, and he was considered to have been one of the ringleaders in the dacoity and murders. Meanwhile the truth of his statement was tested, and he was detained in police custody for purposes of identification, and in order that the police might follow up the inquiry according to the new light thrown on the case by his statement. In consequence of the further investigation which followed, several other arrests were made, including those of the two approvers, Mukta Singh and Mohan Singh who were arrested on the 6th July. On the 29th July these persons, in the presence of Mr. Carnac, offered to give a full account of the dacoity and murders if they would receive a pardon. Their statements were tested by the police, and, at the instance of Mr. Carnac, the Deputy Commissioner deputed Mr. Lees to proceed to the spot and make a memorandum of their statements. This was done on the 1st August. The case was sent up by the police for trial on the 3rd August. The preliminary inquiry was held by the District Magistrate himself, and on the 9th August the case was committed to the Sessions Court. The sessions trial commenced on the 13th September and ended on the 29th September 1893. The Assessors gave their opinion that the accused were not guilty; but the Sessions Judge, differing from them, convicted the accused of dacoity with murder, and sentenced four of them to death and the remaining three to transportation for life. The sentences of death had to be confirmed by the Calcutta High Court in the usual course; and all the convicted persons also appealed against the sentences passed on them. The High Court (Prinsep and Amir Ali, JJ.), in their judgment dated the 11th December 1893, a copy of which is enclosed for the information of the Government of India, acquitted all the accused, and remarked on certain irregularities in the proceedings during the investigation into the case by the police, during the preliminary inquiry before the Magistrate and finally during the trial in the Sessions Court."

2. On the 22nd January last the Secretary of State inquired whether any action had been taken, or whether the Government of India proposed to make inquiry, regarding the conduct of the investigating officers. At the meeting of the Council of the Governor-General for the purpose of making laws and regulations held on the 25th January, certain questions concerning the case were asked by the Honourable Dr. Rashbehary Ghose, and answers were given to them. On the 27th the Secretary of State was informed of this, and also that the necessary action was being taken by the Chief Commissioner of Assam; on the same day the latter officer was asked by the Government of India to submit a report of the action taken by him in the matter. In reply to a further inquiry made by the Secretary of State, his Lordship was informed on the 31st January that the Chief Commissioner had called upon the Magistrate and the Sessions Judge for explanation of the irregularities indicated in the High Court's judgment and had sent for the record of the Sessions trial with the object of seeing what further action was necessary. With his despatch, No. 5 (Judicial), dated the 24th January 1894, the Secretary of State forwarded copies of a question asked in Parliament by Mr. Caine, M.P., and of the answer returned to him, and requested to be furnished with a report as to the matters complained of, and to be informed whether any special investigation had been held or was considered desirable. A copy of these papers was forwarded by the Government of India to the Chief Commissioner of Assam on the 6th March 1894.

3. The Chief Commissioner's report has now been received. It is accompanied by a full explanation furnished by Mr. Herald, Deputy Commissioner of Cachar, who committed the case for trial to the Sessions Court. The Sessions Judge who tried the case has not yet been able to submit the required explanation, as the original records of the case to which he wishes to refer could not be sent to him till very recently. The Government of India therefore propose to deal at once with the explanations furnished of the action of the Magistrates and the police. All the matters complained of by Mr. Caine are comprised in the High Court's judgment; and it will be sufficient there-

fore to take up in detail the points in that judgment, so far as they affect the magistracy and the police; these are enumerated below:—

The points are—

I.—In regard to the Magistrates—

- (a.) That Sagal Semba Sajow, arrested on the 28th or 29th of June 1893, instead of being sent to a Magistrate at Silchar within 24 hours, was examined at Baladhan on the 3rd July by the Assistant Magistrate, Mr. Lees, who had come out for the purpose.
- (b.) That both Sagal Semba Sajow and others, notably the approvers Mukta Singh and Mohan Singh, were kept in police custody for a long period under orders from the Magistrate, Mr. Herald, on no sufficient recorded reasons, although section 167, Criminal Procedure Code, requires that special reasons shall be assigned in such an order of a Magistrate.
- (c.) That the Assistant Magistrate examined the two approvers on the 1st August 1893 at the thana on solemn affirmation, whereas their statements ought to have been taken as those of confessing co-accused; moreover, the case was then ready, and came before the District Magistrate at Silchar on the 3rd August, so that there was no necessity for an examination on the 1st by a Magistrate not competent to deal with the case itself.
- (d.) That the District Magistrate, on opening the inquiry, cross-examined Sagal Semba Sajow in order to confirm and supplement his previous confession; whereas he should only have asked questions to enable the accused to explain evidence appearing against him.
- (e.) That the Magistrate refused to allow the prisoners to instruct and consult with their pleader when they requested to do so.
- (f.) That cross-examination was not allowed in the Magistrate's inquiry before commitment.
- (g.) That Sagal Semba Sajow's first statement to the Assistant Magistrate, though made in Manipuri, was recorded in English and not in Bengali, the language of the Court, into which it was interpreted; that a Manipuri record was also made, but it differs very much from the English record.
- (h.) That Sagal Semba Sajow's statements on the 3rd July were obtained by inducements or promises within the terms of section 24 of the Evidence Act.
- (i.) That a certain witness, Tamra Singh (also called Tamradhaj), because he did not depose as the police inspector said he had stated, was allowed to be cross-examined by the inspector, and was finally ordered by the Magistrate Rs. 200 bail to appear when called for.

II.—In regard to the police—

- (a.) That the police detained Sagal Semba Sajow and others long in custody.
 - (b.) That the police exercised pressure and inducement to obtain confessions and evidence; and that serious charges of misconduct had been made against Khedam Singh and one Gosain, who were employed by the police (these charges, the honourable Judges considered, had not received sufficient attention).
4. The Government of India will now proceed to consider the above points *seriatim* in the light of the explanations furnished:—

I.—(a.) It is shown that on this point the judgment of the High Court proceeded on a misapprehension of fact. The fact is that Sagal Semba Sajow was actually sent before the sub-divisional officer at Hailakandi, and then before the District Magistrate in Silchar, immediately after his arrest, which took place at Jafirband in the Hailakandi sub-division. He was then remanded by the District Magistrate to police custody for purposes of identification by the witnesses who had described him, and was sent to Baladhan. While at Lakhipur *en route* for Baladhan, he tendered a confession to the District Superintendent of Police, and his statement was recorded by the Assistant Magistrate, Mr. Lees, who went to Lakhipur for the purpose. After this it was considered necessary that Sagal Semba Sajow should remain on the scene of the investigation in order that the police might be able to follow up the clues obtained from him. The Chief Commissioner says that so far he can find nothing irregular or improper in this procedure, and the Governor-General in Council sees no reason to doubt this conclusion. Sagal Semba Sajow was duly taken before a magistrate as required by section 61

of the Criminal Procedure Code, and there appears to have been nothing illegal in examining him at Lakhipur instead of recalling him to Silchar, whence he had just been sent.

The High Court, while observing that the Assistant Magistrate went out specially to record the confession, appear to hold the procedure objectionable in that he recorded it while Saga Semba Sajow was still in the custody of the police. The Government of India, as already remarked, do not see that there was any legal objection to the Assistant Magistrate going out. It seems necessary in such cases to leave a discretion to the Magistrates, and in the present case the facts, as now explained by the Chief Commissioner, show that the discretion was not improperly exercised. As regards the examination of Sagal Semba Sajow while still in the custody of the police (to which he was returned after examination), this procedure is not stated, and does not appear to be contrary to the law. The Government of India agree with the High Court that it is in itself very undesirable wherever it can be avoided. But in the present case it seems that it was not desirable either to postpone the recording of Sagal Semba Sajow's confession or to remove him from police custody immediately after it. The European District Superintendent of Police, Mr. Carnac, was on the spot; and the Government of India do not think that the prisoner, in making his confession, can have been under any apprehension of maltreatment by subordinate police officers.

On the first point therefore the Governor-General in Council agrees with the Chief Commissioner's conclusion that the proceedings of the Magistrates are not open to reprehension.

- (b.) After considering the explanation of the local officers, the Governor-General in Council agrees with the High Court that the prolonged remands of the prisoners ordered by the District Magistrate cannot be justified. The protracted detention in police custody of Sagal Semba Sajow and others does not seem to have been, strictly speaking, illegal under the terms of section 167, Criminal Procedure Code. Nevertheless, the Magistrate, Mr. Herald, is to blame for allowing the accused persons to remain for so long in the custody of the police; and he should have been aware of the presumption which was certain to be raised by his action, that the confessions of the two approvers were not to be trusted in consequence of the possibility of their having been subjected to police pressure. The case of Sagal Semba Sajow is different. His statement was not made under police pressure; it was impossible for the Magistrate to declare whether he would accept the statement or not as a confession warranting a pardon until it had been tested, and to this testing Sagal Semba Sajow's presence at Baladhan was indispensable. Still he, too, was detained much too long in the hands of the police; and though the Governor-General in Council recognises that Mr. Herald had reasons for supposing that malpractices on the part of the police would be immediately heard of, his Excellency in Council still thinks it necessary that an expression of his disapproval should be conveyed to the District Magistrate through the Chief Commissioner. Mr. Herald also certainly erred in not recording fully his reasons for allowing the detention of the prisoners in police custody; such a record being plainly required by section 167, Criminal Procedure Code.
- (c.) As regards this point, the Governor-General in Council has no doubt of the *bona fides* of Mr. Herald's motives; but he considers nevertheless that the proceedings were injudicious. It is explained that Mr. Lees was sent out to take the approver's statements informally, simply for the District Magistrate's information. These statements could not have been used as evidence, and it is not clear why they were placed on the record. The proceeding does not appear to have injured the accused; but the Government of India agree with the High Court that it was improper, and that any statement involving their own guilt made by Mukta Singh and Mohan Singh at that time should have been recorded in the manner provided for confessions.
- (d.) Mr. Herald's examination of Sagal Semba Sajow at the commencement of the inquiry was not in accordance with section 342, Criminal Procedure Code, and was wrong in point of procedure. The questions and answers have, however, been reported *in extenso* in the Magistrate's explanation; and the Government of India are satisfied, after perusing them, that the

- Magistrate had no design of unfairly prejudicing the accused; nor, in their opinion, could the questions put be properly described as a cross-examination.
- (e.) This question turns on the point, which is not ascertained, whether the pleader had or had not been instructed before the opening of the case. The explanation submitted is that the Magistrate refused to interrupt the case, which was before the Court, for the purpose of a private consultation. Such interruptions are, it is believed, not usually allowed. But if in point of fact the pleader had not been previously instructed, and Mr. Herald refused to allow a short consultation in private at the opening of the case, the Governor-General in Council does not think that his action can be defended. It is probable that he did not sufficiently satisfy himself as to the circumstances. It is explained that the witnesses were examined from the 3rd to the 8th August, and it has not been alleged that the prisoners were not accessible to their pleaders under ordinary rule before and after the Court hours every day. The Bengal Gaol Manual, which is also in force in Assam, contains the following rule on the subject:—"Prisoners under trial shall have all reasonable facilities for communicating with their friends or legal advisers." The Chief Commissioner remarks that the prisoners were entitled to consult their pleaders out of the hearing, although in the presence of a police officer or gaoler. Subject to the above observations, the Governor-General in Council concurs in the strictures made by the Judges of the High Court on this part of the case. Still, Mr. Herald was willing to allow consultation *in Court* between the accused and their pleaders; and the Chief Commissioner reports that he has no reason to believe that the Magistrate ever intended to refuse a consultation. In these circumstances his Excellency in Council does not think it requisite to advert further to the matter.
- (f.) His Excellency in Council entirely accepts the opinion of the High Court that cross-examination should have been allowed by the Magistrate. On this point Mr. Herald was undoubtedly in error, and the Magistrates should be careful to be guided by the honourable Judges' explanation of the law on this subject. It was explained before the High Court that the District Magistrate of Cachar laboured under an erroneous impression regarding the law which originated in a variation between the Criminal Codes of 1872 and 1882; and the Chief Commissioner of Assam considers that Mr. Herald's mistake in this matter was an excusable one. The Government of India find no reason to doubt that the Magistrate acted in good faith, but his mistake is one which should be carefully avoided by the Magistrates.
- (g.) The statement or confession referred to is the one made before the Assistant Magistrate on the 3rd July 1893. The law (section 364 of the Criminal Procedure Code) requires that the record of the examination of an accused person shall be "in the language in which he was examined, or, if that is not practicable, in the language of the Court or in English," and the record in question was in English. The High Court, without terming the procedure illegal, objected to the double translation (from Manipuri to Bengali, and thence to English), which obviously was undesirable in itself. It is explained by Mr. Herald, with reference to the omission to record the statement in Manipuri, that "there was not a literate Manipuri near Lakhipur at that time whom we could trust with the secret: the few Manipuris in the inspector's employ were illiterate men." Mr. Lees does not, however, appear to have recorded any reasons why the statement was not taken down in Manipuri. There is some authority for holding that it must first be shown to have been "not practicable" to record such a statement in the original language before a version of it in another language can be admitted as evidence; but in this case the High Court appear to guard themselves against being understood to accept that doctrine. However that may be, the omission to record the statement in Manipuri was not one for which the District Magistrate was answerable. With regard to the supposed difference of the Manipuri record from the English record, the papers make it clear that the Manipuri document is not a record of the statement made to Mr. Lees, but contains Sagal Semba Sajow's statement made at a later date before the District Magistrate. It is therefore unnecessary to discuss, as requiring any reply from the Magistrate, the fact that the Manipuri document differs from the English record of what was said before Mr. Lees.

- (h.) Sagal Semba Sajow's confession of 3rd July was obtained by the inducement of a publicly proffered pardon. It thereby became irrelevant as a confession under section 24 of the Evidence Act. Mr. Herald shows that no other inducement or pressure could have been exercised. The procedure for tendering a pardon (section 337, Criminal Procedure Code) was not adopted, and as a confession Sagal Semba Sajow's statement was irrelevant. It was thus wrong to use Sagal Semba Sajow's statement, made in hope of a pardon, against him. The responsibility of admitting it, however, must rest largely on the Sessions Court; and while the Government of India do not doubt that the High Court properly excluded this evidence, they consider that the Magistrate may have been misled by the consideration that if he had observed the formalities prescribed by the Criminal Procedure Code, such a statement, made by a person accepting a tender of pardon, would, if shown to be materially false, have been admissible in evidence against him under section 339 of the Code.
- (i.) It is observed that section 154 of the Indian Evidence Act authorises a Court, in its discretion, to permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. The requirement of bail from Tamra (or Tamradhaj) Singh and his consequent confinement are considered by the honourable Judges to have been illegal. It is now explained that the Magistrate considered that Tamra Singh had evidently committed an offence under section 193, Indian Penal Code, and he required bail to secure his appearing to answer this charge. In doing this before charging the witness with the offence, the Government of India think that the Magistrate acted without jurisdiction; at any rate it is evident that he ought to have recorded his reasons, so that it might be manifest that bail was required from Tamra Singh, not as a witness, but as a suspected criminal. Mr. Herald's motive is clear, and the objection is rather to the irregularity than to the substance of his proceeding. At the same time, his Excellency in Council thinks that the action taken must be condemned not only as injudicious, but as involving an appearance of harshness to the witness which should have been avoided.

5. Regarding the conduct of the police, the Governor-General in Council agrees with the Chief Commissioner that the papers show nothing for which they can be blamed. The whole of their action was taken under the immediate direction and supervision of the Magistrate and the District Superintendent of Police; and there is no proof whatever of any corruption or of any ill-usage of the prisoners. The police are of course legally and wholly exonerated by the orders of the Magistracy from any responsibility for the detention of the accused persons in police custody. The High Court have held that the prolonged detention casts doubt upon the confessions, but have not said that any charges were even *prima facie* established against the police. With regard to Khedam Singh and Gosain (or rather the Gosain of Jaipur) mentioned in the High Court's judgment, it was stated in the reply to the questions of the Honourable Dr. Rashbehary Ghose in the Legislative Council that the Chief Commissioner would consider whether a special inquiry was necessary with reference to these persons; and it is understood that this has been done; but Mr. Ward's attention will again be drawn to this point.

The abstract of the police diaries, submitted with Mr. Herald's explanation, shows the great difficulties with which the police had to contend in this case. The persons suspected were members of a race of which large numbers are settled in the eastern part of the Cachar Valley, who speak a language not understood by the Bengali inhabitants, and are themselves often ignorant of Bengali: they are notorious for their clannish habits, and their indisposition to assist the authorities in making inquiries among them. The investigation took place in a remote and inaccessible corner of the district, 24 miles distant from Silchar, and cut off from easy communication from head-quarters by floods, which were unusually extensive at the time. This fact partially explains the reason why it was necessary to detain the accused persons at or near the scene of the occurrence while the investigation was proceeding, and why it was inconvenient to send them in to be lodged in the gaol at head-quarters. After perusing the papers submitted, his Excellency in Council is unable to say that there are no grounds for the opinion, expressed by the Chief Commissioner, that the acquitted Manipuris were most probably the persons concerned in this atrocious crime.

ORDER.—Ordered, that this Resolution be communicated to the Chief Commissioner of Assam for information and communication to Mr. Herald, and to the High Court, Calcutta, for information.

[True Extract.]

(Signed) C. J. LYALL,
Secretary to the Government of India.

LIST OF ENCLOSURES.

1. Letter to the Chief Commissioner of Assam, No. 46, dated 27th January 1894, with the questions and answers in the Council of the Governor-General for making Laws and Regulations.
2. Letter from the Chief Commissioner of Assam, No. ^{480 Miscellaneous}₂₅₈₁ J., dated 4th May 1894, and enclosures.
3. Resolution by the Government of India in the Home Department, No. 272/74, dated 4th June 1894.

Letter from the GOVERNMENT OF INDIA, HOME DEPARTMENT, JUDICIAL, POLICE (No. 32 of 1894), to the RIGHT HON. H. H. FOWLER, Her Majesty's Secretary of State for India.

(Received August 7, 1894.)

SIR,

Simla, July 17, 1894.

In continuation of our Despatch No. 21 (Judicial), dated the 5th June last, and our telegram dated the 6th instant, we have now the honour to enclose a copy of a letter, No. ^{300 Misc.}_{2000 J.}, dated the 29th ultimo, from the Chief Commissioner of Assam, and of its enclosure, containing the explanation of Mr. J. Clark in connexion with the trial before him as Officiating Sessions Judge of Sagal Samba Sajow and others for the murder of Mr. Cockburn, with the Chief Commissioner's remarks thereon.

2. The Honourable Judges of the High Court, in their judgment dated the 11th December 1893 (a copy of which was forwarded to you among the enclosures of our Despatch of the 5th ultimo), condemned as illegal or improper the following proceedings of the Sessions Court :—

- (a.) That the Judge did not deal properly with the dying declaration made on the 14th April 1893 by the woman Sadi, in which she stated that she had seen no Manipuris among the murderers. The Public Prosecutor wrongly, as the High Court considered, raised objection to this declaration being received in evidence, and the Sessions Judge refused the application made on behalf of the prisoners to summon the magistrate who had recorded the declaration. The Judge himself, however, considered it without laying it before the Assessors. The High Court expressed disagreement also with the reasons for which the judge held the declaration to be valueless as being incoherent and unreliable.
- (b.) That the Judge did not insist on full information from Inspector Joy Chandra Bhadra as to the date on which he first examined the approver Mukhta Singh.
- (c.) That the Judge's reasons for accepting the evidence of the approvers as trustworthy were insufficient.
- (d.) That the Judge treated as evidence, under section 288 of the Criminal Procedure Code, the depositions of witnesses which the committing magistrate had taken without allowing cross-examination.
- (e.) That the Judge improperly allowed the Public Prosecutor to cross-examine Sajow Singh, one of the witnesses for the prosecution.

The following remarks on each of these points are suggested to us by Mr. Clark's explanation :—

3. A.—*The matter of Sadi's dying declaration.*—In the case of *The Empress v. Samir-ud-din* (I. I. R. VIII. Calcutta, 211), where the dying statement of the deceased

had been recorded by the magistrate as a deposition, and admitted in evidence as such at the trial, though not taken in the presence of the accused, the High Court held that the evidence had been improperly admitted, and that the magistrate ought to have been called to prove the statement as a dying declaration. This case seems to have been misunderstood by Mr. Clark as deciding that by no proceeding of his could the record of the dying declaration of the woman Sadi have been made admissible as evidence of what she said. But, apart from the fact that he seems to have overlooked the distinction between the admissibility of such a document as evidence against a prisoner, and its production at the prisoner's request, the question is, whether he ought to have summoned Mr. Howell (who could have used the record to refresh his memory) to depose to what she said. Mr. Clark gives as his reasons for not summoning Mr. Howell that another witness was present who had heard the declaration made; that a re-trial of the whole case would have been necessitated by adjourning it to the next Sessions so as to admit of Mr. Howell's attendance; that he knew Mr. Howell attached no weight to Sadi's statement; and that the statement was contradictory in itself and inherently improbable. The opinion of the High Court is not to be contested that it was important in the interests of the accused that clear evidence should be brought on the record of what Sadi actually said, and we are not prepared to hold the reasons given by Mr. Clark to be sufficient to justify him in having omitted to obtain the best evidence procurable regarding the woman's statement. It may be granted that the prisoner had no technical right to require the production of Mr. Howell, who was not named in the list delivered to the magistrate by whom he was committed for trial. Nevertheless, since the native doctor, who had been present when Sadi's dying declaration was made, and who deposed that she did not name either Manipuris or Gurkhas, could not remember all that the woman said, and inasmuch as a complete record of her statement was of great importance to the accused, and was applied for by them, we believe it to have been injudicious on the part of the Officiating Sessions Judge that he did not comply with the application of the defence to summon Mr. Howell, and that he did not think it necessary to bring, as far as possible, the contents of the declaration made by Sadi on the record by himself examining Mr. Howell. At the same time, it is in our opinion evident that the Sessions Judge was not guilty of any culpable intention in the matter.

4. *B.—The failure to obtain from the Police Inspector information as to the date of his first examination of Mukhta Singh.*—Mr. Clark has not made any reference to this point. The Inspector declined when under cross-examination to refresh his memory by referring to the police diaries. Had he done so, he would have become liable, under section 172 of the Criminal Procedure Code, to be cross-examined on the diaries. It appears to us that the Judge ought to have compelled the witness to ascertain and disclose the date inquired about, and that this might probably have been done without rendering it necessary that the diaries should, in accordance with section 172 of the Criminal Procedure Code, be introduced for purposes of cross-examination.

5. *C.—The acceptance by the Sessions Court of the evidence of the approvers.*—Mr. Clark has not submitted any remarks upon this subject. It appears obvious, however, that the point is one entirely of judicial discretion. The circumstances which to the High Court seemed to discredit the evidence of the approvers did not deprive it of credibility in the opinion of the Sessions Judge. The High Court held that the long detention of the approvers showed unmistakably that their statements were obtained under pressure from the police. The Sessions Judge did not believe that the police had been guilty of misconduct, and (as intimated in paragraph 5 of the Resolution in the Home Department, No. 272, dated the 4th June 1894, forwarded with our Despatch of the 5th June last) we found no reason to think that the police tutored the witnesses or extorted evidence. At any rate the objection only goes to the weight of the evidence, not to its admissibility, and even if the Sessions Judge was mistaken as to its value, that does not, as appears to us, affect the propriety of his action in admitting it.

6. *D.—Admission as evidence of depositions recorded by the Magistrate without allowing cross-examination.*—In our Resolution in the Home Department, No. 272, dated the 4th ultimo, dealing with the conduct of the police and magistracy in this case, we have held that the Magistrate was entirely in error in refusing to allow cross-examination. Here again the opinion of the High Court is not to be contested that the depositions of Sajow Singh and Khamdal Singh were not duly taken within the meaning of section 288 of the Criminal Procedure Code, and we consider the action of the Sessions Judge to have been erroneous and also, in view of the objection raised at the time, unwise. We would, however, observe that the ruling (in the matter of Dham Mundul and others,

VI. Calcutta L.R. 53) cited by Mr. Clark gave him some colour of authority for his proceeding, and we have no doubt that he acted in perfect good faith in the matter.

7. *E.—Permission to cross-examine Sajow Singh, a witness for the prosecution.*—We have alluded to the law on this subject in paragraph 4 (i) of the Home Department Resolution of the 4th June last. The prisoner Sagal Semba Sajow was in some respects the principal accused, and the Chief Commissioner, in his letter forwarded with our Despatch of the 5th June, has expressed the opinion that the evidence was strongest against this man. The witness Sajow Singh had made the statement before the committing Magistrate that on the night of the murder Sagal Semba Sajow and Changbangbang Sajow (another accused) had left his house about 10 or 11 o'clock, saying they had headaches and would go to sleep. Before the Sessions Judge the witness said that, if he had made this statement, it was a mistake; and he then deposed that Sagal Semba and Changbangbang remained at his house from 7 or 8 p.m. till daylight the next morning. The dead body of Mr. Cockburn was found by his bearer who went to the bungalow between 5 and 6 a.m. If, therefore, Sajow Singh's statement before the Sessions Court was true, Sagal Semba Sajow and Changbangbang Sajow could not possibly have been guilty of the murder. There were, therefore, before the Sessions Judge two statements made on oath by Sajow Singh, one tending to implicate and the other to exculpate the accused; and of these two statements one must have been false. The Sessions Judge then learned from the prosecution that they believed they could prove facts which tended to show that the latter or exculpatory statement was the false statement, and that the witness had been tampered with on behalf of the defence. He, therefore, came to the conclusion that the prosecution might properly be permitted "to put to the witness a question which might be put in cross-examination by the adverse party" (Evidence Act, section 154). In cross-examination the fact was elicited that Sajow Singh, before coming to the court as a witness, had been staying at the house of one Amo Singh, who was both a relative of the accused Changbangbang Sajow and himself a witness for the defence, and had met at his house no less than 10 or 11 other witnesses for the defence who had been at the same time assembled. It is true that Sajow Singh also stated in his cross-examination that he had not talked to any one at Amo Singh's about the case, but the facts elicited were nevertheless, it appears to us, of material weight. We do not feel ourselves called on to express an opinion upon a pure question of the interpretation and application of the law, but we are quite satisfied, after considering the above circumstances and the terms of sections 154 of the Indian Evidence Act, that we have no reasonable cause to condemn Mr. Clark's action in this matter.

8. In conclusion, we have to express our concurrence with the opinion of the Chief Commissioner of Assam that there is no reason to suppose that the Officiating Sessions Judge did not act perfectly bonâ fide throughout the proceedings, or that he had any intention of placing the accused at a disadvantage. Holding the views set forth above on the details of the Judge's procedure, we do not consider it necessary to take any further measures in connexion with the case.

We have, &c.

(Signed) ELGIN.
G. S. WHITE.
A. E. MILLER.
H. BRACKENBURY.
C. B. PRITCHARD.
J. WESTLAND.
A. P. MACDONNELL.

From P. G. MELITUS, Esq., C.I.E., OFFICIATING SECRETARY TO THE CHIEF COMMISSIONER OF ASSAM, No. ^{906 Misc.} 4000 J., to the SECRETARY TO THE GOVERNMENT OF INDIA, HOME DEPARTMENT.

Shillong, June 29, 1894.

IN continuation of the correspondence ending with my telegram No. 3387 J., dated the 21st June 1894, on the subject of the Baladhan murder case, I am directed to forward a copy of a letter No. 1354, dated the 20th June 1894, from Mr. J. Clark,

the officer who, as Sessions Judge, tried the persons accused of having committed the dacoity and murders, submitting an explanation of his action in the case.

2. The points on which Mr. Clark's conduct as Judge was found fault with by the Honourable Judges are set forth at page 7 of the High Court's judgment (a copy of which was forwarded to you with my letter No. ^{490 Misc.} _{2681 J.}, dated the 4th May 1894), and have reference to his action regarding the dying declaration of the woman Sadi, and his procedure in regard to the witness Sajow Singh. The Chief Commissioner has now considered Mr. Clark's explanation, and has come to the conclusion that there is no reason to suppose that that officer did not act perfectly bonâ fide throughout the proceedings, or that he had the slightest intention of placing the accused at an unfair disadvantage during the sessions trial. This being so, the Chief Commissioner considers that the Executive Government is not further concerned with the Sessions Judge's action on either of the points referred to in the High Court's judgment. If the Judge erred, it was on matters of purely judicial discretion, and with this the High Court has sufficiently dealt.

3. I am to add, with reference to paragraph 5 of Resolution No. 272-73, dated the 4th June 1894, of the Government of India in the Home Department (Police), that the Chief Commissioner has not overlooked the consideration of the point whether a special inquiry was necessary with reference to the conduct of Khedam Singh and the Gosain of Jaipur, but that he has come to the conclusion that there are not sufficient grounds for making such inquiry.

4. I am to forward, for the information of the Government of India, a copy of the printed paper book, containing the record of the Sessions trial in the case, received from the Registrar of the High Court.

From J. CLARK, Esq., I.C.S., DEPUTY COMMISSIONER, CACHAR, No. 1354, to the SECRETARY TO THE CHIEF COMMISSIONER OF ASSAM.

Silchar, June 20, 1894.

I HAVE the honour to submit the following explanation in connexion with the judgment of the Honourable High Court in the case of Empress versus Chauba Sing and others, known as the Baladhan case.

2. The first point calling for any remarks from me is the dying deposition of the woman Sadi. The leading case in regard to such matters is, I believe, that of Empress versus Samir-ud-din (Indian Law Reports, VIII. Calcutta, 211); and if that case be followed, the record of the woman's statement was not, and could not, be made evidence by itself; all that could be done was to elicit from witnesses who heard the statement made evidence as to the statement; and it is contended that I ought to have summoned Mr. Howell, the Magistrate, who recorded the dying deposition. My reasons for not doing so were as follows:—

- (a.) There was actually present in Court a witness who heard the statement made, viz., the native doctor of the garden, Chandra Kumar Som. The pleader for the defence at first not only abstained from questioning him in regard to the woman's statement, but actually declined to do so when I suggested it to him; and the few questions I did eventually induce him to put were so worded as rather to show that the witness could not repeat the woman's statement verbatim than to ascertain exactly what he remembered of the substance of her statement.
- (b.) To have summoned Mr. Howell would have involved the adjournment of the case till the next Sessions, and, as a necessary consequence, a re-trial, as by that time I should have been relieved of my appointment as Officiating Sessions Judge. Mr. Howell was at the time in charge of the Mangaldai sub-division, so that the adjournment of the case, which was the last on the calendar, would have been practically inevitable.
- (c.) As no genuine effort was made to ascertain from the witness Chandra Kumar what he knew regarding Sadi's statement, the application to summon Mr. Howell appeared to me rather intended as a means by which grounds of appeal might be obtained, it being expected that the application would be refused.

- (d.) So far from the accused being prejudiced by my not calling Mr. Howell, I may mention that long before the trial took place and while the case was still under investigation, Mr. Howell had, in a conversation with me, stated that he had placed no reliance upon the woman Sadi's statement. It is quite possible, therefore, that my knowledge of what his opinion of the statement was may have to some extent influenced me in thinking it less necessary in the interests of the accused to summon him than was contended in appeal.
- (e.) The statement was in itself contradictory, the woman saying at one point that she "was standing quite close to the sahib when he was cut down," and a little farther on that she "did not see him cut down." It differed materially from a statement made by her immediately after the occurrence
- * Page 63 of printed record. (cf. pages 101* and 102 of the Sessions record), and it is opposed to all our experience that Kacharis should associate with Bengali Musalmans for any purpose, least of all for the commission of a crime such as this was.

3. Next as to the witness, Sajow Singh. The Honourable Judges say: "As to the witness Sajow Singh, the procedure of the Sessions Judge is also open to objection. Before the Magistrate this witness stated that two of the prisoners left his house at about 10 p.m. Before the Sessions Court he said that they remained all night. He accounted for the contradiction as due to a mistake. This contradiction was not in itself sufficient ground for treating the witness as a hostile witness. The Sessions Judge, however, allowed the prosecution to cross-examine him because as he has recorded: 'I find on inquiry from the prosecution that they believe they can prove facts which tend to show that the witness has probably been got up apart from the difference in his evidence.' The prosecution have not attempted to do this, and to act on such a ground was clearly improper." If we turn to the

Page 31 of printed record. evidence of the witness in question, we find (page 34)* that the witness admitted in cross-examination by the Government pleader that since the trial began he had been associating with witnesses called for the defence, and had actually been at the house of a relation of one of the prisoners. When the application was made to cross-examine the witness by the pleader for the prosecution, I, as stated, asked whether they had any grounds, apart from the difference in his evidence, for considering the witness a hostile one; and when, in addition to a marked difference on a material point explained as being perhaps due to mistake, it was found that the witness had been associating with the witnesses and friends of the other side, it was not, I think, unreasonable to conclude that he had been gained over.

4. It is said that my action in bringing the evidence of this and other witnesses given before the committing Magistrate as to the record under section 288, Criminal Procedure Code, prejudiced the accused. In reply to this I would refer to the case "In the matter of Dham Mandul" (VI. Cal. L. R. 53). I would also point out that it was, I think, clearly my duty in any case to consider the previous depositions given by the witnesses and to place them before the Assessors, and that this was most easily accomplished by bringing the depositions on to the record.

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