PRIVY COUNCIL

Dwarkanath Varma

Vs.

Emperor

P.C.A No.111 of 1931
(Lords Atkin, Thankerton J. Wright, Sir Lancelot Sanderson and Sir George Lowndes JJ.)

27.01.1933

JUDGMENT

LORD ATKIN J.

1. These are two appeals against conviction and sentence by the High Court of Judicature at Patna. The appeal of Gaya Prasad was brought by special leave of the Privy Council after an application for leave to appeal had been refused by the High Court. The appeal of *Dwarkanath Varma* was by leave of the High Court granted after the special leave had been given to the other appellant. Both appeals were consolidated by order of the High Court. The accused were tried before a Bench of the High Court consisting of the Chief Justice and Kulwant Sahay and Dhavle, JJ., and a special jury of nine persons, on an information exhibited by the Government Advocate by the direction and with the sanction of the Local Government pursuant to Section 17 of the Letters Patent, constituting the High Court and section 194, Criminal Procedure Code, 1898. The appellant Gaya Prasad, an Assistant Civil Surgeon, hereinafter called the doctor, was convicted of perjury and sentenced to five years' rigorous imprisonment ; the appellant Dwarkanath Varma, a Sub-Inspector of Police, hereinafter called the Sub-Inspector, was convicted of conspiring with Ritbhanjan Singh, Subedar Singh and Ramdhani Singh and Gaya Prasad to fabricate and give false evidence in Court with the intent to procure conviction for a capital offence of six named persons in breach of Section 120-B, Indian Penal Code ; and was also convicted of fabricating evidence in six particulars intending to cause the same six persons to be convicted of culpable homicide amounting to murder in breach of Section 194 Indian Penal Code. He was sentenced on each of these charges to ten years' rigorous imprisonment, the sentences to run concurrently.

2. At the conclusion of the appeal their Lordships announced that they would humbly advise His Majesty to allow both appeals and to set aside the convictions, and would give their reasons later, as they now proceed to do. The case was one of some complexity involving questions of considerable medico-legal interest. It has resulted in a miscarriage of justice which has caused two persons of apparently hitherto unblemished reputations to be wrongly convicted of serious offences and to receive sentences of long terms of imprisonment, part of which they had to undergo. It will be necessary to go into some detail in order to explain in what circumstances this unfortunate result occurred.

3. On 2nd August 1928, the Sub-Inspector, who was stationed at Rohtas in the Province of Bihar and Orissa, was in the course of his duties when in the afternoon complaint was made to him by two men, Ritbhanjan Singh and Subedar Singh, of the village of Balbhadarpur, that at about 2 p. m. of that afternoon they and Ramdhani Singh had seen in Ritbhanjan's paddy field six men, Issardeyal Singh, Sheotahal Singh, his son, Lokan Singh, Muneshar Singh and Mundrika Singh (sons of Lokan) and Jitu Singh assaulting Rhitbhanjan's nephew, Jamadar Singh, with kicks, blows and sticks. Jamadar Singh told them that the bullocks of Issardeyal and Lokan were grazing in the field and that he was driving them away to impound them when he was attacked. The three men carried Jamadar to the village and there he died. They had left the dead body on the ground and had run to report the occurrence to the Sub-Inspector. Proceeding to the village he met Issardeyal and Muneshwar ; they denied the charge and alleged that while in their field they had been told by Dhanmantia, daughter of Lokan, that Jamadar had died ; and that Jamadar's relations had assaulted Phulkumari, a female relative of Issardeyal, on the ground that by witchcraft she had brought about Jamadar's death. They said that Jamadar had been ill of cholera for three or four days and had died of it that day. The Sub-Inspector proceeded to make inquiries. In the result he arrested the six accused men for murder. He came to the conclusion that the story of the assault on the old lady was false. That same evening, in accordance with his duty, he dispatched the body of Jamadar for post-mortem examination to the nearest civil surgeon who was at the hospital at Sassaram 50 miles away. With it he sent four bearers for the body had to be carried by band on a khotoli; and an escort of three police officers under constable Girwar Singh, who was entrusted with the necessary documents, accompanied by two relatives. The documents should have included the surathal, or inquest report, which was drawn up by the Sub-Inspector and the challan which described the escort and the circumstances in which the post-mortem was required. It is clear that by mistake two copies of the challan

alone reached the doctor. The material part of it is in the column marked (5) :

> "History of the cause of death which is at present ascertained. As far as is known of the case at present the death of the deceased is said to have been due to severe assault by means of blows, kicks and butt ends of the sticks. The deceased complained of severe pain on the left side of the chest before he expired. No apparent mark of injury is found on the person of the deceased."

4. The body reached the hospital on the morning of 4th August, and the post-mortem dissection began at about 10.30 a m., i.e., 4243 hours after death. Decomposition had obviously commenced. The doctor in charge of the hospital was the appellant Gaya Prasad. He was a young medical practitioner who took his degree of M.B. at Calcutta University in 1925 and had been appointed Assistant Surgeon by the Government of Bihar and Orissa in June 1926, and in August 1928, was on duty at the hospital Sassaram. His chief, Dr. Tarak Nath Mitra, was at that time stationed as Civil Surgeon at Arrah. In that capacity he would have submitted to him the post-mortem reports sent out by the Assistant Surgeons at the various hospitals in this district as was done in this case. The doctor duly made the post-mortem examination and filled up the report. As the case against him turns on this report it is desirable to set it out verbatim. (Here the judgment set out the whole of this report dated 4th August 1928 of which the material portion is as follows.)

III.THORAX

> (1) Walls, ribs and cartilages (2) Pleura (3) Larynx and trachea (4) Right lung Highly congested, specially at the base and posterior side. (5) Left lungHighly congested. (6) Pericardium Pericardial cavity contained 4 ounces of bloody fluid and some clot. (7) HeartThe right auricle at the anterolateral was ruptured. Both chambers empty. (8) Large vesselsFull of bloody fluid.

IV.ABDOMEN

> (1) Walls (2) Peritonium (3) Mouth, pharynx and oesophagus (4) Stomach and its contentswas congested outside and inside, contained some gas and one and a half of faecal matter. There was some bile stain on the part surface of it. (5) Small intestine and its contents The duodenum was ruptured on the lateral aspect just where the bile duct open into it. (6) Large intestine and its contents A linear rent of the ascending colon just at the bend of the hepatic flexure.

5. Their Lordships will revert to this document later. In the meantime it is desirable to notice that the information received in the challan that the death of the deceased was

supposed to have been due to severe assault by means of blows, kicks and butt ends of sticks appeared to have been confirmed by the very serious internal injuries found to exist. One of the constables stated at the doctor's trial that he had told the doctor that the man had died of ras disease, a disease which is variously described by witnesses as being due to constipation, over-eating and purging or vomiting. No one at the trial suggested that the condition described indicated such a disease. The doctor, in his statutory explanation, denied that he had been so told; but it seems reasonably obvious that no one who found the appearances mentioned, and believed that they were the result of an assault before death, would attribute any importance to such a statement by a constable.

6. The report was handed to the constable in charge and was taken back by him to the Sub-Inspector, whom it reached on the evening of 5th August. It appeared to the Sub-Inspector and to his superior officers who now took up the investigation to afford irresistible evidence that the story of the prosecutors was true and that the story of the accused as to the man having died a natural death was false. On 8th August the Superintendent of Police and the Deputy Superintendent arrived at Rohtas. The Deputy Superintendent of Police went to the village and examined the witnesses for himself. The Superintendent examined various witnesses at Rohtas and instructed the Sub-Inspector to obtain further evidence from the Assistant Surgeon as to the cause of each of the various injuries received by the deceased and the weapon used in inflicting them. The doctor had then left Sassaram and was stationed at Arrah, where the required information was obtained. It is as follows : (After setting out the correspondence between the doctor and the Deputy Superintendant of Police, the judgment proceeded.) On 5th-8th December 1928, the charge was heard before the Sessions Judge and four assessors.

7. On 5th December the doctor was called and the complete record of his evidence given to the Court is as follows:-

> Copy of deposition of DR. GAYA PRASAD, Assistant Surgeon, before the Sessions Judge on 5th December 1928.
> Deposition in lower Court read out and admitted under section 509, Criminal PC
> Further examined.
> There was no sign of cholera. The man did not die of cholera.
> I found faecal matter in the body cavity. It was semi-solid. It was a healthy stool.

The deceased must have received a number of blows, probably twenty.

Cross-examined.

8. I don't question the persons who bring a corpse to me. I depend on the documents sent to me by the police.

9. In some cases it may be difficult to say whether ruptures of internal organs are ante-mortem or post-mortem. I did not specially examine for traces of cholera.

10. To Court.In my opinion the rupture of the organs was antemortem. The congestion of blood in some of the organs and the anti-peristaltic action of the intestines causing the faeces to come back into the stomach indicated this. At the sites of the ruptures there were clots of blood indicating that the injuries were ante mortem.

11. I can't say how many hours before my examination he died. Cross examined by permission.

12. In some cases it is very difficult to differentiate between ante-mortem injuries and injuries inflicted just after death.

13. The whole of para. 1 of his answer to the Court was at the present trial assigned as perjury, on which he was convicted. The accused were convicted of murder by the Sessions Judge and sentenced to death. They appealed to the High Court, and on 9th January 1929, the High Court affirmed the conviction, but reduced the offence to culpable homicide not amounting to murder and altered the sentence to imprisonment for life, except for a younger prisoner whose sentence was reduced to 10 years' imprisonment. After the conviction of the accused before the Sessions Judge Phulkumari had been charged before the Magistrate under section 182, Indian Penal Code with giving false information to the police as to the assault on her. It is noteworthy that when the charge was heard on 26th January 1929, she pleaded guilty. The note of the District Magistrate on the order sheet is as follows :

14. Accused pleads guilty and her statement recorded. She is an old woman. She admits to have lodged the false information with the police in order to create defence for her relations who were accused in a murder case and who have already been convicted and transported for various terms. Under the circumstances I think it would meet the ends of justice to take a lenient view of the case. Mt. Phulkumari is convicted and sentenced to suffer simple imprisonment for one month as she is too old to undergo the sentence of hard labour.

15. Any question as to the murder of Jamadar now seemed to be settled. But dramatic

developments soon occurred. The village was in a state of unrest at the result. In particular Issardeyal's wife was untiring in seeking to establish that injustice had been done. The police authorities directed Mr. A.R.P. Sinha, the Deputy Superintendent of Police at Patna, to hold an inquiry. As the result of his report and further inquiries by higher police officials the Local Government appear to have been satisfied that a miscarriage of justice had taken place. They remitted the unexpired portion of the sentence on the six convicts, and in January 1930 appear to have directed the Government Advocate to exhibit an ex-officio information against the three original accusers Ritbhanjan, Ramdhani and Subedar, who will hereafter be called the prosecutors, and the Sub-Inspector for fabricating and giving false evidence on a capital charge. The power to exhibit an information to the High Court is given by Section 194(2), Criminal PC, 1898, which provides that with the sanction of the Local Government the Advocate General (which term by the definition clause Section 4, 1 (a) includes Government Advocate), may exhibit in formations for all purposes for which His Majesty's Attorney-General may exhibit information's on behalf of the Crown in the High Court of Justice in England. By Section 1(d) the High Court may make rules for carrying this section into effect : but no rules appear to have been made. By Section 17, Letters Patent, constituting the High Court at Patna, the High Court is given original criminal jurisdiction to try any person residing in places within the jurisdiction of any Court subject to its superintendence on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf. Their Lordships do not purpose to determine finally the question of jurisdiction raised by the appellants' objection to the procedure in this case. They content themselves with saying that as at present advised the section of the Criminal Procedure Code and the clauses of the Letters Patent appear to show the objection to be ill founded.

16. The procedure was in any event novel, and their Lordships are unable to commend the forms adopted. It is well established that an ex officio information should contain a statement of the charge as certain and detailed as an indictment. The first document filed by the Government Advocate was styled a petition exhibiting an information in the matter of Sections 184 and 195, Criminal PC not under Section 194 at all. Later amendments refer to it as an information exhibited under section 194. The so-called information entitled in the matter of the Sub-Inspector and the three prosecutors sets out the facts of the original trial, recites the attitude taken up by the public in the village and the subsequent police inquiries, and states that the Local Government were satisfied that the whole case against the accused Mu-neshwar and others was false and had directed the release of the original accused and feel that the fresh materials upon

which they came to this conclusion should be placed before their Lordships so that their Lordships might take such action as they might think proper. It is to be observed that no criminal charge is formulated against anyone; and the allegations as to the opinion of the executive are quite out of place in a criminal information, likely to be very prejudical to the accused, and ought never to have been included. The High Court however seem to have thought they were justified in ordering the four accused to be arrested. On 6th March the Government Advocate applied to amend the original information by adding a paragraph that the petitioner, having carefully examined the papers, also came to the conclusion that grave miscarriage of justice had occurred, due to the conduct of the four accused, and that there were strong reasons to believe that the accused had committed offences under section 120-B and 194, Indian Penal Code. The form of this amendment does not appear to be much better than the original. On the same day however the Government Advocate did file an information with detailed charge against the accused. The first five paras. repeat the statements in the original information, and are subject to the criticism already made. Para.6 formulates the charge of conspiracy against the four accused and is as follows (After describing paras. 6 and 7, the judgment proceeded). The information then proceeds to charge each of the other three accused with perjury in their story of the assault and Rhitbhanjan and Subedar with fabricating false evidence in smearing the dead body of Jamadar with mud.

17. On the same day the trial having been fixed for 24th March, the Government Advocate exhibited an information against the doctor which is as follows : (After setting out the petition, the judgment proceeded). It is to be noticed that the charge of perjury as against all the accused is drawn incorrectly. It charges the accused with having made statements in their depositions "which they knew or had reason to know to be false."It should be unnecessary to point out that a man may make a statement in the belief that it is true, though good reasons exist for knowing it to be false, for, unfortunately, man's beliefs are not always influenced by good reasons. section 191, Indian Penal Code, defines the offence of giving false evidence as :

> "making a statement which he either knows or believes to be false and does not believe to be true," and the information should have conformed to the Code. The prisoners were arraigned before the jury on the charge in this information : but the Chief Justice in summing up read to the jury the words of the Code, and though criticism was addressed to a particular passage in his address which appeared to indicate that a witness might be guilty of perjury if he omitted to

tell the whole truth their Lordships taking as a whole the direction on this part of the law find no reason to suppose that the jury were in any way likely to be misled. On 24th March the case came on before the Chief Justice, Kulwant Sahay, J., and Dhavle, J. and a special jury of nine. It lasted 50 days. On 4th June the Chief Justice summed up. He directed the jury that it was unnecessary for them to give a separate verdict on each assignment of perjury or each charge of fabricating evidence. The jury found the three original prosecutors guilty on every charge.

18. They acquitted the Sub-Inspector of perjury, but found him guilty of conspiracy, and of fabricating false evidence. They acquitted the doctor of conspiracy, and fabricating false evidence, but convicted him of perjury. Thereupon the accused were sentenced to the terms of imprisonment already mentioned.

19. Dealing first with the charge against the doctor their Lordships are satisfied that his conviction for perjury was not justified and cannot be allowed to stand. The substance of the case against him was that he did not in fact hold the opinion that the injuries were ante mortem. Now this statement had appeared in the post-mortem report, and in respect of it the jury had acquitted the doctor of fabricating it, following an intimation from the Chief Justice that they would be well advised to find that the charge of fabricating the report had not been made out. Appreciating the absence of any sufficient evidence that on 4th August in stating his conclusion in the post-mortem report, the doctor was stating something that he knew to be untrue the Chief Justice suggested to the jury that on the perjury charge which related to 5th December, they might find that the accused did not in fact hold the opinion he expressed in the witness box by considering those things which were before him on 5th December quite apart from the things which were before him on 4th August. But oddly enough there were no further facts before the doctor at the Sessions except two which would undoubtedly tend to confirm his opinion viz : (1) that his chief had endorsed in writing agreement with his conclusion; (2) that the prosecutors had already before the Magistrate given evidence that Jamadar had in fact been assaulted; and there had been no cross-examination to indicate that their evidence was false. The facts that the Chief Justice impressed upon the jury were in no sense new facts at the Sessions. They were that at the present trial the accused being asked for an explanation of the congestion of the organs, attributed the injury to the heart to hypertension, and that theory must be newly formed or it would have been cross-examined to; and secondly that when asked generally whether he wished to add anything he did not refer to the suggested absence of blood in the abdominal cavity.

20. Neither of the two suggestions seems with respect to have any bearing on the question whether the doctor had abandoned an honest opinion held on 4th August and was professing dishonestly still to hold it on 5th December, and they appear to have no substance in them. There is no indication that the theory of hypertension is new; it is still a theory that the injury to the heart was due to the assault. The stress laid upon the failure to explain the absence of blood is subject to two criticisms. In the first place the learned Chief Justice assumes that the doctor found no blood in the peritoneal cavity which their Lordships venture to think is by no means established by the post-mortem report. In the second place it appears to their Lordships that in this respect the accused doctor has serious ground to complain of his treatment. section 342, Criminal PC provides that for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him the Court shall question him generally on the case after the witnesses for the prosecution have been examined. In pursuance of this section one of the puisne Judges put questions to the doctor. The only questions put on the contents of the post-mortem report were as to the congestion of some of the organs the cause of antiperistalsis, and the omission from the report of the condition of faucal matter, and clots of blood at the orifices of the ruptures deposed to at the Sessions. The other question is a general question whether there was anything else he desired to say about the charges or the evidence. The learned Chief Justice told the jury that the absence of blood in the body cavity was a vital point. If so it is plain that under Section 342 of the Code it was the duty of the examining Judge to call the accused's attention to this point and ask for an explanation. Probably the departure from the statutory rule was due to the fact that one Judge examined the accused while another summed up. But it deprives of any force the suggestion that the doctor's omission to explain what he was never asked to explain supplies evidence on which the jury should infer that six months before he had consciously abandoned a theory which four months before that he honestly held.

21. The fact is that the case for the prosecution broke down as soon as they failed to establish that the doctor was a party to a conspiracy with the prosecutors and the Sub Inspector to bring a false charge against the then accused. On this point the prosecution failed to show that the doctor had ever heard of the deceased or his relatives or the accused. It was suggested that he knew the Sub-Inspector, and had recent written communication with him. Evidence to establish this was entirely lacking, and there can be no question that the verdict of the jury on this charge was inevitable. But on this footing there never was any motive at all for the doctor deliberately giving a false opinion. The charge of perjury could never have been even

put on its legs if it were not for the excessive importance attached by the Chief Justice to the evidence of the doctors called by the prosecution that they would have expected much more blood in the pericardial cavity. The Chief Justice seems to have left the jury the choice of alternatives:

> "I must point to you that the very considerations to support the theory that his opinion was honestly given are those upon which it can be most satisfactorily shown that at any rate he must be a most infernal fool. If Jamadar died of disease and if, as the doctor says, no blood was found in the abdomen that fact should have struck him at once as conclusive against the view that the injuries were antemortem. On the other hand supposing Jamadar did die of injuries then the abdomen would have been full of blood and in that case he was a fool not to have noticed it. In any case he would seam to be a person who is not fit to do post-mortem work. If that be the state of his intellect then it may be that he might have held such an opinion as he expressed."

22. After opinions so expressed the jury may well have thought that anyone possessing a medical degree from Calcutta University and appointed an Assistant Civil Surgeon could not have reached the depth of incompetence suggested, and that they were driven to the only other alternative, perjury. (After discussing the evidence against the doctor, the judgment proceeded.) In their Lordships' opinion there was no evidence of any kind upon which he could properly have been found guilty of perjury. Their Lordships feel bound to express the opinion that Dr.Gaya Prasad has been the victim of a serious miscarriage of justice and that the result of the hearing is to leave no stain on the integrity of his character as a professional man. It is right to add that on the close of the case for the appellant leading counsel for the Crown with the candour which always characterizes him announced that in view of the acquittal of the doctor on the other charges he could not support the conviction, and did not contest the allowance of the appeal. It is now necessary to deal with the charge against the Sub-Inspector of Police. The charges upon which he has been convicted are : (1) Conspiring with the three villagers to fabricate and give false evidence with the intent to procure conviction of the six accused of a capital offence. (2) Fabricating evidence as to seven cases by entries in his diary in the fourth case by altering an initial in the post-mortem report. of the seven diary cases the prosecution abandoned 1 and 5 and the Judge ruled that there was no evidence as to 7.

23. On the question of conspiracy the Judge directed the jury that though the accused believed that the story of murder was true he might yet have conspired with the

prosecutors that they should give the detailed evidence which they did give and that he should make false entries in his diaries. This appears to their Lordships likely to mislead the jury. There was no direct evidence of concert between the alleged conspirators. It had to be inferred from a number of facts. No doubt it is possible that the offence of fabricating evidence to obtain a capital conviction can be committed though the offender believes the accused to be guilty, and indeed though the accused is in fact guilty. and if the offence can be so committed, in like manner a conspiracy so to commit the offence may be established. But in this case the substance of the case is that the prosecutors invented the whole story of an assault and of course knew their story to be false. If the Sub-Inspector similarly knew or believed the charge to be false, and fabricated evidence in support of it, one can understand a jury being asked to infer a concert of the Sub-Inspector with the prosecutors to achieve the wicked result both are aiming for. But if one set of alleged conspirators know the charge to be false, and the other alleged conspirator has no such knowledge but believes the charge to be true, and it is his duty if true to pursue it, the inference of any concert between the two sets of conspirators is so far weakened as, measured by the standard of proof required in a criminal case, to disappear. But the summing up on this point is attacked on another point which it was essential to the accused Sub-Inspector to have put before the jury, and which does not appear to have been mentioned to them in this connexion. The case of conspiracy against the Sub-Inspector is based upon his treatment of the villagers who supported the case for the defence that Jamadar had died a natural death from cholera, and that the injuries might have been caused artificially; and his omission to record statements to that effect in his diaries. It is also stated that he delayed the arrest and charge of the accused until he ascertained whether there was any bribe forthcoming from them. But it is obvious that whatever doubts the Sub-Inspector may have had in the first two days of the inquiry would be removed as soon as he received the post-mortem report, which now must be taken to have been made independently by the doctor without conspiracy between him and the Sub-Inspector. A charge of murder by assault is made; the post-mortem discloses the most serious internal injuries with the opinion of the Assistant Surgeon confirmed by the Civil Surgeon that death was caused by the injuries. It is difficult to imagine what view would be formed by any intelligent policeman other than that the prosecution story was true and the defence story was false; and that whatever wealth of evidence was forthcoming in support of the defence merely indicated that the village possessed a horde of liars. This was the actual effect produced on the mind not only of the Sub-Inspector but also of his superior officers whose position in the matter was strangely

depreciated in the summing up. In India, as elsewhere, a charge of murder is not left to the discretion of a Sub-Inspector of Police. The Superintendent and the Deputy Superintendent investigate for themselves, check the report of the Sub-Inspector, and the Superintendent or some higher official determines what charge is to be made. This course was followed.

24. The Superintendent went to Rohtas; the Deputy Superintendent, *Ram Narayan Singh,* went to Balbhadarpur, and independently of and in the absence of the Sub-Inspector took the evidence of witnesses and heard villagers, put forward the case for the defence that the death was due to cholera and that the injuries must have been caused artificially. He laughed at the suggestion. He was called as a witness for the prosecution, and his evidence at p. 454 in answer to the Court, who asked if it struck him as unimportant, was :

> "At that time it appeared to me absurd and we simply laughed at the defence set up. We thought it absurd in the face of the medical opinion."

25. Elsewhere at p. 419, he said :

> "he was already overwhelmed with the medical opinion that the death was due to the injuries and that they were antemortem," and at p. 447 the following questions and answers appear to represent accurately the official view :
> "Q. Is it true that during the police investigation or supervision by the higher officials the doctor's opinion is the guiding factor in the cases? A. Yes, plays a very important part. Q. and in this case, too, so far as your supervision was concerned, the doctor's opinion was the guiding point? A. Yes, my supervision and the Superintendent of Police's supervision."

26. Their Lordships cannot suppose that there is any ground for disbelieving this statement. The Superintendent and the Deputy Superintendent found the medical report of overwhelming weight. But if so why not also the Sub-Inspector. and if he so treated it he would naturally brush aside or even deal more drastically with witnesses who came with what appeared a concocted story of death by cholera, and artificially produced post-mortem injuries. The result is that the conduct of the Sub-Inspector indicating that he ignored the evidence of defence witnesses appears to afford no inference of a concert with the prosecutors to give or fabricate false evidence. Instead of allowing this contention to have its proper weight with the jury the Chief Justice thus dealt with the matter :

> "Mr. Nageshwar Prasad next propounded a very ingenious but entirely

fallacious argument. He said that the Sub-Inspector in any case was only the humblest member of a hierarchy of officials with many above him, and they all made the same mistake. He said that the supervising officer, the Magistrate, the Sessions Judge and the High Court all came to the same conclusion on the same evidence and that there is no reason why the poor Sub-Inspector should be selected for punishment for that mistake. The fallacy underlying that argument is that a supervising officer and above him the judicial tribunals formed their opinions upon the structure that had already been prepared by the Sub-Inspector. It is not as though each of these officials began a fresh investigation on the same evidence. The argument is ingenious but you will, I think, discard it."

27. Unfortunately the Chief Justice has fallen into a mistake of fact. The supervising officer did not form his opinion upon the structure which had already been prepared by the Sub-Inspector. As has been pointed out he, or rather they, examined witnesses on their own account and were guided chiefly by the medical report which was in no sense part of any structure prepared by the Sub-Inspector. The only other point that need be mentioned is that there was evidence that the Sub-Inspector demanded and received a bribe from Ritbhanjan, one of the prosecutors. But there was also evidence that he demanded and received a bribe from the accused. Whether the jury accepted the evidence or not their Lordships do not know. If true the conduct of the Sub-Inspector is most reprehensible. But the fact, if established, that bribes were taken from both sides fails in the circumstances to afford sufficient evidence of a conspiracy with one side to fabricate or give false evidence. In the result it appears that the case for the defense of the Sub-Inspector was not left to the jury, and that there was no evidence upon which any jury could come to the conclusion that the Sub-Inspector had conspired to fabricate or give false evidence. Their Lordships have no hesitation in coming to the conclusion that the conviction on this charge must be set aside.

28. The conviction for fabricating evidence must also be set aside. A question of law arose at the trial upon which the learned Judges do not appear to have been in agreement, whether to enter a false record in a police diary can be said to be fabricating evidence at all, especially as Clauses 162 and 172, Criminal PC, appear to negative the admissibility of the entry as evidence save for the purpose of contradicting a witness whose statement is recorded in writing, or of contradicting the Police Officer himself. Their Lordships did not find it necessary to hear argument on this point from the appellant's counsel, and they do not propose to give any decision upon it. They leave the doubt to be resolved on another occasion. But the charge as

framed is one of making false entries in diaries under five different dates as well as making an alteration in the post-mortem report. This charge involves at least six different offences, the falsity of each entry, and the intention with which each was made require to be separately ascertained and established in each case to the satisfaction of the jury. The distinct offences were, it appears, separately charged in the information sufficiently to comply with section 233, Criminal PC. The Chief Justice however directed the jury that if any one item were established against the Sub-Inspector they could give a general verdict of guilty on the charge of fabricating evidence.

29. The result is that it is impossible to know whether the jury convicted on all or only one of the offences alleged, and if on one on which. A notable instance is item C, which records that the Inspector went to the place of assault and found hoof marks and the ground trampled with footsteps. This statement was repeated by the Sub-Inspector in his deposition at the Sessions and was assigned as perjury in the perjury charge upon which the jury acquitted him. and on this very charge the Chief Justice directed the jury that they should be very slow to come to the conclusion that it was perjury; and that the evidence was slender that at the Sessions Court the Inspector knew that this was a false case and that he was putting up a case of murder against men whom he knew to be innocent. "I think,"he said, "you will be very slow to come to that conclusion."It was part of the case for the prosecution that some of the diaries were written up together on 6th August; and it is quite possible that if the jury had been directed that if they believed that to be done the writing up at one time might constitute one offence if the entries were false. But they were not so directed and some of the items stand as separate quite apart from such evidence.

30. Their Lordships do not find it necessary to discuss the specific facts of each item. It is sufficient to say that the considerations which they have expressed as to the conspiracy charge applied to these items, and that if they had been presented to the jury the verdict would almost inevitably have been different. The result is that on this charge also the conviction should be set aside. For the above reasons at the conclusion of the argument their Lordships humbly advised His Majesty that both appeals should be allowed and that the convictions of both Mr. Gaya Prasad and of Dwarakanath Varma should be set aside.

31. Their Lordships cannot part with the case without recording their opinion that the procedure adopted in this case of an ex-officio information was unfortunate and was undoubtedly prejudicial to the accused. It was a case where witnesses who were

available at the former trial, but not called, were called for the first time; and where witnesses who had given evidence of the former trial were called to contradict that evidence at the present trial. If the ordinary procedure had been adopted the evidence would have been given before a committing Magistrate and the accused would have had ample notice and time to prepare. As it was, there was no preliminary hearing, and though they received from the Crown in advance statements of what the witnesses would say, such statements had not been made on oath, and in some cases there is complaint of their being handed to the defense very late. Some of the evidence appeared to have been obtained while the trial was proceeding. This case did not differ from other cases of perjury and conspiracy which have been tried by the ordinary procedure ; and its result, it is to be hoped, will be to discourage the recourse to unusual procedure in similar cases in the future.

32. Their Lordships have dealt with these appeals on the footing that the three other accused who have not appealed were rightly convicted. The acquittal of the doctor and the Sub-Inspector is consistent with the guilt of the original prosecutors. But having had the duty of considering the whole of the case their Lordships feel bound to record that they are left with an uneasy feeling that the conviction of the three villagers may be open to doubt. The conduct of the whole proceedings has not imbued them with confidence that a correct result has necessarily been reached. It would not be right for them to particularize the elements of doubt that might arise; they content themselves with expressing a hope that the life sentence of these three villagers will be carefully considered by the appropriate authority.

Appeal allowed.