CALCUTTA HIGH COURT

Pulin Behary Das

Vs

Emperor

(Richard Harington, C.J. A Mookerjee and Caspersz, J.)

02.04.1912

JUDGMENT

Richard Harington, J.

1. In this case, 35 persons appeal against the decision of the learned Additional Sessions Judge of Dacca convicting them under Section 121A of the Indian Penal Code, and against the sentences varying from transportation for life to rigorous imprisonment for three years passed on them on that conviction. In the lower Court, 44 person were placed upon their trial of these, eight were acquitted; one of those convicted has not appealed and is said to have become insane. The remainder are the appellants before us.

2. Stated, as shortly as possible, the case for the Crown is that the first appellant, Pulin Behary Das, founded an association known as the Dacca Anusilan Samity, that that association had branches or similar associations affiliated to it throughout Eastern Bengal, that the object for which the association was formed was for the purpose of bringing about revolution by force of arms and depriving the King of the sovereignty of British India, that the appellants were the members of the association and that they had agreed amongst themselves to promote the revolutionary object with which the association was formed: that having associated themselves for this purpose, they have committed an offence under Section 121A of the Indian Penal Code.

3. Of the appellants some admit and some deny their connection with the Dacca Anusilan Samity. Those who admit their connection contend that the object with which the Dacca Anusilan Samity was formed was not merely an innocent object but that it was a laudable one, viz., that of improving the physical and mental condition of the Bengali race. They contend that the other societies, which the prosecution says were affiliated to the Dacca Anusilan Samity, were in fact independent societies and had no revolutionary or unlawful object in view.

4. The assessors, who have delivered their opinions at some length, disagree with the Judge in thinking that the object of the Samity was revolutionary: one assessor has considered the

question as to which of the appellants are connected with the Society. When the appeal was called on, the learned Counsel for the appellants took certain preliminary objections which may be properly disposed of before the facts of the case are dealt with. He contended, first, that there was no complaint within the meaning of Sections 4 and 190 of the Code of Criminal Procedure, and that, therefore, the proceedings were void ab initio, because the Magistrate had no jurisdiction to initiate them. In the second place, he contended that if there was a complaint, it was not lawfully authorised under Section 196, Criminal-Procedure Code. His third point was that there had been misjoinder of charges.

5. The third point may be very briefly disposed of. The prisoners were charged under Sections 121A, 122 and 123 of the Indian Penal Code. It was argued that a charge under Section 123 could not be legally joined with one under Section 121A. I do not agree with that contention. The charge under Section 121A is that of conspiring to wage war against the King and deprive him of the sovereignty of British India and overawe by means of criminal force or show of criminal force the Government of India. Now, in furtherance of that conspiracy, the persons engaged therein may actively conspire or they may collect arms or they may conceal the existence of their conspiracy from the authorities. All these acts, if done, are in furtherance of (he one transaction, and, therefore, may clearly be charged against these persons, under Sections 235 of the Criminal Procedure Code, and the prisoners may be tried at one trial for all these offences, But had there been any doubt at all in reference to this matter, it would have been set at rest by the decision of this Court in the case of Barindra Kumar Ghose v. Emperor 37 C. 467 : 7 Ind. Cas. 359 : 14 C.W.N. 1114 : 11 Cr.L.J. 453 in which this point was raised and decided adversely to the contention of the appellants. Mr. Dass says that the contention was withdrawn in that case. But that, of course, cannot be done and no conviction which was bad in law could be allowed to stand because the Counsel for the appellant desired to withdraw the objection in point of law. No doubt, the point was not pressed in that case; it was rightly not pressed, because there was nothing in it and it was an idle waste of time to argue it. In any case, we should be bound by the decision, and with that decision we respectfully agree. In this case, the objection has peculiarly little force because the charges under Sections 122 and 123 were not pressed and no judgment was asked for or given in respect of them.

6. The first point, namely, that there was no complaint on which the Magistrate was entitled to issue process, was very strongly pressed upon us. The word "complaint" as defined in Section 4 of the Criminal Procedure Code is an allegation made orally or in writing to a Magistrate with a view to his taking action under the Code, that some persons, whether known or unknown, have committed an offence; and under Section 190, a Magistrate may take cognizance of any offence upon receiving a complaint of facts which constitutes such an offence. Then comes Section 195 which provides) that in certain cases, inter alia, charges under Sections 121A, 122 and 123 of the

Indian Penal Code, unless the complaint is made by order of, or under authority from, the Governor-General in Council, or the Local Government, or some officer empowered by the Governor-General in Council in that behalf, the Magistrate shall not take cognizance of it. Next comes Chapter XVI, prescribing what the Magistrate is to do on taking cognizance and what he is to do before he is entitled to dismiss the complaint; and then follows Chapter XVII dealing with the commencement of proceedings. The first section of the latter chapter, namely, Section 204 provides that if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground, the process must be issued. I pause here to observe that it is not open to the appellants to contend that the Magistrate exercised jurisdiction vested in him under Section 204 wrongfully or issued a process on an insufficient complaint. To make the whole proceeding void ab initio, it is necessary for them to show that there was no complaint before the Magistrate and the Magistrate had no other course but to refuse issue of process on the ground that he had no jurisdiction under the law to issue such a process. It is not enough to say that the materials which the Magistrate had before him were meagre or even insufficient, for if the Magistrate had jurisdiction to issue process, the trial would be perfectly regular even if the Magistrate had exercised that jurisdiction on insufficient materials. The materials which the Magistrate had before him consisted of a sanction authorising one Baba Mon Mohan Chakravarty to prefer a complaint against 47 persons for offencas under Sections 121A, 122 and 123 of the Indian Penal Code, and a petition of complaint signed by Mon Mohan Chakravarty, who said that he had reason to believe that the 47 persons have, amongst themselves, and together with other persons known or unknown, conspired to wage war against His Majesty the King and to deprive His Majesty of the sovereignty of British India, and they had collected arms and had otherwise prepared to wage war with the intention of either waging war or being prepared to wage war against the King, and have further concealed that intent to facilitate the design to wage war against the King. There is also an examination of Mon Mohan Chakravarty in which he proved that he had been directed and authorised by the Local Government to prefer a petition of complaint against these 47 persons and identified the signature of the Secretary which appeared on the sanction. Besides these documents, there was another sanction and a petition of complaint relating to seven other persons, and a third sanction and a petition of complaint with regard to another individual. Similarly, there was an examination of Mon Mohan Chakravarty on solemn affirmation in which he proved these two sanctions and complaints. The last two petitions of complaint recited the first sanction and complaint and stated that the complainant had received sanction to prosecute other persons complained against for the same offences. It has been urged that on those materials the Magistrate had no jurisdiction to do anything and ought to have refused to issue any process at all. Amongst the cases cited by the appellants was that of Emperor v. Lalit Mohan 15 C.W.N. 98 : 8 Ind. Cas. 1059 : 12 Cr.L.J. 2.

7. But that was a case in which the name of the prisoner had been omitted possibly by accident from the complaint made before the Magistrate. It was there held, and quite rightly held, that there was no complaint before the Magistrate in respect of the person whose name had been omitted, and it was held that the fact that his name appeared in the sanction was not sufficient to give the Magistrate jurisdiction when there was no allegation before him that the person whose name was in the sanction had done anything at all. That case is quite distinguishable from the present one, because in that case the materials which the Magistrate had before him did not speak of any offence having been committed by that one particular person. In this case, the question is whether on the materials before him the Magistrate had or had not jurisdiction to act.

8. In my opinion, he had jurisdiction, and, I think that on the materials he had before him, it cannot be said that there was no allegation that the persons against whom process was asked, had committed an offence. The appellants did not take any steps to set aside the Magistrate's order on the ground that on the face of it, the materials on which it was made were insufficient. They have proceeded to trial, the point is not one which affects the fairness of the trial in any way. It is not open to them now to object to the issue of process unless they can show that there was no power to issue it; and that they have failed to show.

9. The second contention on the part of the appellant is that the complaint was not lawfully authorised: he says the sanction was too vague, and that even if not too vague, it was granted by an officer who had no power to grant it. This contention was founded on an objection which, in my opinion, is not open to the appellant. It is conceded that a sanction was given by the Local Government under Section 196 of Criminal Procedure Code. This was in form a proper sanction. There is nothing in the contention that it was too vague. But it is argued that statutory powers, under which the Lieutenant Governorship of Eastern Bengal and Assam was created, did not enable the Government of India to create a new Province comprising the territory which was included in the old Province of Bengal. As at present advised, I am not prepared to say that the powers of the Government are limited as the learned Counsel contends. But I purposely forbear discussing the statutes or dealing with the arguments, because, in, my opinion, the question is one which we cannot go into as it is not a ground for interfering with the decision in the case. The fact that the sanction was given by the Local Government under Section 196 is not disputed. The Local Government is and has been for years the de facto Government of the Province, is admitted. The appellants do not seek to challenge the granting of the sanction nor the appointment of the officer by whom the sanction was granted. But they contend that the Government of India had no power to create the Local Government. All acts, therefore, done by the Local Government, inter alia, the granting of sanction, are bad. The argument of the learned Counsel cannot be limited to the power of the Local Government to grant sanction under Section 196 of the Criminal Procedure Code. If the Local Government cannot grant a sanction because

the Governor-General in Council has no power to create a Local Government capable of granting sanction, then it follows that the Local Government cannot exercise any of the other functions of the Government, it cannot appoint Judges or Magistrates and the Magistrates who were duly appointed by the Local Government had no power to commit, and the Judge, deriving his authority from the same source, had no power to try the case. It is to be observed that this point was not taken on any motion before this Court, and it only comes to this Court after the trial is over and the judgment given. On the face of them, the proceedings are perfectly regular. The point is not one which under the ancient practice in English Courts would have been raised by a writ of error. It, in no way, touches the fairness of the trial or the merits of the case. No authority has been cited to support the proposition that it is open to a prisoner who has bean convicted to dispute the right of the de facto Government to exercise the powers of Government. Although the industry of Counsel has failed to produce any case bearing on this point--it does appear that in the time of the Protectorate, an attempt was made to question the right of the de facto Government to levy duties, in a motion for a habeas corpus on behalf of one Coney who was imprisoned for non-payment of them. The contention was, of course, at once overruled: and the case does not appear to have found its way into any if the authorised reports. In the absence of any authority to the contrary, I am prepared to hold that this question is not open in an appeal preferred by the prisoner against his conviction: and that a person who has been convicted is not entitled to question in appeal the right of the de facto Government of the Province to exercise any of those powers which a Government may lawfully exercise.

10. I now proceed to deal with the facts of the case. It is not disputed on behalf of the appellants that in fact a society known as the Dacca Anusilan Samity was established. It has been proved and has not been contested that the persons who entered that society were bound by vows to observe the most stringent rules of discipline. Although the fact that the society was established is admitted, there is a dispute between the prosecution and the defence as to the time when it came into existance. The contention of the Crown is that the partition of Bengal in October 1905 gave rise to considerable feeling of discontent amongst the Hindu inhabitants of the newly formed Province of Eastern Bengal and Assam, and that this feeling of discontent was utilised by certain persons, who desired to bring about a revolution, for the purpose of fomenting discontent against the Government and for the purpose of introducing into the Province the design of subverting the Government, by force. It is alleged that one Bepin Chandra Pal and P. Mitter came to Dacca shortly after the partition had been accomplished; that they made speeches calculated to stir up the indignation of the audience and then called on the persons who were present to take a vow to sacrifice their lives for their country Amongst those, who responded to this call was Pulin Behary Das. Subsequently, he established, it is said, in Dacca a National School for the benefit of some boys who had been expelled from the Collegiate School for, some misbehaviour with

regard to partition. The National School was eventually established next door to the house at 50 Wari where Pulin resided, and there it is said, that Pulin came to instruct the youths in martial exercises with lathies, swords and daggers with the object of forming the association which afterwards became known as the, Dacca Anusilan Samity. Shortly after it was started, in other places in the Provinca and during the years 1906-07, the movements spread. There was an affray between some Hindus and Mahomedans at 50 Wari in, November 1907, in respect of which Pulin and some members of the association were convicted. In 1908 the owner of 50 Wari gave Pulin notice to vacate the premises. The Samity then moved to 452, South Maisundi, which is also known as "Bhuter Bari" Pulin occupied the house immediately behind it. On the 10th August 1908, the Samity premises were searched with respect to some suspected offence under the Arms Act. On the 5th November, another search was made which is stated to have been confined to certain documents which a boy said to have been kidnapped had alleged were to be" found on the walls. On the 15th of November, a thorough search of the premises was made and a vast number of documents and books were seized amongst which were many documents of a revolutionary character. In December 1908, Pulin was deported and the Samity was declared to be an illegal institution: and from that time the Samity ostensibly ceased to exist. Between the months of June 1908, and September 1910, a number of serious crimes were committed. There were four very serious cases of dacoity, two accompanied by murder. There were two cases of simple murder and there were cases of offences under the Arms Act and under the Explosive Act. The prosecution alleged that these offences were committed by members of the Dacca Anusilan Samity or its affiliated associations in furtherance of the design of subverting the British Government. The appellants contend that the crimes, to which I have referred, have no connection whatever with the Samity. They do not content themselves with saying that the evidence has not established that the Samity was for unlawful purposes. They go further and say that it was formed for the physical improvement of the people of Bengal and the actual stimulus which brought about the formation of the society was the oppression which the Hindus in Eastern Bengal suffered at the hands of the Mahomedans during the years 1906-07. A considerable amount of evidence has been dealt with for the purpose of establishing the allegation of the appellants that there were in fact disturbances between the Mahomedans and the Hindus in the month of March 1907, when the Nawab went to Comilla. All these disturbances, riots at Comilla and Jamalpur, combined to raise in the minds of the Hindus a considerable apprehension of ill-treatment by the Mahomedans. It is contended on the evidence that there was introduced into the minds of the Hindus, a belief that they would not receive the assistance and protection which they were entitled to expect from the authorities, and that in this State of apprehension and panic in which they were, they collected and formed associations for the purpose of encouraging lathi play in order that they might be in a position to hold their own in case of an apprehended attack by the Mahomedans, Notwithstanding the very great mass of evidence which is gone into and the

care with which it has been discussed by the learned Judge in the Court below, I cannot help thinking that it is really very much beside the point. Whether the Samity was started solely in' consequence of the efforts of the revolutionary party to utilise the discontent created by the Partition for the furtherance of their object or whether the fact that disturbances took place in Eastern Bengal and Assam, was the occasion of the formation of the Samity, does not really seem to me to touch the point. The real question at issue is what was the object of the Samity at the time when the premises were searched. Was it, as Pulin says in his statement, an association of which the chief object was to establish the nationality of the Bengalis and to secure their physical and mental improvement, or behind all this, was there the ulterior object of overthrowing by force the Government of India, a purpose to which this establishment of the nationality of Bengalis and their mental and physical improvement could be advantageously utilised? To my mind, the object of the Society is to be ascertained not only by ah examination of the evidence of those persons who have been members of it but by careful examination of the documents admittedly appertaining to the Society, such as, its rules, its vows and the documents found in the possession of the Society and its members and by an examination of the oral testimony as to what is done by the persons who belong to the Society.

11. The evidence on this branch of the case consists, first, of documentary evidence, secondly, of oral testimony. The documentary evidence can be divided into two classes of documents: first, those documents which have been described as official documents of the Samity, and secondly, books and papers belonging either to the Samity Library or to the members of the association. The oral testimony consists, first, of evidence of witnesses who belonged to the Samity and have given information with regard to it; and secondly, of witnesses who speak to alleged acts. These are said to have been committed by the members of the Samity in pursuance of the object which it sought to obtain.

12. The most important evidence is that which is to be found in the documents which admittedly belong to the Samity. These documents are: the Unity leaflet, the Paridarsak, the Adya and Antya vows, the first and second special vows, a series of rules which appears in a document headed Notification, Duties of Secretaries, another document which is described as a Copy of the Rules, the Village notes and the paper inviting opinions as to the proposal to divide Bengal into divisions forming central Samities to superintend the branch Samities.

13. The Unity leaflet, which was found at the search of the Samity premises, is of the nature of an essay by Pulin inculcating importance of obedience to the leader. It shows how impossible it is to be saved from pending dangers and mishaps, if there be a lack of unity of force and if each individual is guided in his action by his own independent opinion. It is impossible, according to this leaflet, to secure national and social freedom unless the individual freedom is surrendered to

the, bands of the leaders. And it commends that whoever the leader might be, his order must be carried oat with a spirit of reverence and without cavil.

14. The next document, Paridarsak, is one of great importance. It is written by Pulin and several copies of it have been found. It is headed "To proceed to work after reading this work five times with attention." It is an essay on the formation of a Samity and indicates what, in the writer's views, is necessary for this purpose. It begins by pointing out that "the attention of the people of the locality must be gradually drawn towards our object." It points out the necessity of unity and obedience to one leader, of vows and of hard and fast rules without which at no time a powerful body or military organisation can be formed, that it should be ascertained whether any new Samity has been formed without the writer's knowledge, and arrangements-, should be made for its supervision, that it should be ascertained whether members who are playing in a Samity have taken prescribed vows, that if any member of the Samity included in the writer's has been teaching plays to any one who has not taken vows, an attempt must be made to remedy this, that steps must be taken against faction which comes into existence against the Samity, that if any one by deception learns play without taking vows, arrangement should be made for complete destruction of his knowledge. Inquiry is to be made in villages as to whether the work is being carried out; important information is to be sent to the Secretary of the Samity, not by post but by special messenger; the Samity is to have no open relation with the popular and outward Swadeshi, as it is against its principle to mix up in quarrels, dispute or litigation. Unless, it says, the foreigners and the foreign King are driven out, it is impossible altogether to drive out foreign goods. It is proper for each individual member to use Swadeshi goods as much as is possible. The writer then goes on to discuss why Mussalmans are not admitted into the Samity. In his view, they are untrustworthy, He says: When entire Mussalman race is against us, it will not be particularly profitable to us if one or two Mussalmans join our band " Then there is a remarkable passage in these words-: If it so happens that all Mussalmans grow violent against the Hindu, or if they join with the English, and if the parents and relatives of the Mussalmans who have joined our band stand against us, then what course will all these Mussalman members adopt is a question to be considered by both sides." And goes on to say: "It will not be of any good to us, if two or four Mussalman students come and play lathi with us and then go away; they will simply go away with a knowledge of some of our secret mantras. But if these Mussalmans who are in sympathy with us can make their society fall in with our views and can, above all, make arrangements for the entire prevention of cow killing, then it is possible for all parties to secure benefit and welfare in all respects." It contemplates that the Mussalmans would become sub-emissive to the Hindus, and while pointing out that it is improper to court their friendship, it concludes by saying that in no circumstance would it be proper to show hostile feeling against or to deal unjustly with the Mussalmans as a nation.

15. Following this document, come the Vows. The Adya or preliminary vow binds the person who takes it never to separate himself from the Samity, to warn the authorities if there is anything antagonistic in the Samity, to resolve to work out the welfare of the country, to absolute obedience to the authority and not to teach the art of, lathi play to any one who is not a member of the Samity. The next vow, the Antya, binds the members of the Samity not to divulge any internal matter of the Samity to any one or to discuss this matter unnecessarily. The member is to be absolutely obedient and to inform if there be any conspiracy against the Samity. And he will not teach the subjects in which he receives instructions in the Samity, after he is bound by an oath, to any one except those persons who are also bound by an oath. By the first of the two bishes or special vows, a member in the most solemn way vows that he will not Hive the circle till the object is fulfilled, and he will discard all ties of family affection, he will avoid all sexual indulgence, whether natural or unnatural, and he imprecates on himself a solemn curse if he does not keep this vow. Under the second special vow, a member swears that he will stake his life to do the work of the circle and for the development of the Samity, and will do utmost injury in his power to every opponent of the Samity, that he would never discuss the secrets with any body, that he will not argue about them even with those who are included in the circle. That he will carry out commands in a steady manner preserving secrecy of mantras, that he will conceal nothing from the leader, that he will engage in the practice of religion and mete out punishment to those who are opposed to it, and he will imprecate a solemn curse on himself if he fails to observe this vow.

16. The next document, which is headed Notification, provides for the domestic discipline within the walls of the Samity. It provides for doing all the domestic work, for the care of the property, for issue of books in the Library, for setting of a night watch and for matters solely concerned with the maintenance of strict discipline within the walls.

17. Then comes the document headed the Duties of the Secretaries. They are to be present and to see to the attendance of the members, to see that every new member is bound by vows, to observe the rules of the Samity, to examine his antecedents, to see that no non-Hindu is admitted, to enable members to change one Akhra for another, to compel the members to observe the rules, and in cases of serious wrongs, to report to the Chief Secretary. Delinquents are to be punished but not to be allowed to leave the Samity. There is to be a meeting every Sunday. The spirit of patriotism is to be excited. Routine work is to be carried out. Arrangement is to be made for exercise, for teaching drill and forming habits of enduring hardships. The members are to be divided in batches and each such batch is to be placed under a captain and teacher. Both sets of vows are to be hung up in the Akhra. Leaders are to be responsible for education and attendance of the members of their batch. Every chief instructor mast supervise the teachings of smaller batches and teach the leaders. Those who have taken only the adya vow are to be taught up to

certain point in the big and smaller lathi play, and instruction to be given in all branches to those who have taken all the vows. Boys under 12 years of age are described as external limbs of the Samity. They are to receive certain teaching. There are to be subscriptions of rice. The accounts are to be rendered to the Chief Secretary. The Secretaries are empowered to select members as their assistants and assign different duties to them and to appoint men to do their duties in their absence.

18. There is another document headed Copy of rules. Under the first rule, every member of a circle is to take the vow of the Samity and also the special vow of the circle. There is to be a Chief Superintendent at the students mess under whom-there will be teachers of lathi play, persons having the custody of the property of the Samity; persons who are absent will be punished. An absentee must be brought back even by the use of force. Prayers are to be said. The members are to be always present and are only entitled to leave with the permission of the authorities. Every member is to learn the vows, the duties of a manager, the Paridarsak play books and the regulation. Money obtained is to be the common property of the members. No unnecessary letters are to be written to the friends and relations. All letters for or from the members must be shown to the leaders of the circle. Members who absent themselves without the permission are to be debarred from the privileges of the Samity. Then follow some rules directed to taking care of the property of the Samity. The rules then go on to say that no member should be allowed to make arrangement for the food and board in the Samity for any guest or relation without previous sanction of the Chief. The members are to report any misconduct on the part of other members as to quarrelling or talking; and matters concerning the Samity are not to be discussed even amongst the members themselves. The rule ends up with the provision that those, who wish to go out on their own business or to become worldly men on reasonable ground, shall have to pay the expense at the rate of Rs. 12 a month for the period during which they were in the circle.

19. These constitute the official documents of the Samity. It only needs the very brief summary that I have given of the contents of these documents to show that a Samity formed in accordance with them would consist of a number of men, trained in the strictest discipline, bound to obey without question the orders of their leader and bound by the most solemn vow to keep absolutely secret the affairs of the Samity. It is to be observed that in neither the vows nor in the rules is the object of the Samity definitely stated. For the Crown, it is contended that the rules and vows show that the Samity had the many characteristics of a secret revolutionary society, e.g., secrecy, absolute obedience to leaders and strict discipline for some secret object, which are, at any rate, sufficient to rouse suspicion as to what that object was. And the object, according to the prosecution, is disclosed in Paridarsak, in which they say, Pulin has allowed his real aim to slip out. The two passages which the Crown says betray the object which the rules and the vows

conceal, are, first, the one referring to the driving oat the foreign King, and secondly, the passage referring to the possibility of the Musalmans joining the English. These passages, unless satisfactorily explained, indicate that the great object which is referred to in other parts of the Paridarsak, was the object of subverting the Government by force and expelling the English from India.

20. Further, they contend that the document inviting opinions as to the formation of Samities shows a design to spread the bodies far and wide through the Province and to honeycomb the Province with societies arriving at this end. The explanation which has been given in the course of the argument as to the formation of the Samity is two-fold. First, it is said that it is a means of enabling the Hindus to get a training in the lathi play and to become sufficiently strong and well-disciplined to crush the Mahomedans. Now, in favour of this contention, there is evidence that there were undoubtedly in the year 1907 some disturbances between the Hindus and the Mahomedans. And it is not at all unlikely that the facts that there were riots and that there was some excitement amongst the Hindus in the Province with respect to them, enabled Pulin to get persons to learn lathi play. But that the object of the Samity was solely for the purpose of providing an effective body of Hindus to defeat the Mahomedans, seems to me quite inconsistent with the object as disclosed in Paridarsak. If the association was to be a purely anti-Mahomedan association, Pulin would never have discussed the question as to why the Mahomedans were not permitted to join, Such an idea would be impossible and absurd, if the association was directed against the Mahomedans. Then, at the end of the Paridarsak, after discussing this question, there occurs a passage to the effect that in no circumstance would it be proper to show hostile feeling against or to deal unjustly with the Mahomedans as a nation. This sentiment is quite inconsistent with the Samity being aimed against the Mahomedans. That it was aimed against some body is quite clear; and if it was not against the Mahomedans, against whom was it aimed? The prosecution says it was against the English. Their contention is supported by the speculation of the writer of the Paridarsak as to the possibility of the Mahomedans joining with the English.

21. Then, there is another explanation which has been given by Pulin of the object for which the Samity was formed. He' says that it was formed to establish the nationality of the Bengalees and to secure their mental and physical improvement. But if this was true, no reasonable explanation is forthcoming as to the secrecy which the members were sworn to maintain. No object would have been more attractive to the more enthusiastic of the young men of Bengal. So far from there being any reason to conceal such an object, the publication of it far and wide would have assisted its course and would have brought into the association all those who aspired to attain so laudable an object.

22. The difficulty which meets those who have to explain the official documents of the Samity

lies in this: If absolute obedience and secrecy are explained by saying that the association was formed for the purpose of fighting and beating the Mahomedans, and for that purpose it was necessary to keep it secret, then it is inconsistent with that part of the Paridarsak which discusses the relation between the Samity and the Mahomedans. And if, on the other hand, it is said that the object was that of doing good to the Bengalee race, then secrecy and stringent need of the vows remain unexplained., There is another species of documents appertaining to the Samity which should be noticed, viz., Village notes.

23. This document is a printed form: it contains in print 21 points as to which intelligence is to be obtained: it has besides a table in print with, spaces for the entry of information on various heads.

24. Some copies filled in have been produced. The matters, on which information is obtained, relate to the inhabitants, fairs, produce, roads and watercourse, secrecy, enthusiasm or otherwise of the Samity members and other matters.

25. The Crown says that these notes summarise information which would be undoubtedly useful to those who had it, in the event of a rebellion: and contend that their inspections were made under the directions of the Samity for that purpose, and to enable the net work of Samities to be spread through the country.

26. The appellants, on the other hand, contend that the object of these notes was to enable the Samity to see where it could do good to persons residing in villages by improving roads, water supply and such like. This explanation is not supported by any evidence that the Samity ever did any work for the material well-being of any village.

27. All that can be said is, that it shows, the Samities were busy collecting information about the country. The object was, I think, to enable them to extend Samities throughout the country and to keep a check on those which had been already established.

28. Besides the official documents, there was on the premises of the Samity, a library. A great deal has been said in the course of the argument for the Crown as to the nature of the books found in that library. A very large proportion of them appear, from what has been said on the other side, to have been books of harmless character which throw no light whatever on the aims and objects of the Samity. There were, however, other books which are said to have been calculated to excite hatred against the English. As to these, we express no opinion, because we have not read them. But even if they had the effect which the Crown contends, even then it has very little to do with the case. Because the utmost that can be said is that the person, in whose library they were, approved of literature of that nature. And even that assumption would not in all cases be a just one. But there were copies of two frankly revolutionary works, namely, the

Modern Art of War and the Mookti Kon Pathe. Besides these, there were found very revolutionary poems written in the hands of one who is said to have been a member of the Samity but has not been arrested. There were printed poems, violently revolutionary, dedicated to Pulin and a large number of documents expressing the bitterness and hostility against the English and urging their destruction and some poems directed to exaltation of Khudiram and Profulla, the persons who murdered the English ladies at Muzafferpore. Now, the inference to be drawn from the presence of these documents in the Samity, to my mind, is, that the members of the Samity were imbued with the sentiment these documents express, that is, they were extremely hostile to the Government now carried on and were desirous of putting an end to it by force of arms.

29. The oral testimony directed in showing the object of the Samity is to be found in the deposition of witnesses Nos. 2, 3 and 39. Hemendra, who joined the Satipara Samity, before joining, was told that the object was to drive out the British. He afterwards joined the Dacca Anusilan Samity and was there for about 20 days. During that time, Pulin Das lectured on how to drive out the English. His brother Nagendra came to Dacca in 1907 and joined the Anusilan Samity in August of that year. He was advised to join by his cousin who said that a Samity was being formed for the purpose of driving out the English. He deposed that the members of the Samifcy said that they should follow the example of Sivaji and commit theft and dacoity and collect money and weapons. The other witness Upendra said that he was taken to the Samity at 50 Wari, that he took vows and some of those, who were there, explained to him how good is to be done to India; they were to collect arms and to be united, and pointed out that the Feringees would not stand before the 30 crores of Indians.

30. This oral evidence is open to the observation that it comes from persons who either have been members of the Samity or else have joined it for the purpose of betraying its secrets. Evidence of this sort must be very carefully scrutinised. Much weight cannot be attached to it unless it is corroborated by other circumstances.

31. But in this case, I have no doubt that, generally speaking, the evidence is true because much of it relating to lathi play, to taking vows, to the individuals who belonged to the Samity, is expressly admitted in the cases of many of the appellants. It becomes necessary to consider whether that part which relates to the objects of the Samity is to be believed, and to test this the documentary evidence has to be considered.

32. The result of the vows and rules is to show that an association has been formed for the purposes of furthering an object which is not stated.

33. The members of the association are bound by the strictest vows to maintain inviolable secrecy: to submit absolutely to their leaders to undergo a training of a quasi military character.

On the premises of the association are found books and writings advocating a revolution by force, and stirring up hatred against those who govern.

34. If the case stood thus, then the inference that the object of the society was, in the absence of any satisfactory explanation, a revolutionary one, would, in my opinion, be justified.

35. An explanation might be given and the inference might be displaced: but the facts I have stated would be quite enough to throw on the members the onus of explaining the object of their society.

36. In this case, there are the explanations of Pulin on one side; on the other, the evidence of the witnesses. Pulin's statements of the objects are, shown to be irreconcilable with his own official document, the Paridarsak: the statements of the witnesses as to the Samity's object are directly in accord with the Paridarsak and are in agreement with those particular passages, which, in my opinion, are susceptible of no explanation other than that the object of the society was revolutionary.

37. The learned Counsel for the appellants has vigorously contended that Pulin has been strongly influenced by Bankim Babu's writings, and that in forming a society in which the members exercised their religion, under-went training in physical culture and submitted to discipline, he was carrying out in practice the theories of Bankim Babu's.

38. To my mind, the question whether Pulin was inspired by the writings of Bankim is of the smallest importance.

39. Assuming that Bankim's theories, if followed out in practice, would produce a body ; of men war-like and vigorous but under strict discipline devoted to their leader, bound under the most sacred vows to obey his orders, and never to divulge his secrets, then it follows that a body of men would be produced who, in the event of the stirring calls to war and revolution in the literature found in the Samity being translated into action, would be most useful in the attainment of victory.

40. Now, besides the documents, other matters relied or by the Crown, in support of the conviction are certain alleged overt acts. Between the 2nd June 1908, and the 6th September 1910, no fewer than 10 serious cases occurred. There were Bara Dacoity, Satipara boat theft, Naria Dacoity, the murder of Sukumar, the murder of Priya Mohun, Rajendrapore train case, Dariapore Dacoity. There were finds of arms at Adapur and in a grocer's shop at Dacca and a find of bombs at Munshigunj, These cases, says the Crown, are due to the activity of the members of the Samity. Now, some of these cases can very shortly be disposed of.

41. The Bara Dacoity took place on the 2nd Jane 1908, when a number of men attacked the house of Sasi Sarkar at Bara and plundered it. They were disguised, their faces were covered with masks and they had torches and fire arms which they did not hesitate to use. After robbing the house, they left the place in boats which were followed by the villagers for some distance. But none of these dacoits were ever captured or identified. The only ground on which they were said to have been members of the Samity is that they were described as bhadralok. In our opinion, this is quite insufficient to connect the Samity with the dacoity. Though it is true that if the dacoity were committed by the members of the Samity it would have been committed by bhadralok, because all the members of it are of that class, yet the converse of that proposition is not equally true, namely, if a dacoity was committed by bhadralok, it was committed by the members of this Samity. It is quite true, as Mr. Garth argues, that if the members of the Samity followed the counsel given in the Mukti Kon Pathe with respect to the collection of money for the Samity, we should find dacoities committed by bhadralok. But we do not think that that circumstance would be sufficient to bring home the case to the Samity.

42. Similar observations apply to the Dariapur Dacoity, in which the only evidence to connect the Samity is that the robbery was committed by persons of the bhadralok class.

43. A case which requires more consideration is the Satipara boat theft case, which took place on the 14th August 1908. It is alleged, and the learned Judge in the Court below has found, that this was one of the overt acts of Samity and that the theft was committed for the purpose of a dacoity which had been planned by the leader of the Samity. It is beyond question that a boat belonging to Nilmoni was taken to Naraingunge without his authority or consent by the two appellants, Jadu and Binode, together with one Troilakhya who is not before the Court. The only question is, has it been satisfactorily established that this was done in pursuance of a plan to commit a dacoity as the witnesses for the Crown say. It is beyond doubt that the two witnesses Hemendra and Nagendra went to Mr. Dawson early in the morning of 15th August and gave him information which induced him to write a letter to the thana in consequence of which the persons in the boat were arrested. The arrest, however, was not made until the afternoon of that day.

44. The case for the defence now is that Jadu and Benode were desirous of seeing a display which was to take place at Naraingunge, that they took possession of the boat ac Satipara not intending to steal it in the sense of depriving the owner altogether of his property in the boat, but to make use of it for the purpose of getting to Naraingunge, and that when they were there, as I have already mentioned, they were arrested. Now, the evidence that a dacoity had been planned depends on the statement of Hemendra and Nagendra. And the point taken by the appellants is that even on the case presented by the Crown, it cannot be held that the connection with the Samity has been established, because putting it on the highest, it rests on the uncorroborated

testimony of persons who were either informers or spies.

45. Now, the first point to be observed is that it does not appear that Hemendra and Nagendra were able to say where the dacoity was to be committed. It is stated in the course of argument that they told Mr. Dawson that a boat from Dacca was to join this stolen boat at Naraingunge, and that they would then proceed to the place where robbery was to be committed. Now in the 'Sessions Court, it transpired on an examination of the evidence, nothing of that sort was said ; all that was said was that a Manji was to come from Dacca. But no information appears to have been given to Mr. Dawson as to where the robbery was to take place excepting that it was to be at some place outside the Dacca district, nor was he told how it was to be made known to those who were in the boat, to what place they had to proceed. The reason for saying in the course of the argument that Hemendra and Nagendra told Mr. Dawson that a boat from Dacca would join the stolen boat is that a statement to that effect is to be found in the deposition in the Magistrate's Court which was put in the course of the trial. But no question was asked with respect to this at the trial in the Sessions Court. And Mr. Dawson's evidence and his acts seemed to be inconsistent with any such statement having been made to him. If it were true that Mr. Dawson was informed that this boat contained members of a revolutionary association, who were to join other persons of the same association at Naraingunge and then to proceed to commit robbery, it seems incredible that he, did not take any step to capture the persons who were to come from Dacca. According to the case for the Crown, the stolen boat remained at Naraingunge from the evening of one day until the afternoon of the next, yet there is no evidence that any such boat ever came from Dacca or that any person connected with Pulin's Samity communicated with the boat at Naraingunge notwithstanding the fact that according to Hemendra and Nagendra some of the men went to Pulin starting about 11 P. M, on the night of their arrival.

46. The boat remains at the ghat some 18 hours and nothing is done by Pulin. And the way in which Mr. Dawson treated the occurrence makes one think that the information laid before him was not so grave as Hemendra and Nagendra would have us believe.

47. Then for some reason, no arrest was made during the day. It was not till late in the afternoon that the persons in the boat were taken into custody. The appellant's case is that when they were about to start from Satipara, Hemendra and Nagendra declined to come into the boat and went to Naraingunge by steamer, that they then concocted this story about the proposed dacoity to gain credit with Mr. Dawson, and that having concocted that story, no arrest could be made until the afternoon because the boat did not arrive at Naraingunge till then. Hemendra and Nagendra, on the other hand, say that they arrived at Naraingunge by a boat late on Saturday night and went to see Mr. Dawson first thing in the morning.

48. Now, to support the case for the Crown, reliance has been placed on a letter signed by

Trailokhya and sent to Nagendra warning him to get together the members of the Samity and also on another letter signed by Jadu warning Nagendra to be present at the appointed place at the appointed hour with the appointed men. These documents seem to refer to some design. But if they refer to the transaction with regard to the stealing of the boat, it is rather a singular circumstance that these letters were never produced or mentioned at the time of the boat theft case. They only appear two years later. It does not appear that either Nagendra or Hemendra mentioned Pulin's name in connection with the theft of this boat to Mr. Dawson. As the evidence stands, the Samity can only be connected with it through Nagendra and Hemendra.

49. Putting the evidence very shortly, it amounts to this. A boat was stolen and brought to Naraingunge. Hemendra and Nagendra say, this was for the purpose of committing a dacoity but were unable to say where the dacoity was to be committed or what steps were to be taken at Naraingunge for the purpose of intimating the inmates of the boat where they were to go. No satisfactory explanation has been given of the lapse of considerable time between Mr. Dawson's direction for the arrest of the persons in the boat and their being taken into custody. During the whole of that time, nothing seems to have occurred which would enable the inmates of the boat to know where they were to go to commit the robbery.

50. The points which 'had great weight with the learned Judge were the production of the letters, the fact that Hemendra and Nagendra were able to tell Mr. Dawson that a boat was going to be stolen, the false story told by Jadu and Benode and the false petition put in by Nilmoni and the circumstance that the story now told by the appellants was not told on the trial for stealing the boat.

51. The letters are, as I have pointed out, open to the observation that they were not produced in the boat theft case.

52. The other facts seem to me not the least inconsistent with the story that the boat was taken for the purpose of going to Naraingunge to see a display. If the plan was mooted sometime before it was carried out, Hemendra and Nagendra might have known of it. Nilmoni's boat was, undoubtedly, taken without his permission: it is not unlikely, therefore, that Jadu and Benode would tell a be about it when found by the Police in possession of a boat they had no right to have; if the case went on, Nilmoni's boat would remain in the custody of the Police; it is quite conceivable that Nilmoni would put in a false petition for the sake of getting his boat returned at once by stopping the case. But, on the other side, it is to be observed that there does not appear to be any evidence that there was a display that day or at what time or when it was to be held.

53. One of the most substantial difficulties in the way of the Crown arises from the circumstance that no arrest was made until late in the afternoon. According to the Police Inspector Mon Mohan

Ghosh, Hemendra brought him the slip from Mr. Dawson quite early in the morning at 6 or 7; that he then sent two constables disguised as Manjhis to join the suspected boat as Hemendra said Manjhis were re-joined. Then he and Benode went in one boat and Kumudini went in another boat, towards the Sodawater factory ghat where Hemendra said the boat was for the purpose of taking possession of it. Benode is landed to look for the boat as he could find it, both boats go away in search. Subsequently, they separated and Kumudini having got fresh information from Hemendra, he probably means Hemendra communicates with Mon Mohun Ghosh, and the arrest is effected at the Sodawater ghat factory about 5 o'clock in the afternoon.

54. Now Bimola has not been called: one of t the policemen who was disguised as a Manjhi has. He says he and the Babu were looking for the boat from 7 A.M. to 12 A.M.; very extraordinary state of things if the Babu had only left her an hour or so before.

55. Then Bimola is told to look for a boat with students in it, instead of for the one with the disguised constables in it. According to Hemendra he took the disguised constable up to the boat and told Jadu, they were Manjhis; according to the constables, he painted cut the boat from a distance and then left.

56. All that can be said is that the discrepancies in the evidence, and the absence of Bimola make the delay from 7 A.M. and 5 P.M. quite inexplicable. The finding of the daggers I have not dealt with: they were only found after the boat had been in charge of the Police for 21 hours. This find cannot be regarded as having much weight, in view of the difficulties in the evidence to which I have referred. I do not think it is satisfactorily made out that the boat was stolen for the purpose of a dacoity, nor indeed can I find any corroboration of Hemendra's and Nagendra's evidence that Pulin and his Samity were engaged in it.

57. I now come to the case of the murder of Sukumar, whose dead body was discovered not far from Dacca horribly mutilated on the 13th November 1908. The case for the Crown is that this murder was the work of some members of the Dacca Anusilan Samity. The appellants contend that the Police were the persons who murdered Sukumar. It appears that a complaint had been made about the 4th November that Pulin had kidnapped a lad named Ananta. This case was being investigated by the Police and in the course of the investigation, Inspector Ashutosh Banerjee visited the house in which Sukumar was living. He took his statement and placed him under arrest. Now, when he took the statement there were present his elder brother Surja Kumar, one Abinash Ganguly, Sashi Dey and Sukumar's sister. Abinash is alleged to be related to one of the members of the Samity and Abinash, being present, heard the statement which Sukumar made to the Police Inspector Ashutosh Banerjee. Ashutosh thought that Sukumar would give more information if it were not for the presence of these other persons. He, therefore, released him on bail and directed him to appear before the Magistrate of Daoca on the 12th. He did not

appear and, as far as the evidence on record goes, the last person who saw him alive was his sister Susila, who speaks to his having left for Dacca for the purpose of giving evidence. There is no evidence that any one saw him alive again and his dead body was found on the 13th close to Dacca. The body was horribly mutilated Sukumar had tattooed on his arms his name and also the name under which he was known as a member of the Samity : and though the body was horribly mutilated as to be almost unrecognisable, these marks, which sufficed to identify the body as that of Sukumar's, were left untouched. The evidence of the doctor shows that injuries were inflicted with some sharp cutting weapon and that amongst the many wounds on the body, some presented the appearance of being caused by daggers. The evidence, therefore, amounts to this: that Sukumar was about to make a statement to a Magistrate, that he was murdered by persons unknown some of whom were probably armed with daggers, that he was a member of the Samity, and that if the members of that association desired to prevent his breaking the vows of the secrecy by which the members of the association were bound, they would have had an interest in murdering him: and, further, that if they desired to make an example calculated to terrify the other members of the association and yet to leave no doubt as to who the victim was, one would expect to find, as was found, horrible mutilation coupled with a preservation of those marks which would show who the victim was. All that can be said is that circumstances exist which throw suspicion on the members of the Samity. But, in my opinion, the case can be placed no higher than that. The suggestion that the murder was perpetrated by the Police is to my mind an absurd one. Sukumar was released on bail, because the Police believed that he would give important information. There is no evidence that he either saw or spoke to one single policeman after the time when he was released on bail. The circumstance that he had left his house for the purpose of going to Dacca leads one to believe that he intended to carry out the condition on which he was released on bail, i.e., to make a statement before the Magistrate. The persons therefore, who would have most gained by his remaining alive and making a statement to the Magistrate were the Police who were engaged in the case. It is suggested that they tortured him, but there is absolutely no foundation for the suggestion: and as far as evidence goes it indicates that nothing would be gained by maltreating a person who was voluntarily going to a Magistrate for the purpose of making a statement. There is absolutely no foundation whatever oven for a suspicion that he was tortured by the Police. All the circumstances disclosed in the case show that they would be the last persons in the world to having any motive for injuring him. But while there is no cause for suspicion against the Police, in my view, there is nothing more than suspicion against the Samity also. No doubt, if their objects were unlawful ones, they would have an interest in the murder of Sukumar. But there is no evidence that he ever saw or spoke to any member of the Samity after he had left his sister's house and started for Dacca. How he met his end, and at whose hands, are entirely matters for speculation. And, though the case is one of suspicion, the prosecution has not proved such facts as would justify us in finding beyond all

reasonable doubt that the man lost his life at the hands of the members of the Samity.

58. Then there comes the case of another murder--the murder of a man named Preo Mohan. This was perpetrated on the 2nd June 1909. He was the brother of a man named Gobesh, who was a member of the Dacca Anusilan Samity. Now, Gobesh had made certain statements with reference to a dacoity which was suspected to have been committed by the members of the Dacca Anusilan Samity, and he had given certain information to the Magistrate. On the morning of the 2nd June 1909, Gobesh left his house to go to Dacca. His younger brother, Preo Mohan, unfortunately for himself, had come back from school and was staying at the house. On the evening of the 2nd June, some persons who had never been identified invaded Gobesh's house, seized Preo Mohan, threw him down, kicked and stabbed him, dragged his body out of the bari and eventually stabbed him to death. There is no evidence that Preo Mohan, who appears to have been merely a school boy, had any quarrel with any body and the motive for the murder of Preo Mohan stands unexplained. The suggestion for the Crown is, that the Samity members intended to murder Gobesh to prevent him from disclosing their secrets, that not knowing that. Gobesh had left the house that morning, they mistook Preo Mohan for Gobesh and murdered him. As in the case of murder of Sukumar, there is no evidence as to who the persons were who murderd Preo Mohan nor is there any evidence as to why he was murdered. It seems not at all improbable that Preo Mohan was murdered by mistake for Gobesh. That the authorities thought that Gobesh's safety was threatened by those in respect of whom he was making the statement is clear because they caused him to be guarded by Policemen: but it does not appear that the members of the Samity were the persons who committed the murder of PreD Mohan. In the absence of evidence connecting the murder with the Samity, it would not be fair to treat the case as more than one of suspicion and that suspicion only arises because it is probable that Preo Mohan was murdered by mistake for Gobesh and the only persons who, as far as is known, had any interest in the murder of Gobesh were those who were likely to be implicated in the statement he was about to make. Like the murder of Sukumar, the case is one of suspicion and circumstantial evidence is not such as would justify us in putting the case on a higher footing.

59. The Rajendrapur Train dacoity was a very serious crime which was committed on October 11th, 1909, in which one man was murdered, and a large quantity of money stolen. Three persons were in the train with the money in their charge: they were attacked by a party of young bhadralok, one man was murdered: the other two seriously wounded and the money thrown cut of the carriage after which the robbers jumped off the train. One of the party, Suresh, was identified and subsequently convicted.

60. The learned Judge finds that this man was a member of the Jnan Bikashini Shava at Madyapara and as he considers that a branch of the Dacca Anusilan Samity, he holds that the

overt act has been made out. There does not appear to be any evidence connecting Suresh with the Dacca Anusilan Samity beyond his connection with the Jnan Bikashini Shava.

61. For reasons which we shall detail hereafter, we do not think that it has been established that the Jnan Bikashini Shava is a branch of the Dacca Anusilan Samity, and, therefore, think that this crime has not been made out to have been committed by the Dacca Anusilan Samity.

62. The most important of the overt acts which the prosecution says were committed by the members of the Samity is that known as the Naria Dacoity. The story told is that on the night of the 30th and 31st October 1908, a gang of dacoits who were described as bhadralok came in boats and plundered Naria Bazar and several houses. Amongst the several places they visited was the Steamer Station.

63. From thence they carried off one parcel which came from Calcutta containing books.

64. The first information of this outrage was laid by the Choukidar on the 31st October. The first Police officer who arrived at the spot was Abdul Jabbar who found certain articles which were said to have been left by the dacoits. On the following day, Ananta Babu arrived in the morning and was followed by Mr. Giles in the afternoon. Inquiries were set on foot. And on the 4th November, some person gave information to the effect that he heard that there was' a boat adrift opposite Rajbari. Abdul Jabbar was sent in search of it and finally he discovered a boat fun aground on a chur. "With the assistance of a Police launch, he towed her up to Nana where she was searched in the presence of the Police officers there. A number of things was found in the boat of which the most important are parts of green-wrapper which had been attached to a box of Bley's Revolver cartridges, part of a wrapper which was apparently the wrapper of the parcel of books sent from Calcutta and some pieces of paper which formed part of the Village notes which were one of the official documents of the Dacca Samity and a "leaflet" referring to the establishment of central Samities.

65. It is contended for the Crown that the articles discovered in this boat leave no reasonable doubt that this was one, at any rate, of the boats which were used by the dacoits, and that the presence of the Samity papers in her, shows that the dacoits were persons who were members of the Dacca Anusilan Samity.

66. Now, one of the contentions which is pressed on behalf of the appellants is that this was not a dacoity in the ordinary sense of the term, but a raid made at the instigation of the landlords of Naria for the purpose of bringing pressure to bear on the recalcitrant tenants. This argument was founded on the circumstance that no complaint was made to the Police Station by any person who had been robbed. Nor was there any information that any man of Naria complained of

losing or having lost any property.

67. The first information was lodged by the Choukidar. This is by no means an unusual state of things. Nobody was named, because nobody had been recognised. If there had been a dispute between landlords and the tenants at Naria, there would have been no serious difficulty in eliciting that from the witnesses. There is no evidence that the landlords and the tenants were not on perfectly good terms. The circumstance that the first information was laid by the Choukidar and that no complaint was made by any person alleging to have been robbed certainly would not justify the inference that it was an attack by the landlords without any sort of evidence to show that the landlords and the tenants were on bad terms with each other.

68. The appellants endeavoured to dispose of the difficulty created by the presence of the village notes and leaflets by saying that the Police pat them there for the purposes of implicating the members of the Samity in the outrage. Now, this outrage took place in the evening of the 30th October. The Samity premises had been searched in August and one copy of the village notes had been obtained, but that it remained in the custody of the Magistrate and was produced at the trial. There is no ground for suggesting that any other copy had fallen into the hands of the Police on that day. But there was another search of the premises on the 4th of November. On that day the persons who were found there were taken into custody. The argument addressed to us is that when they had been removed from the house, it would have been open to any evil disposed person to go in and appropriate these papers, and then, if they could be conveyed to the boat, an evidence could be fabricated which would connect the Samity with the outrage. Now, there is a man, named Bama Charan, who came from Dacca arriving at Naria on the 5th. He, it was suggested, was the man who brought the papers from Dacca. The suggestion is based on a statement he is said to have made in the Magistrate's Court to the effect that when he arrived on the 5th, he saw the Alamats left with Abdul Jabbar on that day. He now says he saw them on the 6th. Now, Abdul Jabbar had left on the 4th and was not present on the 5th. And it is said that this Bama Charan now altered the story to meet the state of things. Putting it at its highest, his statement as to the Alamats is only ambiguous, But even if it were supposed that there had been any confusion as to the dates or not, it is very significant that no effort appears to have been made in the cross-examination to show that Abdul Jabbar and Bana Charan actually met before the former arrived at Naria, bringing the boat up with him. There were present at Naria engaged in the investigation, Mr. Gile and Ananta Babu. Mr. Gile does not appear to have been asked whether Bama Charan arrived before Abdul Jabbar left, though he is able to say that Abdul Jabbar left on the 4th. Ananta Babu says that Bama Charan was not present when the information about the boat was given on the 4th. From his evidence, it is clear that Bama Charan did not arrive until 7 or 8 P.M. in the evening of the 5th. Bama Charan does not appear to have been asked the hour at which he arrived. Nor was any question put to him to elicit whether he had left

Dacca before or after the search of the Samity premises on November the 4th, or if he had heard anything of the Samity or anything of the search. If he left before the search, it was, of course, physically impossible for him to get the paper in the way the learned Counsel for the appellants suggests. And it is very significant that no question was asked for the purpose of showing what his movements were before he left Dacca. Then, again, there is another observation to be made that if any person had been wicked enough to have put these papers in the boat for the purpose of implicating the Samity, one would expect him to fill up the blank space with the name of the Naria village and with such particulars as to indicate that the document had been filled up to facilitate a dacoity at that place. But the village notes that appear are only the printed forms used by the Samity. It does not appear that the blanks were ever filled up. That circumstance alone would give the strongest reason in supposing that the presence of the papers was not the result of a foul play. Farther, it must be remembered that this took place in November 1908. No proceeding was taken against the Samity till 4, 1910. It suggests a miraculous fore-knowledge on the part of the Police to foresee that the members of the Samity would be eventually prosecuted, as they were, a year afterwards. As the case stands, documents which can only be obtained by the members of the Samity were found in the boat. The suggestion that they had been put there by the Police fails, because it has not been shown that it was physically possible for the Police to have obtained them and placed them there. And it further fails, because if they had been placed there for this wicked purpose, the village notes would have been previously filled up.

69. Then the next question that arises is: Is this one of the boats used by the dacoits? A very strong point was made by the learned Counsel for the appellants on the circumstance that when the choukidar laid the first information, he had stated that the dacoits were in a pansi boat while the boat, which was brought up the river by Abdul Jabbar, was identified as one of the boats used by the dacoits, is what is described as chandni boat. But a reference to the first information shows that the choukidar said that the dacoits brought three or four boats, and though he had seen a pansi fitted with roof, he had been told that other boats had gone before it. Now here again there is nothing on record to show how a pansi boat with roof differs from a chandni boat or whether in the darkness it would have been possible to mistake one for the other.

70. Amongst the things found in this particular boat in question, was a piece of paper which has been shown to be the wrapper of the parcel awaiting delivery at the Steamer ghat station. That the parcel was in fact sent from Calcutta is quite clear. There is the evidence of the gentleman who ordered the books and who lives at a place some seven or eight miles from Naria. He produced a letter from the shop of Banerjee and Co. in Cornwallis Street advising him that the parcel had been despatched, and he produced (he Railway receipt that he got when he paid the Post office the sum due (V.P.P.) on the parcel. And he has sworn that the parcel was never delivered to him although he sent for it in due course. The letter advising the despatch of the

books was stamped with the post mark of October the 31st at the receiving office, and it bore the Calcutta Post Office mark of October the 28th. The argument is that the parcel could not have arrived before the letter, therefore, the story of this being stolen on October the 30th is a fabrication. But the stamp shows that the letter was posted on the 28th October at 9-20 P.M. and the way-bill shows that the parcel was despatched at 5-10 P.M. It is quite possible, therefore, that while the parcel was in time to go by the evening mail of the 28th, the letter posted after 9 o'clock had to wait till the following day. Though the fragments found in the chandni boat are much tattered, they show the label of a book-seller whose address is in Cornwallis Street, Calcutta. There is not the slightest doubt that the label on the wrapper was on the pracel of books that had been despatched from Calcutta by Hari Kanta and which was stolen on the night of the 30th in the Steamer Office at Nana and its presence in the chandni boat shows without doubt that the boat was used by the dacoits.

71. It is argued for the Crown that the fact that a parcel of books was stolen indicates that the dacoits were educated men. I do not think that there is much in this argument. If the books were packed in the ordinary way all that the f hieves would know would " be that it was a parcel containing something heavy. Uneducated men who could not read are just as likely to carry off a heavy parcel as educated persons are to carry off a parcel bearing a book-seller's label.

72. There is evidence that the dacoits used fire-arms. It is said that a fired cartridge was found in the boat but when the water was being bailed, it was lost again. But that the persons who were in the boat used cartridges was clear from the fact already mentioned that a green wrapper of box of Eley's cartridges was found in the boat.

73. These facts leave no doubt in my mind, that the Judge is right in finding that this was one of the boats used by the dacoits at Nana on the night of the robbery and that those dacoits or some of them ware members of the Dacca Anushilan Satnity.

74. The only other alleged overt acts are the Adhabari Arms Act case, the Munshigunge Bomb case, and the find of arms in the' grocer's shop at Dacca.

75. As the latter is intimately connected with Nitai's case, I reserve the consideration of it until we deal with that appellant.

76. The principal evidence into the Adhabari Arms Act case is to the effect that on the evening of December 14th, 1909, Hossein All went to Pal's garden to unloose his cattle.

77. He heard whispering and a sound like that of a dao being sharpened. He then saw some 10 or 15 people amongst whom was the appellant Aboni, one Saroda Chackerbutty and others. They ran away. He spoke to Mohar Ali Kulia who had seen in the garden some loose earth and rags.

78. The next day the witness with Mohar Ali, Sekanda Sukher Mahomed and Lakhai came to the place, which was some 30 or 40 yards from where the men had been seen, and found buried a tin canister which contained some revolver-cartridges and phials of acid.

79. Out of the 10 or 15 people, Hossein Ali had recgnized 5. Two out of the five, Aboni the appellant and one Saroda Chackerbutty, are said to have been members of the Dacca Anushilan Samity.

80. Aboni was tried under the Arms Act and acquitted.

81. Aboni, no doubt, was a member of the Samity: the learned Judge finds that Saroda Chackerbutty was a member also. But granting that they were, and that Hossein. Ali's identification, seeing when it had began to get dark, can be absolutely relied on, I do not think that the inference that the weapons belonged to the Samity or to some member of it would be justified.

82. The arms were found in a tin box buried; how long they had been there buried we do not know: by whom they were buried we do not know.

83. The men who were seen by Hossein Ali were 40 yards away and were not seen to do anything in relation to the spot where the arms were buried.

84. The men's conduct may have been suspicious and if the evidence is true, they may have been there for no good purpose, but there is nothing to connect them with the find of arms or fib justify us in saying that this is made out to be an overt act of the Samity.

85. The Munshigunge Bomb case was the consequence of a find of bombs in the house of one Lalit Chowdhury in September 1910, and this find is connected with Pulin's Samity because when the Samity was searched, a letter, dated December 1908, signed L. Chaudhuri, was found.

86. The letter is dated from Panthbhoy: and is said to be in the hand of the man in whose house the bombs were found.

87. There is no evidence that Pulin ever replied to it or that he ever held any communication with L. Chaudhuri. L. Chaudhuri was not said to be one of the conspirators: although the letter was found, no sanction for his prosecution was applied for and if any inquiries were made, we must take it that they failed to show any connection between Pulin and L. Vcaudhuri.

88. I do not think, on these facts, it would be safe to say that the bombs found in 1910 are connected with the Samity, without any evidence to show any connection between Pulin and the man in whose house the bombs were found in 1910 except one letter written to Pulin in 1908.

89. This concludes the case with respect to the overt acts.

90. The result of the oral and documentary evidence is to show that the Dacca Anushilan Samity was formed having for its ostensible object, the improvement of Bengali youths by the promotion of discipline, and physical exercise, but that behind this ostensible and open object, there was a secret object known to those in positions of importance and authority but not necessarily confided to the younger and less defendable members. That secret object was to bring about a revolution and subvert the Government by force and to this end the Samity followed the line laid down in the Mukta kon Pathe both in the system on which it was founded, and in one case at least, in the nature of the crime against property which its members committed.

91. This concludes the general aspect of the case; it remains now to deal with the cases of the particular appellants.

92. In dealing with the individuals, it is to be observed that they fall into three distinct classes--(1) those who are alleged to be members of the Dacca Anushilan Samity, (2) those who are members of other Samities said to be branches of the Dacca Anushilan Samity, and (3) those who are only connected with the Dacca Anushilan Samity through some overt act.

93. The last class only contains two persons Benode and Jadu whose sole connection with the Dacoa Anushilan Samity rests on their participation in the Satipara boat theft case. But, for reasons which we have given, we are of opinion that it is not established that that crime was connected with the Samity, and if this is not established, it is conceded that the case against these two appellants must fail.

94. The conviction must, therefore, be set aside and they must bea acquitted.

95. The great difficulty that there is in dealing with the individual appellants arises from the fact that it does not follow that because they are members of the Dacoa Anushilan Samity that they are acquainted with the real object which is so carefully concealed in the rules and vows.

96. It is true that Hemendra says that those, who took the Adya vow, were cognisant of the revolutionary objects of the Samity. I am, however, not satisfied that this is true. The Adya vow does not contain that vow of secrecy which is to be found in the Antyd and Bishesh vows and it is extremely unlikely that so serious a matter as the revolutionary object of the conspiracy would be confided to any persons who were not solemnly bound to secrecy. The rules show that persons who had only taken the Adya vow did not know as much as those who took the subsequent vows. This induces me to believe that while lathi play and physical exercise would be held out as the ostensible object to persons, who, when they joined, were not known to be persons of strong revolutionary" desires, the true object would only be disclosed when they had taken more serious

vows or were known to be persons of pronounced revolutionary ideas.

97. It is unnecessary to discuss the evidence with respect to Pulin or Ashutosh Das Gupta. The former is the founder of the Dacca Anushilan Samity, the latter was his chief lieutenant and was the person who was next in authority to Pulin.

98. It was conceded in the argument that the convictions of these two persons hung on the question whether the Dacca Anushilan Samity was a revolutionary Society or not--if it was, the convictions of these two persons must stand.

99. There is another appellant Jayotirmoy, who is in much the same position as Pulin and Ashutosh as far as is concerned the evidence of his connection with the Society. Against him, there was not only a great deal of oral evidence to show that he was a prominent player of lathi at the Samity, of his presence when the Samity premises were searched, of his close association with Pulin, but there was also a great deal of documentary evidence which has been discussed in detail by the learned Judge. Jayotirmoy was a man who wrote a most beautiful hand, there can never be a moment's doubt as to the documents which he has written.

100. Not only are there the Adya and Antya vows, but there are seditious poems, copies of the Duties of Secretaries, Duties of Paridarsak and other writings, which show that Jayotirmoy was an important member of the Dacca Anushilan Samity. No one who had written out the Paridarsak and other official documents of the Samity could for a moment be supposed to be ignorant of the aims and objects of Pulin.

101. The conviction of these three persons was undoubtedly right and their appeals must be dismissed.

102. Aboni is one of those who is said to be a member of the Dacca Anushilan Samity and to have in that society borne the name of Ajit.

103. That there was an Ajit who was a member of the Dacca Anushilan Samity there is no doubt, for this name appears in a list of members in an account book, in a list of clothes, all found at the Samity.

104. To show that Ajit and Aboni were the same person, reliance is placed on the issue register belonging to the Samity, Library in which in the column, the signatures of those who take out books, appears "Aboni Mohun Gangopadhya" scored out and "Ajit Kumar" written in its place. This is said by Mr. Hardless, the expert witness, to be in Aboni's hand and a comparison between Aboni's signature in the written statement and the writing in the issue book can leave no doubt that Mr. Hardless is right in this.

105. There is oral evidence that Aboni was at the Samity premises and his name was found on a book which was in the Samity.

106. The explanation given with reference to the library issue book is, that outsiders were allowed to take books, but they had to be taken in the name of a member, that Absni wrote his name carelessly and then crossed it out as he was not a member and Ajit's name was written. This explanation does not strike me as satisfactory. In the first place, Aboni says nothing about it in his statement; he denies the writing: secondly, I do not believe that persons unconnected with the Samity would have been allowed to write in the issue book.

107. The rules as to the library are in the notification found at the Samity: that provides that only books of daily use will be allowed to be kept by members reading them after they have entered their names in the issue book. There is nothing to show that notwithstanding books might be issued to outsiders. That such could be done, rests only on Pulin's statement which I disbelieve because it is inconsistent with the rules.

108. There is another document, Village notes, with the name Ajit Kumar Gangopadhya at the foot of it. Mr. Hardless says this is in Aboni's hand, but it does not show the striking resemblance to his signature on the written statement which is to be found in the library issue book.

109. In Aboni's favour, it must be noted that his name does not appear in the false name list found at the Samity nor. is there any oral evidence that the name Ajit was borne by Aboni, but then, on the other hand, no witness has spoken to there being any person who bore the name Ajit.

110. On the whole, I come to the conclusion that he was a member of the Samity. There is no reason to suppose that the false name list was exhaustive, and I am convinced that the writing in the issue book is in the hand of Aboni.

111. The next question to be considered is, how far was Aboni a party to a design to wage war against the King?

112. It is true that Hemendra says that those who took the Adya vow were cognisant of the objects of the society: but I do not believe this, because I do not believe that those objects would be disclosed ordinarily to any one who had not taken the vow of secrecy.

113. Possibly, it might be done in the case of a person who was known to be strongly seditious, but there is nothing to show that Aboni was distinguished in that way.

114. Of the documents in which the name Ajit appears, two are undated, another is in 1908 as is also the library issue book. The oral evidence does not indicate the period during which Aboni was a member nor is there any evidence as to how many of the vows he had taken.

115. On the whole, I am not satisfied that he had attained sufficient importance in the Samity to be entrusted with knowledge of the object which lay beyond the lathi play and physical exercise. I am, therefore, in favour of reversing his conviction and allowing the appeal.

114. Akhoy was a man who was an expert wrestler. He took a prize at one of the exhibitions and there is oral evidence that he was a prominent lathi player.

117. The documentary evidence is found in the issue book which shows that he took a book from the library and in fact that there were a number of books in the Samity bearing his name.

118. He explains this by saying that after he had won a prize, he gave some books to the Samity and was allowed in consequence to take books out, a permission of which he on one occasion availed himself.

119. There is a great deal of oral evidence as to his being a lathi player at the Samity both at Wari and Bhuterbari; indeed, one witness describes him as a leader at Chandraghat, but, on the other h-and, his name does not appear in any Samity papers or in any lists, and had he been the person of importance that the learned Judge thinks he was one would have expected to find his name on some of the papers in the Samity. No revolutionary writings of any sort are connected with him, The evidence of the Sub Inspector Anunta Kanta Chakravarty hardly justifies the inference which the learned Judge draws from it. If the appellant had really come down to Lakipur for the purpose of starting a Samity, one would have expected some evidence that something was done there. On the contrary, the Police Inspector himself, to whom the statement is said to have been made, expressly says he was in lathi play.

120. On the whole, we do not think it is established that he was anything more than a skilful athlete, and we do not think he conviction, as having joined the conspiracy, would be safe.

121. We, therefore, allow the appeal and set aside the conviction.

122. Aswini Kumar Ghose is a man who is admittedly a member of the Brati Samity.

123. For the Grown, it was contended that this was a branch of the Dacaa Anushilan Samity, but I think one of the letters produced is conclusive to show that while some members of the Brati Samity belonged to the Dacca Anushilan Samity, some did not.

124. It is a letter addressed to Aswini as Secretary of the Brati Samity asking him to order his members, "especially those who are members of the Anushilan Samity", to exercise early in the morning. This letter in my view shows beyond doubt that some members of the Brati Samity were members of the Anushilan Samity and some were not If the Brati Samity were a branch of the Dacca Anushilan Samity and all the members of the Brati Samity were thereby members of

the Dacca Anushilan Samity, the sentence "especially those who are members of the Anushilan Samity" would not have appeared in the letter.

125. It becomes unnecessary to discuss in detail the grounds on which it is contended that the Brati Samity was a branch of the Dacca Anushilan Samity: there is no direct evidence that it was, and the letter which I have referred shows that it was not. But the letter also shows that it does not follow that because Aswini was a member of the Brati Samity, he was not also a member of the Dacca Anushilan Samity.

126. A number of documents were found at the search of his house which show him to be a person of extreme revolutionary sentiments and desires.

127. His story is that there was an Anushilan Society of Naraingunge which was amalgamated with the Dacca Anushilan Samity: that he left that Samity because he was unwilling to take those vows and remained a member of the Brati Samity only.

128. At the search of the house of Aswini was found a note-book in the hand of Aswini, which, with an exhortation to pawn life for the removal of the distress of the motherland, contains vows.

129. The vows are not the Adya and Antya vows as administered in Pulin's Samity, but they contain paragraphs which are in effect the same as the Adya and Antya vows of the Dacca Anushilan Samity. Some of the sentences are in the same words. The obligations which the members of the Dacca Anushilan Samity took on themselves when they took the Adya and Antya vows are to be found in Aswini's note-book, but in addition there is a vow to pay pice to the teacher.

130. Then followed lathi play terms similar to those found in the lathi play books of the Dacca Anushilan Samity.

131. The fact that these notes give the substance of the vows, and are not in as many words the vows themselves, lends some colour to Aswini's statement that he was unwilling to take the vows, and the letter implying that he is regarded as being the person who was opposing the attendance of members at the Anushilan Samity looks as if he was not a member; if he had been, he will have fallen within the category of those liable to punishment under the rules of the Samity.

132. There is oral evidence of Sailendra that Pulin started a Samity in Naraingunge in the end of 1906 and that Aswini was a member of it. It has been argued that this is an Anushilan Samity distinct from the Brati Samity of which Aswini was a member. This gets some colour from the letter I have referred to which is addressed to him as Secretary of the Brati Samity, Amlapara,

while the Samity to which Sailendra refers was carried on at Ukilpara.

133. The conclusion to which we have come is that it has not been established without doubt that he was a member of the Dacca Anushilan Samity and that his conviction, therefore, should be set aside and his appeal allowed.

134. Bankim Chandra Roy.--Bankim Chandra Roy was admittedly a member of the Bandhav Samity at Serajgunge. It is stated by the witnesses and indeed admitted by Bankim that he and the members of the Club at Serajgunge were in for lathi play, but he denies that he or the Club were in any way connected with the Dacca Anushilan Samity.

135. It is admitted by Bankim that Dinesh and Profulla came to his house for the purpose of instructing the members of the Culb in lathi play, and that he wrote to Pulin and Ashutosh to obtain the permission which he received from Ashutosh that they should be permitted to teach.

136. This circumstance raises a presumption that the members of the Bandhav Samity have taken the vows prescribed by the Dacca Anushilan Samity, as under the rules of that Society, (of which Profulla and Dhinesh were members), persons who were not bound by vows were not to be taught lathi play; but Bankim says he never in fact took any vows, and that he gave up getting teachers from the Dacca Anushilan Samity when Pulin insisted on the administration of vows. The evidence shows a very close and intimate association with both Dinesh and Profulla and further there are documents found on a search of Bankim's house connecting Bankim with the Dacca Anushilan Samity. A notice relating to a sport competition similar to that found in the Samity was discovered under Bankim's bed another document referring to the increase in the branches of the Samity was also discovered: it is the same as one found in the Samity premises at Dacca.

137. Then comes a book about lathi play containing the Adya and Antya vows just as the appear in the papers of the Dacoa Anushilan ' Samity and these are written in Bankitn's hand.

138. The explanation given is that Bankim may have copied this out for Dinesh and Profulla, who were admittedly at his house and that the other documents were left there by Dinesh and Profulla when they a quitted this house.

139. I do not think the explanation satisfactory. To accept it, one would have to suppose that Dinesh and Profulla were permitted by Ashutosh to disregard their vows not to teach lathi to any one who had not taken the vows. Secondly, one must suppose that they disregarded their vows of secrecy and disclosed to Bankim the details of the lathi play and the vows without having him bound by vows and that they were so careless of their obligation to the Dacca Anushilan Samity as to leave papers relating to that body in the hands of Bankim.

140. I have not the least doubt that Bankim took the vows of the Dacca Anushilan Samity. But how far was he imbued with a knowledge that the object was revolutionary? He is a man who appears to have been regarded as having influence with Pulin, as in the letter signed Raeya Dada, the writer relies on his influence to get him sent to Serajgunge instead of Noakhali.

141. In his favour, there are no revolutionary. writings in his hand, but, on the other hand, there are very revolutionary writings in a book partly in Dinesh's hand and partly in Bankitn's hand found in Bankim's house, and it is impossible to believe that Bankim did not know and assent to these views.

142. The evidence establishes, then, he was a man of revolutionary opinions, that he had taken the vows of the Dacca Anushilan Samity and was in close and intimate association with some of the conspirators.

143. The only inference from the facts is that he knew and assented to the objects of the Samity. His appeal must accordingly be dismissed.

144. Bhupati Mohan Sen.--Bhupati was admittedly a member of the Jnan Bikashini Sava. He denies that he belonged to the Dacca Anushilan Samity. The Judge and one of the assessors have both come to the conclusion that he was connected with the latter body. That he is a person of extremely seditious taste is shown by the facts that he was a member of the Jnan Bikashini Sava and that certain of the seditious writings are found to be in his hand. A letter dated October 1907, from Pulin to Bhupati shows that he was on good terms with Pulin. In the dhobi's account found at the Samity premises, the name of Bhupati occurs. Another Samity document contains an account of a fare for fetching Bhupati. Although the appellant has not been identified as that Bhupati, there does not seem to be any suggestion that there was any other Bhupati who had anything to do with the Samity. Pulin was at Madhyapara about the latter part of 1907. On that occasion, Girish Chandra Sen said that he asked about Bhupati who was related to him, and that Pulin spoke about rejecting Bhupati, Girish talked to Bhupati and two other persons. He heard of their being members of the Dacca Anushilan Samity.

145. A letter from Nripendra was found at the search of the Samity containing a statement that Bhupati was residing there. The words following 'Bhupati' in this letter are 'Gipal Sen'. And it is suggested that comma between Bhupati and Gopal San was inserted later. The colour of the ink does not lend any support to this contention. Whether there was a comma or not, Gopal Sen might have been written for Bhupati Mohan Sen. This letter was written on the 1st December 1908 and in my view, it leads to the conclusion that even if Pulin did think of rejecting Bhupati in 1907, he did not carry out that desire.

146. A very seditious notice was found posted on the wall of a shop in Loharganj Bazar on December the 2nd, 1908. There is evidence that this is in the hand-writing of Bhupati.

147. But the resemblance between the two writings is not so clear that it satisfies me without reasonable doubt that that is really the case. A poem in Bhupati's hand was found at the house of Charu at Madhyapara. It was a seditious poem declaiming against the foreign King. Another document calling on the Indians to wake up and stake their lives for the welfare of the mother country is also in the hand-writing of Bhupati. If all these circumstances are looked at, there can be no reasonable doubt that Bhupati Mohan Sen is a member of the Dacca Anushilan Samity just as much as he was of the Jnan Bikashini Sava.

148. And it is impossible to believe that a member of such very seditious view was not cognisant of or had not assented to the real object of the Samity. His appeal must accordingly be dismissed.

149. Dinesh Chandra Guha is not the witness who has been referred to as being with Profalla at Bankim's house. He was in association with two members of the Dacca Anushilan Samity, in what is known as the Agartolla incident.

150. There is evidence that he was at the Samity: Upendra gives him as one of those who directly preached the driving out of the English: but as to this, Upendra is not corroborated. He was certainly a competitor in the competition of August 1908, and was one of the persons seen playing lathi at the Samity.

151. Although described as a captain of lathi play at Rajadeori, his name does not appear as such in any of the reports.

152. In short, the evidence against him goes no further than that he was a lathi player at the Samity and was in association with some of the members of the Samity, but there is nothing to show whether he had taken the vows or how deeply he was imbued with the Samity's secrets.

153. His name appears amongst the list of competitors in a lathi play competition. This explanation is that outsiders were allowed to compete. The Judge regards the question as to whether outsiders might compete doubtful, and gives Dinesh the benefit of this, but he considers with respect to him a letter written by one Hem Basu to Ashutosh. This, of course, would only be evidence if Hem Basu were shown to be one of the conspirators, and that does not appear to have been alleged or proved and the Agartolla incident, except so far as it shows association, cannot be taken into consideration.

154. Dinesh is not connected with any seditious writings and his connection with the Samity is only shown in the fact that he played lathi.

155. In the absence of any reliable evidence to show how deeply he was in the secrets of the Samity, we think his appeal should be allowed.

156. Gopal Chandra Ghose.--Gopal Chandra Grhose is a man who admits that he was a member of the Samity, but says that he was only there for a very short time before his, arrest which took place on November the 4th. He seems to be very young. If the Judge's estimate of his age is correct', he was only 15 years of age at the time of his arrest. The statement that he was not there before November appears to be untrue: because his name appears in the library issue book as early as 16th September 1908. A book was found which is said to bean his name written in the handwriting of Kamakhya Charan Bose. Kamakhya was there when he was arrested. But it is unnecessary to discuss the question whether his name was in his writing or nit, because he admits that he was a member of the Samity. The name was written only on a book which contains stotras. The evidence against him clearly establishes that he was a member of the Samity. But this is in his favour that he was a very young man, no revolutionary writings are found in his hands, there is no reason for supposing that he held a position of any importance or consequence in the Samity. In my view, it would not be safe to presume on this evidence that he was admitted into the secrets of the Samity. Therefore, I think his conviction ought to be set aside.

157. Gopiballav.--Gopiballav admits that he was a member of the Dacca Anushilan Samity. It is the case for the prosecution that he was known within the Samity under the names of Hari Mohan Chakrabarti and Rangudada. The learned judge discusses carefully the evidence which points to the conclusion that he did bear those names. There can, be no doubt that the Judge's conclusion is right, because had the evidence which deals with it been open to criticism, all difficulties would have been set at rest by the list of names found at the Samity in the hand-writing of Pulin himself in which these two false names appear under the name of Gopiballav Chakrabarti. In short, the appellant has felt himself unable to question the conclusion to which the learned Judge has come on this point.

158. There is no oral evidence that he resided at No. 50 Wari and Bhuterbari, while these places were occupied by the members of the Samity. That only goes to show his admission as to his connection with the Samity is true.

159. His position in the Samity is shown by a letter in his hand, signed Rangudada, which shows that he was sent by the Samity authorities to Noakhali and that he was very anxious to be transferred to Serajgunge.

160. A letter signed Rangudada shows that he was very anxious to be at Serajgunge. This makes it clear that it is quite impossible to read this letter without coming to the conclusion that he was a person of sufficient authority in the Samity to be despatched on missionary work to the other

places.

161. I think the only conclusion that can be drawn from these circumstances is that he was a member of the Samity and one of sufficient importance, to be fully cognisant of the secret object at which the Samity aimed.

162. Gurudayal.--Gurudayal, who is said to have been a medical practitioner, was admittedly Secretary of the Sonamoyee Samity. He was an uncle of the appellant Khirode, the two men residing at the, same place.

163. It is unnecessary to discuss in detail the evidence which led the learned Judge of the lower Court to come to the conclusion that Gurudayal was guilty as there are documents which, if proved, show that beyond doubt he was not only a member of the Dacca Anushilan Samity but one who occupied a position of consequence in it. The most important is a letter which was found at' the Samity on the occasion of the search on November 5th. It is dated from Sonamoyee and is signed by Gurudayal; it contains a statement that the writer is sending his brother Sriman Nara Singha and asks that he may be enrolled as a member of the circle. He requests that Sriman be sent with copies of the manager's duties, preliminary and final vows., Gurudayal denies that he wrote this letter; but the evidence of the hand writing expert is to the effect that this letter and a bail bond are in the same hand and a perusal of the documents shows that the expert is undoubtedly right.

164. The argument for the appellant is that Gurudayal has not been identified as the man who signed the bail bond, and that the document which is the standard of comparison has not been brought home to the prisoner; the writing of the letter, therefore, has not been proved to be his.

165. A mukhtear was called who proved that the bail bond in question was signed by one Gurudayal Das, son of Raj Kishore Das, of Sonamoyee in his presence. The bond was for the purpose of obtaining the release from custody of one Narsing Das who was described in the bond as the brother of Gurudayal ' and is dated November 4th, 1908. The mukhtear, when asked, says that he is unable to say whether this Gurudayal is the same man who signed the bond or not. There is evidence that Narsing Das was arrested at the Samity on November 4th and was one of the five minor boys who were to be released if their guardian gave bail for them.

166. In his written statement in this case, the appellant describes himself as the son of Rajkishore Das of Sonamoyee and refers to Narsing Das whom he describes as his younger brother.

167. Although the appellant is not identified, there can be no doubt that the two documents were written by the appellant: to assume otherwise would be to suppose that there were two Gurudayal Dases of Sonamoyee, both sons of Rajkishore Das, both having young brothers named Narsing

Das and both writing in identically the same hand.

168. I have no doubt that the letter is proved and that Gurudayal was a member, of the Dacca Anushilan Samity and a member of importance. He is an older man than the, other appellants. There can be no doubt that, filling the position he did, he knew all about the secret objects of the Samity. His appeal must, therefore, be dismissed.

169. The next persons whose cases have to be considered are Poresh, Hem Chandra, Saroda and Sukendra. These four persons were members of the Jnan Bikashini Sava, which is shortly referred to as the Jnan Bikashini Sava at Madhyapara, and they were only connected with the Dacca Samity if it be found that the Jnan Bikashini Sava was a branch of that association. Now the Jnan Bikashini Sava had been in existence for a number of years. It was originally attached to the Madhyapara School and was a debating society attended by boys who read essays in it and heard lectures. Whatever the origin of the society, Jnan Bikashini Sava, was, it is quite clear that in 1908, it; was a society of extremely seditious nature. A great number of documents of very inflammatory nature was found throwing light on the society. Besides the inflammatory documents, there was a record of the proceedings of the Jnan Bikashini Sava. This shows that in Chaitra 1314, a meeting was held to resuscitate this old society; then there were the minutes of the proceedings of the resuscitated society. The Jugantar was read and many other essays and poems calculated to stir up hatred and disaffection against the English. It is not necessary to discuss in detail the very great mass of seditious literature which was found belonging to this society.

170. If the members had been indicted for committing an offence under Section 124A., Indian Penal Code, it is very difficult to see what defence they could have successfully raised. But they have not been indicted under that section. And the question is whether the persons, who were members of the Jnan Bikashini Sava, were so connected through that body with the Dacca Anushilan Samity as to be parties to the conspiracy which originated in the brain of Pulin. It does not necessarily follow that because the men were strongly seditious and endeavouring to stir up disaffection, they had necessarily gone a step further and actually conspired for the purpose of bringing in a revolution.

171. The learned Judge, who has carefully considered the evidence with regard to the connection between the Jnan Bikashini Sava and the Dacca Anushilan Samity, has come to the conclusion that they are the same society. Now, it has been abundantly proved that one of the activities of the Jnan Bikashini Sava was lathi play. That, no doubt, is also an activity of the Dacca Anushilan Samity. In the Dacca Anushilan Samity, there was to be found a quantity of seditious literature. The same observation applies to the Jnan Bikashini Sava. But there are some very striking differences between the two societies. In the first place, the Dacca Anushilan Samity had a local

habitation. There were stringent rules considerably fettering the liberty of the members who lived within the walls of the Samity, there were vows, there were oaths and secrecy and the members were not even permitted to discuss the affairs of the Samity among themselves. The Jnan Bikashini Sava appears to have had no local habitation. The papers belonging to it were found at the house of a man named Gobardhan, There is evidence as to the binding of the members of the Jnan Bikashini Sava by vows. The members were not under strict discipline which obtained in the Dacca Anushilan Samity. Nor would it have been possible to place them under that discipline without establishing the Jnan Bikashini Sava in the same house. Secrecy and silence do not appear to have distinguished the Jnan Bikashini Sava. Its proceedings show that there were meetings at which seditious literature were read and the members seem to have been free to speak and read as they like. The only evidence with regard to the vows is that a couple of Aiya and Antya vows were found in a note-book belonging to Poresh, a member of the Jnan Bikashini Siva. But they do not appear to have been written in Poresh's hand. There is no evidence as to how they came there. Poresh denied that he used that note-book himself and there is nothing in it to show that this statement was untrue. The circumstance that some members of the Jnan Bikashini Siva were also members of the Dacca Anushilan Samity seems to ma to militate against the theory that they are one and the same society. If they were, I would have expected that all the members of the Jnan Bikashini Sava were members of the Dacca Anushilan Samity, that they would have been bound by similar vows, they would have been subjected to similar rules of discipline, and that their personal freedom would have been similarly curtailed. In the accounts of the proceedings of the society there is no reference to the vows which are such an essential part of the Dacca Anushilan Samity. On the whole, though, no doubt, the Jnan Bikasilan Sava was an exceedingly seditious body, I do not think the evidence justifies the inference that it was a branch of the Dacca Anushilan Samity. And I come to this conclusion because the characteristics of taking vows, secrecy and silence do not appear to have marked the Jnan Bikashini Sava.

172. It is not necessary, therefore, to discuss in detail the evidence against these four persons Poresh, Hem Chandra, Saroda and Sukeudrs, because it is conceded on all hands that their conviction can only be supported if it is found affirmatively that the Jnan Bikashini Sava and the Dacca Anushilan Samity are one and the same body.

173. Their appeals must be allowed and convictions set aside.

174. Khirode.--Khirode does not deny that he was a member of the Samity. He says that he played lathi for the purpose of self-defence. There is oral evidence with regard to his taking part in the lathi play at the head quarters of the Samity. Besides this, there are a very large number of documents which connect him with Pulin's Samity where he appears also to have gone under the

name of Hiramoni. This is proved by a postal peon whose evidence does not appear to have been questioned in cross-examination. Amongst documents found in his house, there were papers with Adya and Antya vows. Further, there were seditious poems signed with the name of Hiramoni which were proved to be in his hand-writing. There was an unfinished novel the hero of which is represented as following the precepts of Mukti kon Pathe. And it is difficult to believe that the writer has not derived his idea from that work.

175. The very great mass of documents coupled with his admission leaves no doubt that he was a member of the Dacca Anushilan Samity and that the seditious literature shows that he was a person of strongly revolutionary feelings.

176. As in the other cases where a person has displayed in his writings violent revolutionary, ideas, and is a member of a society, the ultimate object of which is revolution, the only conclusion that can be come to is that he was a party to revolutionary object of the Samity.

177. His appeal must, therefore, be dismissed and conviction affirmed.

178. Nishi Bhusan Mitra is a man who, on his own showing, spent three or four months in the Samity where he says he was a teacher only, and that he did correct exercises, is shown from the books found on the search. There is no doubt that the Judge has come to a correct conclusion with regard to him.

179. In the first place, it is in the highest degree improbable that a man would have been permitted to stay in the Samity in the important position of a teacher unless he had taken the vow and had assented to the designs of the Samity.

180. That he wag a strong supporter of revolution is shown by the sentiments expressed in his diary in which he quotes a passage from the Mukti kon Patheand refers to devotion to the mother and his readiness to face dangers. He has been photographed sword in hand in a posture much more consistent with the sentiments he expressed in his diary than with his statement that he was merely a corrector of exercises.

181. It is clear that he was a man of position in the society and was strongly revolutionary. There can, therefore, be no doubt of his guilt. His appeal must be dismissed and conviction affirmed.

182. Radhica Bhusan Ray.--Radhica Bhusan Ray is alleged by the Crown to be a prominent member of the Dacca Anushilan Samity. He denies that he was a member. One of the assessors, who has considered in detail what persons were connected with the Samity, finds that he was connected with it. He was convicted in the Wari affray case. He attributes his conviction to this circumstance: He says he was at that time living near Fifty Wari, and when the disturbance took

place he went there for the purpose of assisting Pulin. There was a good deal of oral testimony to show that Radhica Bhusan Ray was at the head-quarters of the Samity. And the evidence is corroborated by discovery of books at the Samity bearing his name in his hand-writing. One of these was a lathi play book containing both Adya and Antya vows in full signed by him. The name of Radhica appears as the winner of a gold medal in a mock fight which was held on the 23rd August 1908. But in favour of Radhica it is to be observed that there is nothing to show that this is the same Radhica, as the appellant. But the oral evidence, coupled with the discovery of documents to which I have referred before, leaves no doubt that the Judge and one of the assessors were correct in supposing that this man was connected with the Samity.

183. The question that is to be considered is what his position with regard to the Samity was. For the Crown, it is urged that he was obviously a person of importance, because he went to Noakhali for the purpose of instituting a Samity there. He denies that he ever went to Noakhali,-- it should be observed that he was arrested when leaving Pulin's house and that when arrested he gave a false name. It was only in consequence of what Nitai, who was then in custody, said at the Police Station that his name was discovered as Radhica. A man of the name of Kali Charan, who is a contractor at Noakhali says that a man named Radhica came to Noakhali and gave him instruction to erect two huts for lathi play. The criticism, to which Kali Charan's evidence is open, is that in the Magistrate's Court, he appears to have identified a wrong man as Radhica. He says that he did not, but he admits that he only saw Radhica twice. It is, therefore, necessary to see how far other evidence corroborates this witness with regard to Radhica's going to Noakhali. There is no reason to suppose that the witness is not speaking truth in the story he tells us of the visit to Noakhali by one Radhica. It is clear, therefore, that some man named Radhica did go to Noakhali for the purpose of establishing a lathi play. His name appears in the report made by Bankim after his visit to the Bhuterbari premises on the 2nd December 1908. But I do not think the statement made to the constable on that occasion in Radhica's absence is admissible. Rejecting that, there is the fact that after Radhica had been arrested by Bankim and after he had admitted that the name as given was not his, that his real name was Radhica, he further admitted that he went to Noakhali and that a photograph in which he appeared had been taken at that place. There is also the evidence of a person named Phani Bhugan Sen, who is a gentleman of position and respectability, to the effect that Radhica came to Habiganj and taught lathi play at the Anushilan Samity which had been established in that town. At that time he said that he had come from Dacca.

184. To sum up the evidence against him, there is the evidence that he was at the headquarters of the Samity, that he went to Habiganj as a teacher of lathi play of the Samity there, that a man bearing his name did go to Noakhali for the purpose of establishing a Samity and that he admitted that he had gone there; besides this, the discovery of the document at the Samity head-

quarters, to which I have referred. Amongst the document mentioned, there was one seditious work which bore his name on the cover. I think the inference to be drawn from this evidence is that he was a person of position in the Samity. And if the evidence is true, and I believe it to be true, that he went to Habiganj and to Noakhali on the errand on which he has been alleged to have gone, I think it follows that he must have been a man who had studied the Paridarsak and knew the object for which this Samity was formed.

185. The result of this evidence is to leave no doubt on my mind that his conviction was right. His appeal must accordingly be dismissed.

186. Nishi Kanto Chaudhuri is identified by a witness, who had kaown him since he was small, as having taken him to a field at Wari where there was lathi play. He described him as coming from Olpur.

187. It is contended by the appellant that this Nishi Chaudhuri has been put on the list in substitution for a Nishi Chaudhuri, son of Rajani, who is related to a Police Inspector. Ashutosh Banerjee says there was such a Nishi Chaudhuri: he had heard that Nishi Chaudhuri, son of Rajani, played lathi at Nayabazar but says he saw the appellant Nishi playing lathi at Nayabazar, Wari and Bhuterbari.

188. In the report of June 1907, the Nishi mentioned is Nishi Kanto Chaudhuri of Nayabazar.

189. There is an exhibit which shows that a Nishi Kanto Basu. Chowdhury was appointed by the Habiganj Central Samity to be an Inspector and there is evidence that Nishi is the appellant.

190. It has been argued that this Habiganj Central Samity has been organised as Pulin recommends, but there is no direct evidence to support this contention. There is evidence that a man came from Dacca to teach. There is evidence that vows were administered to the members of the Habiganj Samity and the members of that Samity indulged in lathi play, but I don't think that this is sufficient to justify the conclusion that the Habiganj Samity was a branch of the Dacca Anushilan Samity. We do not know what the vows administered in the Habiganj Samity were, and even if it were accepted as clear that this Nishi was the man who played lathi at War and Bhuterbari, yet even then there would bi nothing to show what his position was in the Samity at Dacca. He had an authority to inspect but this authority was not issued be Pulin nor does it appear to have emanatey from the Dacca Anushilan Samity--on thd contrary, it issued from the Habiganj Samity and the Habiganj Samity is not shown to have, been connected with the Dacca, Anushilan Samity.

191. We do not think that his conviction can safely be affirmed: we accordingly allow the appeal.

192. Nitai Chand Banikya.--Nitai Chand is one of those who, in his written statement, denies that he was a member of the Dacca Auushilan Samity. There is a considerable body of oral testimony to the effect that he was present at the head-quarters of the Samity. The criticism made on this is that if it is true, there is no reason why he was not included in the first batch of prisoners against whom sanction was granted. As a matter of fact, sanction was not granted until after his conviction in an Arms Act case which took place in August 1910. In this case, some arms, warlike books and papers were found at the shop of one Mohim Mudi, which was being searched by the Police who were looking for a stolen watch. Mohim Mudi made a statement implicating Nitai. Nitai was then arrested. And he and Moti and Mohim were eventually convicted and punished for this offence under the Arms Act. The arrest was on July the 30th and they were taken before the Magistrate on the 31st. Mohim Mudi made a statement to the effect that Nitai had given him the books, dagger and paper which were found in his shop, and that the revolver was one which Nitai had kept there, sometimes taking it away and bringing it back. Nitai also made a confession on the 31st July. He stated that a man, named Ashu Dass, kept the dagger and books with him and the pistol had been deposited with him by Sachindra Banerjee. He says they were both persons who were members of the Dacca Anushilan Samity and that he, having received these things from Ashu Dass and Sachindra, kept them with Mohim in his grocer's shop. This confession was subsequently retracted on August the 11th, when Nitai denied that he recognized the articles which had been found and said that he did not keep them with Mohim. He said that the statement made before was false. But in this statement of August the 11th, he stated, as he had in his previous statement, that he was a member of Pulin's Samity. It appears from the evidence of Bankim that Nitai was sent back into Police custody after his statement before the Magistrate and that he was remanded for seven days. After expiration of that time, he was remanded for another seven days. The point made by the appellant's Counsel is that Nitai's feeling was improperly worked on during this time and, therefore, what he said cannot be relied upon. Now, there is no explanation why he was remanded for this length of time to the Police custody. Whatever the reason may be, it could not have affected the statement which ha made on the 31st July, for that was made a day after his arrest and before he had been remanded to Police custody. But, then, on the other hand, there is this observation to be made with regard to the statement, he was strongly interested in trying to put the blame on somebody else. Mohim made a statement on the same day, whether before or after Nitai, it does not appear. And Mohim endeavoured to put the blame with regard to the possession of these articles on Nitai's shoulders while Nitai tried to put it on Sachindra and Ashu Dass. On the one hand, if Nitai had nothing to do with the things, one would expect him to deny altogether any knowledge of them as soon as he was brought before the Magistrate. On the other hand, if he knew Mohim's statement, he might have thought that Mohim had been successful in putting the blame on him and that his safest course was to try to put his balme on some one else, I do not feel very great confidence in

that statement.

193. Now, the only evidence to connect the weapons in question with the Samity is that statement made by Nitai and the papers which were found with other things in the Mudi's shop. Now, these papers are Samity papers containing the duties of a Secretary, The learned Counsel explains their presence by pointing out that they were found a considerable time after the Samity had ostensibly come to an end. That the shop where these articles were found was quite close to the Samity premises and that the fact that the grocer had been using them as odd scraps of paper for the purpose of jotting down items of account on them, as it appears from an inspection of them, shows that they: were not papers given him by any person to take care of with other articles, but justifies the inference that they were odd pieces of papers which he had obtained after the Samity had been closed. On the whole, I come to the conclusion that the fact that they had been used by the grocer indicates that they were not papers given to him to take care of for any member of the Samity. The result, therefore, is that the connection of these articles with the Samity' is not satisfactorily made out.

194. But that Nitai was in fact a member of the Samity, I think there can be no reasonable doubt. The oral evidence in this respect is corroborated by the statement which he made on August the 11th. At that time, he had made up his mind to retract the confession which he had made with respect to the possession of the arms and other incriminating things. Yet, when he retracts his confession, he still adheres to his previous statement that he was a member of Pulin's Samity. I think, in the face of that confession corroborated by the oral testimony, there can be no doubt that he was in fact a member of the Samity. This view has not only been taken by the learned Judge but also by the only assessor who has taken the trouble to consider the individual cases.

195. Then we have to consider what the position of this man was in the Samity. There is evidence of Aswini Kumar Guha that lathi play was taught at Sunamganj in the summer of 1908, and that Nitai was associated then with One Nagendra Dutta who was teaching lathi play at that place. This gets some support from the report that Aswini made on the 16th June 1908. He then mentioned Nitai as the robust young man who associated himself with Nagendra. He did not give his name, apparently because at that time, he did not know it. But then the effect of the oral evidence as to his presence at the Samity and his association with Nagendra is much weakened by the circumstance that no sanction for his prosecution was applied for till after the Arms Act case. In his favour, it is to be observed that his name does not appear in any document belonging to the Samity. Upon that, it is argued that his position was not really an important one.

196. The result of the evidence comes to this, that Nitai was a member of the Samity, that he was in possession of certain warlike books and weapons at a period long after the time when the Samity had ceased openly to exist. The articles are not shown to be connected with the Samity.

The books are not shown to belong to the Samity Library and they are traced no nearer than Nitai himself. These facts are consistent with the articles having belonged to Nitai in his private capacity. As against him there is oral testimony: but that is not sufficient to show that he started a Samity at Sunamgunj, or came armed from Pulin with the authority of an Inspector, but, on the other hand, it is in his favour that he is not connected with any of the revolutionary writings. The evidence, therefore, in our view is not sufficient to justify the inference that he had those revolutionary desires which would lead to the inference that he knew of the ultimate design of the Samity--or that he was in such, a position of such importance in the Samity as to make it certain he must have known the true objects; for these reasons, we think this appeal should be allowed and conviction set aside.

197. Promode.--Promode was the brother of Pulin and he was admittedly a member of Pulin Samity up to the time of Wari Affray case. His contention is that he left the Samity after that disturbance; and it is argued that that contention gains some force from the evidence of Bhugwan Charan Pal, who says that Promode went to live with Nalini in a house close to that in which Pulin lived. But there is direct evidence; that Promode was in fact seen at souttf Maisunda whither the Samity had removed; after the Wari Affray case. This oral testimony obtains corroboration from the fact that Promode's name appears in the library issue book as taking out books long after the, date of the Wari Affray case. I think there can be no doubt that the Judge is perfectly' right in the conclusion to which he came that Promode continued to be a member of the Dacca Anushilan Samity. Certainly, there is no positive evidence to support Pro-mode's statement that he left the Samity; while there is both oral and documentary evidence pointing to the conclusion that he still remained a member.

198. It is contended on behalf of the Crown that he was a member of some importance, because a parwana was discovered amongst Pulin's papers authorising Promode to supervise the works of Moffusil Samities. The parwana also directs the Mofussil Samities to assist him in every way and to see that the supervisor is not put to inconvenience for want of men and money. This document is not dated. And it is argued by the appellant that inasmuch as it was found amongst Pulin's papers, it must be supposed that it was never delivered to Promode and never acted on. I do not think that such a contention would be justified. The two men were brothers and it is quite likely that the document found its way back into Pulin's hand after it had been acted on. In any case, I do not believe that such a document would have been made out in favour of any person who was not completely in Pulin's confidence and fully cognisant with the object for which the Samity was established. I agree, therefore, in the conclusion at which the learned Judge has arrived with respect to Promode.?

199. His appeal must be dismissed and his conviction affirmed.

200. Prafulla.--Prafulla admits that he was a member of the Dacca Anushilan Samity but denies that he had anything to do with the Jnan Bikashini Sava. As I have come to the conclusion that the Jnan Bikashini Sava cannot properly be described as a branch of the Dacca Anushilan Samity, it becomes unnecessary to discuss the evidence of Prafulla's relation to the Jnan Bikashini Sava or to determine whether he was or he was not a member of that body. The difficulty of determining whether he was a member of the Jnan Bikashini Sava or not, lies in the fact that there was a number of persons bearing the same name as he himself, belonging to the Jnan Bikashini Sava.

201. But with regard to the Dacca Anushilan Samity, even apart from his admission, there can be no doubt as to his being a member. His name appears in a very large number of documents found at the Samity. And a letter produced shows that he was is close association with Dinesh and Bankim. He was identified as having played lathi at the Samity. Amongst the documents found are Adya and Autya and Bishes vows all written in his hand.

202. Although in Prafulla's favour, there are no revolutionary, documents in his hand, yet the discovery of lathi play books in his hand containing not only the Adya and Antya vows but even the Bighes or special row puts, it beyond doubt, that he had attained a high grade in the Samity and he was, therefore, cognisant with the object for which the Samity was formed.

203. His appeal must, therefore, be dismissed and conviction affirmed.

204. Radhika Bannerjee.--Radhika Bannerjee admits that he was a member of the Dacca Anushilan Samity. When he was arrested, he gave his name as Karuna. Under that name, he has been referred to by the witnesses. The only question really is what his position in the society was. As he admits the membership, no good purpose can be served by discussing the evidence which would otherwise establish that fact.

205. His name does not appear in any document earlier than 13th Aswin 1315, (29th September 1909). If that be so, there is nothing to show that he had been a member for any length of time before the members of the Samity were arrested. The Judge thinks that he must-have been a person of importance, because he was satisfied that he (Radhika) invited Sukumar to join the Samity. And his uncle was present when Sukumar made a statement to the Police.

206. The Judge thinks that it was through this man Radhika that the Samity received the information which determined them to murder Sukumar. But in dealing with the murder of Sukumar I have pointed out that it is really nothing more than a case of suspicion. In my view, we should not be justified in allowing it in any way to influence the conclusion to which we come as to the position of Radhika Banerjee in the Samity. After all, the fact that lie invited one

member to join without any evidence to show that he himself was either a person of consequence in the Samity for a long time or a person of violent revolutionary tendency, would not be sufficient, in our opinion, to justify us in coming to the conclusion that he was a member of importance and knew the secrets of the Samity.

207. We hold, therefore, that this appeal should be allowed and conviction set aside.

208. Surendra Mohun Ghose.--Surendra Mohun Grhose was the man spoken to be Ashutosh as one of the members of the Samity. He is also identified by Sarat Chandra Ghose. There are documents found at the Samity which are said to be in his hand-writing, particularly one, an arithmetic book, which bears his name, in his hand. There is another magazine on which Sarendra's name appears. Although the 'Ghose' resembles 'Ghose' written by Sarendra, Sarendra appears to hare been differently written. In the account of the Samity, the name appears, but it is conceded that there is nothing to show that that Surendra refers to this man. An important piece of evidence is that given by Satish Chandra Ray, who has known Surendra Mohun Ghose since 1907. The witness lives at Olpur and says that Snrendra Mohun Ghose came there, that he said that he had come to Olpur from Dacca as an Inspector of the Anuahilan Samity. There was an Anushilan Samity at Olpur. Drill and mock fight were openly carried on at that place. It is not stated that this Samity was started by Surendra nor has it been shown to have been connected with the Dacca Anushilan Samity. The only evidence that he was there as a person of authority from the Dacca Anushilan Samity is the admission said to have been made to the witness Satish. No inflammatory "document has been found in this writing, Though I am satisfied that Surendra Mohan Ghose was a member of the Samity there is nothing to show his position in the association, excepting the admission said to have been made to Satish.

209. I feel doubtful whether it would be safe to act on the admission said to have been made three years before the witness gave his evidence, in the absence of some evidence to show that the appellant was a person of revolutionary ideas.

210. We, therefore, set aside his conviction and allow the appeal.

211. Surendra Chandra Ray--Surendra Chandra Ray admits that he joined Pulin's Samity. He is spoken to as having played lathi at 50 Wari and at Bhuterbari and having taken part in the competition in 1907. The only question of difficulty is to ascertain what position he held in the Samity. The learned Judge has come to the conclusion that he is a Paridarsak; if that is established, there could be no question as to his knowledge of the objects of the Samity.

212. A considerable number of lathi play books in which his hand-writing appears were Section found at the Samity. His name also appears in other books and accounts which, though, do no

more than corroborate his own statement that he was a member of the Samity.

213. There is, however, one document which, is relied on by the Crown as showing the appellant's connection with the deeper secrets of the Samity. That is a paper note-book which bears on it the statement that Surendra Ray is the owner. The first two paces are of darker coloured paper than the rest of the book, and appear to be sheets put on by way of a cover because it is obvious that the paper was written on before it was sewn on to the back, and on one of these sheets is a list of chemicals scored out. When they were written, by whom, there is no evidence; soma appear to be chemicals which might be used in making explosives, but it is not alleged that this is a formula for an explosive powder nor is the writing connected with any member of the Samity; indeed, we do not think that affects the case. A piece of evidence, which influenced the learned Judge, was the fact that Ashutosh had told Bankim, when that Police officer made inquiries, that Surendra had gone to Camilla, and the evidence of Abdul Gam that he used to teach lathi at Comilla.

214. But the difficulty as to this is that what Ashutosh said is not evidence against Surendra, and Abdul Gani, although he gives the name of the man who taught lathi at Comilla, is unable to identify him.

215. In favour of Surendra, it is to be observed that no seditious writings are traced to him; on the other hand, if Pulin's statement which can be looked at under the Evidence Act be true, then he had taken both the Adya and Antya vows and the number of lathi play books in his hand would justify a. suspicion that his position in the Samity was something more than that of a mere teacher.

216. The case is one which falls very near the line. On the whole, we do not think that the evidence of his being a teacher at Comilla is satisfactory: he is not connected with seditious writings. We think, therefore, that his appeal should be allowed and conviction set aside.

217. Suresh Chundra Sen.--Suresh Chandra Sen, was a shop keeper in Dacca. He was arrested at the time of the Wari Affray case and was subsequently discharged. The oral evidence against him is that of Upendra, who says he was a member of the Samity and of Sarat Ghose, though the latter's evidence was not relied on by the learned Judge, because he did not identify the prisoner. Reliance was placed on seven documents which were found at the Samity and which are said to be in the handwriting of the appellant. The hand-writing of these documents has been proved by Mr. Hardless, but an examination of these documents, particularly the two lathi play books, and a comparison of them with the standard, does not show such a resemblance between the writing as to leave the matter free from doubt. The only question is, do the documents found at Suresh's father's house justify the inference that Suresh was a member of the conspiracy?

218. They are undoubtedly seditious but appear to have been printed pamphlets and there is nothing more to connect them with Suresh than there is with Nibaran in whose house Suresh was living. On the whole, we have come to the conclusion that the evidence on the record is not sufficient to justify the conviction of Suresh.

219. The oral evidence is weak; we are not satisfied that the writings which are relied on by the Crown are in fact in Suresh's hand: the other documents found are not shown to be connected with him.

200. His appeal must, therefore, be allowed and his conviction set aside.

221. Sachindra Mohan Banerjee.--Sachindra Mohan Banerjee is a man spoken to by no fewer than seven witnesses in the lower Court. Two of the seven failed to identify him in the Magistrate's Court, but the five others pointed him out. It has been pointed out by the learned Counsel for the appellants that his name does not appear in the Police report made in the month of June or in Mr. Salkeld's report. But then, on the other hand, it has not been shown that he was a member of the Samity at any time before the report was made. Some difficulty arises in the circumstance that there appears to be another Sachindra connected with the Samity. He was one Sachindra Chandra Chandra and he is the Saqhindra mentioned by the witness Padmini as teaching people to play lathi at Imamganj, Pacca. His name appears in a list of members which was'found at the search of the house of Jyotirmoye. Although his name does not appear in Mr. Salkeld's list, he appears to have been under surveillance. Then, on the other hand, although Rati Lal Roy identifies the appellant and says he gave the name to the Inspector and the Inspector made a note of it, yet Sachindra's name does not appear in any report. The result is, with regard to this appellant, the evidence is purely oral, and even if it is conceded that he belonged to the Samity, there is nothing to show what position he held or how he was implicated in it. He is not connected with any seditious writings: we do not think it will be safe to uphold his conviction. It is, therefore, set aside, and he is acquitted.

222. Santipada.--Santipada admits that he was a member of the Dacca Anushilan Samity since 1908.

223. He was one of those who took part in the Agartola incident when with two others he was found loitering at a place to which the Lieutenant-Governor was expected to come. It was reported that he and his companions were there with the intention of doing some mischief. But as, when they were searched, nothing compromising was found on them, the suspicion cannot be justified notwithstanding the fact that they gave false names.

224. But in this case of Santipada, there were not only his admission and oral evidence to support

it but there were a great number of lathi play books found at the search of his house, one of them containing the Adya and Antya vows. There was also a book of rules for mock fight and there was a book in his hand-writing on drill partly in English and partly in the vernacular. Although ma his favour it can be said that no revolutionary writings are brought home to him, yet there is a book relating to drill. It was a careful exposition of the ordinary military drill. Bearing in mind that the ultimate object of the Samity was a revolutionary one, the writing out of this work by a member of the Samity calls for some explanation. No explanation is offered as to why Santipada took upon himself to write out this book on drill. The only inference, therefore, that can be drawn is that the appellant wrote the book because he was cognizant with the object at which the Samity of which he was a member, Was aiming.

225. I entertain no doubt that he was party to the design that Pulin had in his hand.

226. His appeal must be dismissed and conviction affirmed.

227. Manikya.--Manikya was, no doubt, a member of the Dacca Anushilan Samity. His case is that he was not trusted with the secrets of the Samity, but that he was only what was described in the rules as external limb of the Samity. As to this, he is supported by the statement of Pulin. There is evidence that he was present at a meeting in which Bepin Chandra Pal and P. Mitter were present in 1905. He was described then as being 9 or 10 years' old and attracted attention because he was too young a child to be present on such an occasion. In the view of the learned Judge, he was 17 or 18 at the time of his trial. That would make him 14 or 15 in the year 1908. While there is no doubt that he was a member and probably a precocious and forward one, there is some element of doubt as to whether he would have been trusted with the knowledge of the object of the Samity. There would be a risk in acquainting a boy of 15 or 16 years of age with such a dangerous piece of knowledge. "We think there is just that element of doubt in his case which would justify us in. saying that it has not been satisfactorily established that his position in the Samity was such that he mast have known the serious object which Pulin had set before himself.

228. The result is that we think that there is a reasonable doubt of his guilt. We, therefore, allow his appeal and set aside the conviction.

229. Jogesh Chandra Rauth--Jogesh Chandra Rauth is a man against whom the evidence is practically all oral. A number of witnesses speak to his presence at the Samity both at Wari and at Bhuterbari amongst those playing lathi: but he cannot have been seen by any Police officer between September 1907 and June 1908 as he was in hiding (hen, as there was a warrant out against him for being concerned in a stabbing case, and if seen, he would have been arrested.

230. His house was searched and nothing found. Assuming that he did, play lathi, there is nothing to show how far he Was in the secrets of the Samity.

231. here is evidence that he was the leader of the lathi play in the Jindabahar branch of the Samity, but if that were the case, one would have expected to find some mention of him in the Police reports.

232. In the long and elaborate report of Hossein, his name does not appear though Jindabahar men are to be found there and in the list of captains his name is absent.

233. The absence of his name from, these papers makes it doubtful whether he was as prominent a man as would appear from the oral testimony.

234. He is unconnected with any revolutionary writings. On the whole, we think that it is not clear that he held a position of importance in the Samity, or was acquainted with Pulin's real object.

235. Under the circumstances, we allow the appeal and set aside the conviction.

236. Charu Chanira Sen.--Charu is a man who, while admitting that he belonged to the Jnan Bikashini cava, denied that he belonged to the Dicca Anushilan Samity. Ha was brother of one Profulla who admittedly belonged to the Dacca Anushilan Samity. Charu was arrested at No. 50 Wari. His name appears in a number of documents. But the difficulty in dealing with the case arises from the fact that while this Charu belongs to Madhyapara, there seems to have been another Charu, who belongs to Outsbabi. Oharu, the appellant, has been identified by Ashutosh Banerji but the witness does not connect him with any particular incident. One. Oharu has been spoken by Nagendra as having came to Sherpur and given him some information about the Samity in Dacca. Akhil also mentions the Charu who came to Sherpur but neither witness identifies this appellant. Upendra mentioned Charu. Chandra Sen first time as the son of Sarat Chandra Sen. He is a different person from the appellant who is the son of Mohin Chandra Sen Gupta. The learned Judge relied on certain documents found at the Samity as connecting Charu with the conspiracy, but With regard to them the difficulty that arises is that there is nothing to show whether the Charu there referred to is the son of Sarat, or the appellant. The lathi play book found in the Satnity is not, in our opinion, in the hand of Cham: the documents containing the words "ushem Charu" is not in Charu's hand, and there is nothing to show to which Charu it refers.

237. The difficulty as to the documents found at Charu's house is due to the fact that Profulla, his brother, lived there, and was, undoubtedly, a member of the Samity, and may, therefore have been in possession of the incriminating' documents.

238. There is oral evidence that Charu went to Sherpur to start a Samity but out of the three witnesses only one identifies this Charu, the others, with one of whom Charu is said to have conversed about the Dacca Samity, do not identify this Charu as the man who came to Sherpur.

239. The case is one of some difficulty. I do not feel convinced that the appellant and the Charu whose names appear in Samity documents are the same man, and under the circumstances, I think the appeal should be allowed.

240. Nripendra Mohan Gupta.--Nripendra Mohan Gupta is a man who was admittedly a member of the Jnan Bikashini Sava, and he denies that he belonged to the Dacca Anushilan Samity. That he was a person of revolutionary desires is clear from his essay on Freedom. It was found in the search which brought to light the other papers appertaining to the Jnan Bikashini Sava. He was clearly at the head-quarters of the Dacca Anushilan Samity at the time of the Wari Affray case. And his connection with the Samity depends really on a letter which was found at No. 50 Wari. This letter was dated the 12th January 1908 and would appear to be a reply to a letter which was written on the 4th January 1908 by one Upendra Mohun Gupta, This letter asks about your cases and asks 'who of our village are involved in it'. Then the letter which shows the connection of Nripendra with the Samity is dated from 50 Wari and says Charu, a fellow of our village, and myself were implicated in this case and oar case came up for hearing on Monday and it goes on to say who were residing on the premises and they had nothing but lathi play. He says that any one who was living here had to dedicate his life to the interest, of the Samity and could not live worldly life, There is evidence that that letter and the essay on the Freedom are in the hand-writing of Nripendra. That evidence the Judge believes. I think he is right in accepting it. And I have no doubt that Nripendra was a member of the Dacca Anushilan Samity, that he joined that body some time before January 1908 and that he was a person of pronounced revolutionary opinion., As in the other cases, where, a man is shown, to be a person of re-voluntionary desires, and to be a member of the Dacca Anushilan Samity, the only inference that can be drawn is that he was acquainted with and agreed to the revolutionary object which the Samity had in view., I have no doubt his conviction was right and his appeal must be dismissed.

241. There only remains to be considered the question of sentence. The learned Judge has passed sentence of a severity which is only justified on his finding that the overt acts were traced to the Dacca Anushilan Samity; inasmuch as we have come to the conclusion; that the cases other than the Naria dacoity have not been connected with the Samity, we feel bound to make a considerable reduction in the sentences.

242. In passing the sentences, we do take into consideration the fact that the appellants have been in custody for the greater part of two years, and we direct that the sentences we are about to pass take effect from to-day.

243. Pulin, the leader, transportation for seven years.

244. Ashutosh Das Gupta and Jyotirmoy, six years' transportation.

245. Bankim Chandra Roy and Gurudayal Das, five years' rigorous imprisonment.

246. Profulla Chandra Sen Gupta, Radhika; Bhusan Roy, Khirode Chandra Guha, Santipada Mukerji and Bhupati Mohan Sen Gupta, 'three years' rigorous imprisonment.

247. Nripendra Mohun Sen Gupta, Nishi Bhusan Mitra, Gopi Ballav Chuckerbutty and Promode Behari Das, two years' rigorous imprisonment.

248. The remaining appellants are acquitted and discharged.

249. Before I conclude my judgment. I desire to say a word in commendation of the great care and industry shown by the learned Judge who tried the case in the Court of first instance. An enormous mass of evidence was placed before him. Although in some points we have had to differ from his conclusions, I desire to place on record ray appreciation of the ability with which he has dealt with this difficult case.

Mookerjee, J.

250. This is an appeal on behalf of 35 persons who have been convicted under Section 121A of the Indian Penal Code. Originally, 45 persons were prosecuted, of whom one was discharged by the committing Magistrate, and 8 others have been acquitted by the Sessions Judge. Of the remaining 36 persons, one is said to have become insane and has not appealed to this Court. We are, therefore', concerned with the oases of the remaining accused persons only. On their behalf, the judgment of the Sessions Judge has been assailed not only as contrary to the weight of the evidence on the record, but also as bad on four grounds of law, each of which, it has been contended, is sufficient to vitiate the convictions. These grounds must obviously be considered in the first place, and they have been formulated by the learned Counsel for the appellants in the following form, namely, first, that the proceedings are bad because they were not upon complaint made by order of or under authority from the Local Government within the meaning of Section 196 of the Code of Criminal Procedure; secondly, that assuming that there was a sanction by the Local Government, the sanction was bad for vagueness, inasmuch as the particular complaints were not authorised thereby; thirdly, that the complaints themselves were not complaints of facts within the meaning of Section 190(i)(a) of the Criminal Procedure Code, and could not form the foundation for the initiation of any valid criminal proceedings; and, fourthly, that the trial was vitiated by the misjoinder of charges contrary to the provisions of the Criminal Procedure Code.

251. In support of the first ground, it has been argued that before a Court can take cognizance of

any offence punishable under Section 121A of the Indian Penal Code, the essential pre-requisite is a complaint made by order of or under authority from the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf. In the case before us, the complaint was not made under authority from, or by an officer empowered by, the Governor-General in Council; the complaint purported to have been made by order of the Local Government. Now, the expression Local Government' as defined in Section 3(29) of the General Clauses Act, 1897, means the person authorised by law to administer Executive Government in the part of British India in which the Act containing the expression operates. It has been argued that the Lieutenant-Governor of Eastern Bengal and Assam, by whose order the complaint was made, was not the person authorised by law to administer Executive Government in that part of British India, because the Province of Eastern Bengal and Assam was irregularly constituted and the Lieutenant-Governor himself as such was irregularly appointed. In other words, if the contention of the appellants is well founded, the only person competent to authorise a complaint under Section 196 of the Criminal Procedure Code was the Lieutenant-Governor of Bengal. The argument of the appellants also involves by necessary implication the position that the Court of Session was irregularly constituted because the Lieutenant-Governor of Eastern Bengal and Assam who acted in this behalf was not the Local Government within the meaning of Section 9(i) of the Criminal Procedure Code. The line of reasoning by which this position has been sought to be supported has been lucidly and concisely stated in the following manner by the learned Counsel for the appellants. He has argued that the procedure embodied in Proclamation 2832 of the 1st September 1905 for the constitution of the Province of Eastern Bengal and Assam was ultra vires and that the result achieved by means of the Proclamation could have been validly attained only by Parliamentary Legislation, in view of the provisions of 3 and 4 Will. IV, c. 85; 5 and 6 Will. IV, c. 52; 16 and 17 Vict. c. 95; 17 and 18 Vict. c. 77; 24 and 25 Vict. c. 67; and 28 and 29 Vict. c. 17. Section 38 of 3 and 4 Will. IV, c. 85, provides that the Presidency of Port William in Bengal, is to he divided into two Presidencies, namely, Bengal and Agra. Section 56 provides that; the Executive Government of the Presidencies is to be administered by the Governor in Council, of the Presidencies of Fort William in Bengal, Fort St. George in Madras, Bombay and Agra respectively. The Statute 5 and 6 Will. IV, c. 52 gives powers to the Court of Directors to suspend the execution of these provisions so far as they relate to the creation of the Government of Agra, and during such suspension gives powers to the Governor-General in Council to appoint a Lieutenant-Governor for the North-Western Provinces. Under Section 15 of 16 and 17 Vict., c. 95, the suspension is continued, and the appointments and arrangements made with regard to the North-Western Provinces are kept in force. It is worthy of note that Parliamentary Legislation was thus deemed necessary to create a Lieutenant-Governorship out of the Presidency of Fort William in Bengal. Section 16 of 16 and 17 Vict. c. 95 provides that a separate Governor shall be appointed for the

Presidency of Fort William in Bengal as in Madras and Bombay, as provided by 3 and 4 Will. IV, c. 85; but it is laid down that pending such appointment, it would ba lawful for the Court of Directors to authorise the Governor-General of India to appoint a Lieutenant-Governor for the Presidency. Section 17 provides that the Directors may create one Presidency and authorise the Governor-General in Council to appoint a Lieutenant-Governor. The section provides at the same time that the arrangements hereinbefore authorised would be continued for the territory now and heretofore under the Presidency of Fort William. Statute 17 and 18 Vict. c. 77 transferred to the Lieutenant-Governor of Bengal the power formerly exercised by the Governor-General in Council in respect of the Presidency of Fort William in Bengal, leaving to the latter a residue of powers in respect of territories not so transferred. Section 3 of the same Statute gives powers to the Governor-General to take territories under his direct authority and management and to provide for their administration. With reference to these provisions, it has been argued by the learned Counsel for the appellants that neither the Governor-General in Council nor the Secretary of State for India in Council can create a new Lieutenant-Government divide the Presidency of Fort William in Bengal without special Parliamentary Legislation. Reliance has also been placed on Sections 22, 46 and 47 of 24 and 25 Vict. c. 67, and with reference to the two latter provisions, it has been on-tended that Section 46 applies only to territories not forming part of the Presidency at the time of its creation; and this view has been sought to be supported by reference to the terms of Sections 4 and 5 of 23 an 23 Vic. c. 17. The question thus raised as to the legality of the re-distribution of territory and the creation of the Lieutenant-Governorship of Eastern Bengal and Assam by Proclamation and without Parliamentary Legislation, is not free from difficulty, and, in my opinion, there is some apparent force in the contention of the appellants that the language of the Statutes has been strained and their provisions applied in a manner not contemplated by the framers thereof. But it is not necessary to pronounce a final opinion upon the legality of the procedure adopted for the constitution of the Province of Eastern Bengal and Assam for the appointment of a Lieutenant-Governor of the Province so constituted, because in my view the question dues not arise in the present proceedings. The complaint in the case before us was made under authority from and by order of the de fucto Local Government and was sufficient for the validity of the proceedings. The learned Counsel for the appellants has contended, upon the authority of the decisions in Empress v. Burah 4 C. 172 : 3 C.L.T.197 : 5 I.A. 178 and Hari v. Secretary of State for India 27 B. 424 : 5 Bom. L.R. 431 that it is competent to the Court to examine the legality of the procedure adopted for the creation of the Province; this position may be conceded to be sound [cf. Dicey on the Law pf the Constitution, pp. 96-98]; but the true question which requires examination is, whether the sanction by the de facto Local Government is or is not sufficient for the validity of the trial.

252. It is well settled that the acts pf one who, although not the de jure holder of a legal office,

was actually in possession of it under some colour of title or under such conditions as indicated the acquiescence of the public in his actions, could not be collaterally impeached in any proceeding to which such" person was riot a party: Parker v. Kett (1693-1701) 1 Ld. Raym 658 : 12 Mod. 467 and R. v. Bedford Level (1805) 6 East. 356 : 2 Smith 525. The view, however, has sometimes been maintained that there can be no de facto officer where there is no office de jure: Norton v. Shelby County (1885) 118 U.S. 425 : 30 Law. Ed. 178. But the contrary opinion has been maintained upon weighty reasons; and it has been, held that an unconstitutional law establishing an office, may, until such law has been declared unconstitutional, be regarded as conferring colour of title, and that the incumbent of such an office should be treated as a de facto officer. The two fundamental pre-requisites to the existence of a de facto officer are, first, the possession of the office and the performance of the duties attached to it; and secondly, colour of title, that is, apparent right to the office and acquiescence in the possession of it by the public. The proposition that the official acts of public officers, in an office created by an unconstitutional procedure, performed before its unconstitutional character has been declared by an authoritative decision, cannot be collaterally attacked; is illustrated by more than one decision to be found in the books. In Clarke v. Commonwealth (1857) 29 Pa. 129 the prisoner had been convicted of murder in a Court, the Judge of which was exercising functions in a county attached to his district subsequent to his election, and his Contention on appeal was that the Act of the Legislature by which such addition of territory was attempted to be made was unconstitutional. But the Court held that the question could not be raised collaterally, that the Judge was a Judge de facto and as against all but the Commonwealth a Judge de jure; and the murderer was hanged. In Campbell v. Commonwealth (1880) 96 Pa. 344 the prisoners had been convicted of arson in burning a dwelling-house and other buildings. Two associate Judges sat with the President Judge and participated in the trial and sentence. The validity of their title to the office, and hence of the composition of the Court, was questioned, in-appeal on the ground that they had been elected to their office unconstitutionally. It was held that they were Judges de facto and as against all parties but the Commonwealth they were Judges de jute, and having at least a colour of title to their offices, their title thereto could not be questioned in any other form than by quo warranto at the instance of the Commonwealth. The result was that the burners of the dwelling-houses went to the penitentiary for eight years, though at a subsequent term the associate Judges were ousted in an action in quo-warranto brought by the Attorney-General. Of like import is the decision in Coil v. Commonwealth (1883) 104 Pa. 117 and the murderer was executed. See also State v. Carroll (1871) 38 Conn. 449 : 9 Am. Rep. 409; State v. Gardener (1896) 53 Ohio St. Rep. 145 : 31 L.R.A. 660 and King v. Philadelphia Co. (1893) 154 Pa. 160 : 31 L.R.A. 141 : 35 Am. St. Rep. 817. A somewhat similar attempt was made in this country in Queen Empress v. Ganga Ram 16 A. 136 : A.W.N. (1894) 39 where the appointment of Mr. Justice Burkitt as a Judge of the Allahabad High Court was unsuccessfully questioned; the decision, however, is practically

valueless in view of the pronouncement by the Judicial Committee in Balwant Singh v. Rani Kishore 20 A. 267 : 25 I.A. 54 that the learned Judge had been validly appointed to his office.

253. The doctrine that the acts of officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding as if they were the acts of officers de jure, dates as far back as the Yearbooks, and it stands confirmed, without any qualification or exception, by a long line of adjudications. Viner says: "Acts done by an officer de facto and not de jure are good, for the law favours one in, a reputed authority." (Abridgment, Tit. Officers and Offices, G. 4) In fact, the question for determination in cases involving the application of the de facto doctrine, is not, as a rule, whether the challenged acts, assuming the officer to be de facto as such, are valid, but whether the person whose title is questioned, is or was really a de facto officer.

254. The earliest case on record I have been able to trace is to be found in the Yearbooks, under the name of the Abbe de Fontaine (1431) Y.B. 9 H. 6 Fol. 32 decided in 1431. The action was on a bond given by one who illegally held the office of Abbot of the convent of Fontaine, for supplies furnished to the convent. The office was elective, and though the unlawful holder had obtained only a minority of the votes, yet he had procured himself to be inducted by the ordinary, and had taken possession of the abbacy. Subsequently, however, the duly elected Abbot displaced him and was in turn inducted into office. The action was brought against the latter on the bond of his predecessor, and he pleaded the invalidity of the same on the ground that it had been given by one who never was the lawful Abbot of the convent. The Court overruled this contention, and considered the bond valid, because given by the person who at the time was in fact the Abbot. It is remarkable that the language used by Chief Justice Babington plainly indicates that the principles of the de facto doctrine were even then not entirely new. From this period, the de facto doctrine rapidly spread in England, and became firmly established, as is clear from a long series of decisions dealing with its various features and expanding its principles to meet the requirements of diverse circumstances and different times. We may briefly state that these cases illustrate the following positions: first, that a parson presented by an usurping patron, who was wholly without authority to present, was a good parson de facto: Abbey of Fontaine (1431) Y.B. 9 H. 6 Fol. 32; secondly, that a clerk of a Lord of the Manor holding a manorial Court without any authority whatever and deriving colour only from his known relation to the Lord of the Manor as a simple clerk, was a good officer de facto: Knowles v. Luce (1580) Moore 103; thirdly, so of the servant of a steward holding a manorial Court without authority from the steward or the law: Lord Dame's case (1553) 1 Leonard 255; fourthly, so of the deputy of a deputy to whom authority could not be delegated : Leak v. Howel (1596) Cro. Eli. 533; fifthly so of the steward of a manor appointed not by the Lord who alone had the power to appoint, but by county officers who had no authority whatever to appoint: Harris v. Jays (1599) Cro. Eli. 698;

sixthly are-affirmation of the doctrine by Lord Holt that the deputy of a deputy has sufficient colour to make him a de facto officer: Parker v. Kett (1693-1901) I Ld. Raym. 658 : 12 Mod. 467 which is not inconsistent with the decision in Rex v. Lide (1738) Andrews 163 and seventhly, the adoption of Lord Holt's definition that an officer de facto is none other than he who has the reputation of being the officer he assumes to be; although he is not such in point of law, by Lord Ellenborough in Rex. v. Bedford Level (1805) 6 East. 356 : 2 Smith 525. Amongst later decisions in which the existence of the de facto doctrine as a well settled rule of law, is fully acknowledged, may be mentioned Margate Pier Co. v. Hannan (22) B v. Herefordshire (1819) 1 Chitty 700 : 22 R.R. 830 H. v. Slythe (1827) 6 B. & C. 240 : 30 R.R. 312 : 9 D. & R. 226 : 5 L.J. (o.s.) M.C. 41 De Grave v. Monmouth (1830) 4 C. & P. 111; R. v. Dolgelly Union Guardians (1838) 8 A. & E. 561 : 3 N. & P. 542 : 1 W.W. & H. 513 : 7 L.J.M.C. 99, Penny v. Slide (1839) 5 Bing. (N.C.) 319 : 7 Scott 285 : 8 L.J.C.P. 221 : 1 Arn. 539 : 50 R.R. 698; B. v. St. Clement's (1840) 12 A. & E. 177 : 3 P. & D. 481 : 4 Jur. 1059; B. v. Mayor of Cambridge (1840) 12 A. & E. 702; B. v. Cheshire (1840) 4 Jar. 484; Scadding v. Lorant (1851) 3 H.L.C. 418 : 88 R.R. 144 affirming 13 Q.B. 706; Lancaster v. Heatoa (1858) 8 El. & El. 952 : 27 L.J.Q.B. 195 : 4 Jnr. (N.S.) 707 : 6 W.R. 293; Waterloo v. Cull (1858) 1 El. & El. 213 : 28 L. J. Q. B. 70 : 5 Jnr (N. S.) 464 : 7 W.R. 87 : 29 L.J.Q.B. 10 : 117 R.R. 182 and Mahony v. East Holyford (1875) L.R. 7 H.L. 869 : Ir. R. 9 C.L. 306 : 33 L.T. 383.

256. The application of this doctrine of de facto officers admits of illustration from well known historical events. The de facto doctrine received a solemn recognition from an Act of Parliament passed in 1461. This was after the House, of York bad reasserted its title to the Crown of England and succeeded in establishing it in the person of Edward IV. The Statute Edw. IV. C.I. declared that the previous Henrys of Lancaster were usurpers, but, to avoid great public mischief, also declared them kings de facto; the de facto doctrine was carried so far with respect to the English Crown that treasons committed under Henry VI, not in aid of the lawful claimant, were punished under Edward IV. It is further stated in Bacon's Abridgment (Prerogative A) that it bad been settled that all judicial acts done by Henry VI while he was King and also all pardons of felony and charters of designation granted by him are valid." The history of England affords another memorable instance of the application of the de facto doctrine. On the death of Charles I, Charles II immediately became King of England de jure, and the years of the reign of Charles II are to this day counted from, the death of Charles I; yet there was an interval of eleven years between the death of Charles I and the restoration of Charles II, during the greater part of which, under the Protector, a government maintaining order and able to enforce its authority existed. Sir Matthew Hale, though he never formally recognized the government of Cromwell, sat as a Judge of the Common Bench, as the Court of King's Bench was called in Cromwell's time, administering the plenary jurisdiction of the Court, in the adjudication of cases involving title to property as well as

those affecting civil liberty. At the Restoration, he sat in the same Court as Lord Chief Justice of the King's Bench. His explanation is well known, and was to the effect that the public business must go on and justice be administered alike under de facto and de jure governments. (See Life of Sir Matthew Hale by Bishop Burnett and also by Dr. Williams). For other illustrations of a similar character, reference may be made to the cases of Bank of North America v. McColl (1812) 4 Bunn. 371 where the question arose as to the validity of judicial proceedings in the Saint Domingo Courts not constituted by authority of the French Government, and Keene v. M'Donough (1834) 8 Peters 308 : 8 Law. Ed. 955 where the question arose as to the validity of the judgment of a Spanish Court rendered in Louisiana, after the cession of that country to the American Union but before the formal surrender. To the same effect is the decision in Horn v. Lockhart (1873) 17 Wallace 570 : 21 Law. Ed. 657 where the question was raised as to the validity of the decisions of the Courts of the Confederate States of America during the War of Secession. The position is thus now firmly settled in England, in the United States and in Canada, that the title of de facto judicial officers is not collaterally assailable. Hippsley v. Tucker (1677) 2 Lev. 184; People v. Sassoville (1866) 29 California 480; O'Neil v. Attorney-General (1896) 26 Canada Sup. Court 122 : 1 Canada Cr. Cases 303; Speeres v. Speeres (1896) 28 O.R. 188; Parker v. Parker (1840) 8 Paige 428. See also the case of Sir Edward Coke, who, though only a de facto member of Parliament in 1626, was granted privilege against a suit in Chancery commenced against him by the Lady Cleare. (1625) 1 Douglas Ele. Cas. 425 at p. 444.

257. It is not necessary for our present purpose to investigate exhaustively all the qualifications or limitations subject to which the de facto doctrine has to be applied. The substance of the matter is that the de facto doctrine was introduced into the law as a matter of policy and necessity, to protect the interest of the public and the individual where those interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. The doctrine in fact is necessary to maintain the supremacy of the law and to preserve peace and order in the community at large. Indeed, if any individual or body of individuals were permitted, at his or their pleasure, to collaterally challenge the authority of and to refuse obedience to the Government of the State and the numerous functionaries through whom it exercised its various powers, on the ground of irregular existence or defective title, insubordination and disorder of the worst kind would be encouraged. For the good order and peace of society, their authority must be upheld until in some regular mode their title is directly investigated and determined. See the observations in Scudding v. Lorant (1851) 3 H.L.C. 418 : 88 R.R. 144 affirming 13 Q.B. 706 and Norton v. Shelby County (1885) 118 U.S. 425 : 30 Law. Ed. 178. In the matter now before us, the. sanction under Section 196 of the Criminal Procedure Code was granted by the de facto Local Government and the cognizance of the case has been taken by the de facto Sessions Judge, In my opinion, it is not open to the appellants to question

collaterally the legality of the conviction upon the allegation that the Local Government was irregularly constituted and the Sessions Judge irregularly appointed. The first ground upon which the legality of the trial is assailed must, consequently, be overruled.

258. In so far as the second ground is concerned, it has been contended that the sanction under Section 196 of the Criminal Procedure Code is vague, because it does not sanction the specific complaint preferred before the Magistrate and that consequently it amounts in substance to a delegation of the authority vested in the Local Government. In support of this view, reliance has been placed upon the decision in Barindra Kumar Ghose v. Emperor 37 C. 467 : 7 Ind. Cas. 359 : 14 C.W.N. 1114 : 11 Cr.L.J. 453. In my opinion, there is no substance in this contention. In the case relied upon, sanction was granted for prosecution for offences under four sections specified and any other section of the Indian Penal Code which might be found applicable to the case. There was, consequently, a plain delegation of the controlling power and discretion vested in the Local Government. In the case before us the persons to be prosecuted are named and the sections under which they are alleged to have committed offences as also the period of their activity are specified. The mere circumstance that these persons are not described as members of the revolutionary society, the existence whereof was sought to be established at the trial, does not affect the validity of the sanction. The second ground, therefore, cannot be supported.

259. In so far as the third objection is concerned, it has been argued by the learned Counsel for the appellants that the conditions requisite for the initiation of a valid criminal proceeding are exhaustively enumerated in Clauses (a), (b) and (c) of Sub-section (1) of Section 190; that Clauses (b) and (c) have no application to the present case, and that the requirement of Clause (a) was not fulfilled inasmuch as what purported to be the complaint was not a complaint of the facts which constituted the alleged offence. My attention has been invited to the definition of the term complaint embodied in Section 4(1)(b) of the Code, as the allegation, made orally or in writing, to a Magistrate with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence. Reliance has also been placed upon the provisions of Sections 200, 202 and 203 of the Code to show that when a Magistrate has taken cognizance, of an offence on complaint, he has, to examine the complainant upon oath, to satisfy himself as to the truth of the complaint, to make an inquiry into the case or direct a Local investigation for this purpose, if necessary, and then to determine whether he will dismiss the complaint for reasons to be recorded or issue process against the accused. It has been argued that in order to enable the Magistrate to exercise his judgment in this matter, it is essential that the complaint should be a complaint of the facts which constitute the offence, and that in the case before us, this condition has not been fulfilled. The complaints do not set out the facts. I shall take as an illustration the first of the three complaints on the record dated the 29th July 1910. The petition of complaint is headed as a complaint of offences under Sections 121A, 122, 123 of the

Indian Penal Code, and then proceeds as follows: "Your petitioner has reasons to believe that the persons named in the Government order dated the 26th July 1910, which is hereunto annexed, have amongst themselves and together with other persons known or unknown conspired to wage war against His Majesty the King and to deprive His Majesty of the sovereignty of British India, and they have collected arms and have otherwise prepared to wage war with the intention of either waging war or being prepared to wage war against the King, and have further concealed with intent to facilitate a design to wage war against the King, and have thereby committed offences punishable under Sections 121A, 122 and 123, Indian Penal Code." It will be observed that no facts are set forth in. the so-called complaint, but the words of the successive sections of the Code are literally copied out. In fact, the complainant might merely have stated that he complained that the persons named had committed offences, punishable under Sections 121A, 122 and 12 3 of the Indian Penal Code. In my opinion, a complaint of this description c institutes a merely colourable compliance with the provisions of the Statute. That substantial compliance with the statutory requirements may be secured without the least practical difficulty is clear from the form of the complaint in the case of Emperor v. Noni Gopal 15 C.W.N. 593 : 38 C. 559 : 12 Cr.L.J. 286 : 10 Ind. Caa. 582 which was produced before this Court, and which showed how a tolerably full statement of the concrete facts may be incorporated in the complaint so as to enable the Magistrate to discharge his judicial functions under Sections 203 and 204 of the Criminal Procedure Code, and, in the event of the issue of process under the latter section, to furnish indication to the accused of the outlines of the case for the prosecution, The view I take is founded not merely on the language of the Code Queen Empress v. Sham Lal 14 C. 707 at p. 716 but also on well recognized principles which lie at the foundation of Criminal Jurisprudence. It is well settled that in accordance with the general rule in criminal prosecutions, an indictment or information for conspiracy must contain a statement of the facts relied upon as constituting the offence, in ordinary and concise language, with as much certainty as the nature of the case will admit: Rex v. Jones (1832) 4 B. & Ad. 345, Rex v. King (1844) 7 Q.B. 782 at p. 795 : D. & M. 741 : 13 L.J.M.C. 118 : 8 Jur. 662. I am not unmindful of the view sometimes taken that where conspiracy is made a statutory offence, if the Statute sets out fully and without uncertainty or ambiguity, the elements necessary to constitute the offence intended to be punished, a charge in the language of the Statute is sufficient. Reg. v. Rowlands (1851) 17 Q.B. 671 : 5 Cox. C.C. 436 : 2 D.C.C. 364 : 21 L.J.M.C. 81 : 16 Jar. 268 : 85 R.R. 615. But it is indisputable that if the Statute employs broad and comprehensive language descriptive of the general nature of the offence denounced, the complaint should embody a particular state-. ment of the facts and circumstances: Rex v. Peck (1889) 9 A. & E. 633 : 1 P. &. D 593 : 8 L.J.M.C. 22; Pettibone v. United States (1832) 148 U.S. 197 : 37 Law. Ed. 419; McClain on Criminal Law, Vol. II Section 984; Bishop on New Criminal Law, Vol. II, Section 202; Bishop on New Criminal Procedure, Vol. II, Section 217. If the contrary view were maintained, we might as well hold that because

sanction has been accorded under Section 196 of the Criminal Procedure Code, the Magistrate need not exercise his judgment at all,--a position clearly not intended by the Legislature. In my opinion, therefore, the complaint in this case was not a complaint of facts as contemplated by Section 190 of the Criminal Procedure Code. The question thus arises, how far, if at all, the validity of the proceedings has been affected by this defective nature of the complaint. On behalf of the appellants, it has been contended that there was no complaint in the eye of the law and consequently the proceedings were without jurisdiction. In support of this proposition, reference has been made to the cases of Umer Ali Saffer Ali 13 C. 334; Baidya Nath Singh v. Muspratt 14 C. 141; In re Subrao Ram Chandra Ranchoddas 954; Runga Chari v. Emperor (1902) 2 Weir 241; Emperor v. Lalit Mohan 15 C.W.N. 98 : 8 Ind. Cas. 1059 : 12 Cr.L.J. 2; Barindra Kumar v. Emperor 37 C. 467 : 7 Ind. Cas. 359 : 14 C.W.N. 1114 : 11 Cr.L.J. 453; Shamal Khan v. Queen-Empress 16 P.R. 1890 Cr.; Apurba Krishna v. Emperor 35 C. 141 : 7 C.L.J. 49 : 7 Cr.L.J. 10 : 2 M.L.T. 509; Lokenath v. Sanyasi Charan 30 C. 923 : 7 C.W.N. 525; Haladhar v. Sub-Inspector of Police 9 C.W.N. 199 : 2 Cr.L.J. 51; Chamroo Sahu v. Emperor 11 C.W.N. 170 : 5 Cr.L.J. 13; Kesri v. Muhammad Bakhsh 18 A. 22; Abdul Kadir v. Emperor 5 M.L.T. 163 : 4 Ind. Cas. 1107 : 11 Cr.L.J. 190; Queen-Empress v. Alim Mundle 11 C.L.R. 55 and Subrdhmania v. Emperor 25 M. 61 : 28 I.A. 257 : 11 M.L.J. 233 : 3 Bom. L.R. 540 : 5 C.W.N. 866. This position has been contested on behalf of the respondent, and it has been argued, on the authority of the decisions in Chidambaram x. Emperor 32 M. 3 : 9 Cr.L.J. 130 : 5 M.L.T. 16 : 1 ind. Cas. 36 and Swami Dayal v. Emperor 7 Cr.L.J. 353 : 15 P.W.R. 1908 Cr. : 8 P.R. 1908 Cr. : 149 P.L.R. 1908 that the defect, if any, may be deemed to have been cured by Section 537 of the Criminal Procedure Code. Upon examination of the decisions to which reference has been made at the bar, it appears that not one of them is precisely in point; but one rule is deducible therefrom, viz., that if the Court has acted without jurisdiction, the legality of the proceedings cannot be sustained. Now, it is plain that in the case of Batindra Kumar v. Emperor 37 C. 467 : 7 Ind. Cas. 359 : 14 C.W.N. 1114 : 11 Cr.L.J. 453 where the order under Section 196 of the Criminal Procedure Code did not mention Section 121 of the Indian Penal Code, as also in the case of Emperor v. Lalit Mohan 15 C.W.N. 98 : 8 Ind. Cas. 1059 : 12 Cr.L.J. 2 where the complainant omitted to name an accused person in his petition of complaint, the defect went to the root of the matter and made it impossible for the Court to hold a valid trial for the offence not specified or of the accused person not mentioned. Again, where, as in the case of Chamroo Sahu v. Emperor 11 C.W.N. 170 : 5 Cr.L.J. 13 the validity of the complaint is successfully questioned before this Court, before the trial, the obvious course to adopt is to quash the proceedings as framed. In the case before us, however, the sufficiency or legality of the complaint has not been brought up to this Court for consideration before the completion of the trial in the subordinate Courts. On the basis of the complaint, the inquiry proceeded before the Magistrate, and after commitment by him, the Sessions Judge has elaborately tried the case with the aid of assessors. Under these

circumstances, it is plainly no longer competent to the accused to invite this Court to set aside the convictions on the ground that the complaint was materially defective. A case of this description is, I think, completely covered by Clause (a) of Section 537 of the Criminal Procedure Code. There is no foundation for any possible suggestion that that essentially defective nature of the complaint has in fact occasioned a failure of justice. The essence of the argument for the appellants is that the complaint must embody a statement of facts, so as to enable the Magistrate to form an opinion whether he should take action under Section 203 or Section 204 of the Code. But that stage has been long since passed, and the Court is now called upon to decide, not whether the complaint should have been thrown out or acted upon, but whether the voluminous evidence on the record justifies the convictions and sentences. The view I take is supported by the observations in the oases of Swami Dayal v. Emperor 7 Cr.L.J. 353 : 15 P.W.R. 1908 Cr. : 8 P.R. 1908 Cr. : 149 P.L.R. 1908 and Chidambaram v. Emperor 32 M. 3 : 9 Cr.L.J. 130 : 5 M.L.T. 16 : 1 ind. Cas. 36 though I do not adopt all that is said in these oases. In so far as the second case. accepts the decision in Queen v. Bal Gangadhar Tilak 22 B. 112 it cannot be reconciled with the decision in Barindra Kumar v. Emperor 37 C. 467 : 7 Ind. Cas. 359 : 14 C.W.N. 1114 : 11 Cr.L.J. 453 but that does not affect the point now under consideration. My conclusion, therefore, is that although the complaint is not in conformity with the requirements of Section 190 of the Criminal Procedure Code, and although the accused might have, possibly with success, applied to this Court to quash the proceedings at the appropriate stage, the convictions cannot now be assailed on this ground.

260. In support of the fourth ground, it has bean Contended that the trial is vitiated by misjoinder of charges, inasmuch as a charge under Section 121A was coupled with a charge under Section 123 of the Indian Penal Code. The contention in substance is that the same person cannot be guilty of offences under both the sections, and in support of this view, reliance has been placed upon the decision in Queen v. Raj Coomar Banerjee 1 Ind. Jur. (o.s.) 105 where it was ruled that the illegal concealment by act or omission contemplated by Section 120 of the Indian Penal Code has reference to the existence of a design on the part of some third person other than the person who commits the offence. It has further been argued that if there was a misjoinder of charges, the trial has been altogether vitiated, because conducted in a planner not contemplated by law, and in support of this proposition, reliance has been placed upon the cases of Queen v. Chandi Singh 14 C. 395 and Subrahmanya Ayyar v. Emperor 25 M. 61 : 28 I.A. 257 : 11 M.L.J. 233 : 3 Bom. L.R. 540 : 5 C.W.N. 866 which mast be taken to have overruled the decision of the Fall Bench in In re Abdur Rahman 32 M. 3 : 9 Cr.L.J. 130 : 5 M.L.T. 16 : 1 ind. Cas. 36. In my opinion, there is no substance in the contention that the trial is vitiated by misjoinder of charges. In the first place, it is clear that the decision in Barindra Kumar v. Emperor 37 C. 467 : 7 Ind. Cas. 359 : 14 C.W.N. 1114 : 11 Cr.L.J. 453 is opposed to the contention of the appellants. In the second place, it is

manifest that the same person may be guilty of offences under Section 121 A. as well as Section 123 of the Indian Penal Code; for instance, a person may bring himself within the latter section by concealment of the existence of a design to wage war against the King, and may immediately afterwards join in the 'conspiracy to wage war against the King and thereby bring himself within the scope of Section 121A. It is reasonably plain, therefore, that even if Sections 231 to 233 of the Criminal Procedure Code are of no assistance to the prosecution, because, as explained in Budhai Sheik v. Emperor 33 C. 292 : 10 C.W.N. 32 : 3 Cr.L.J. 126 they are limited to the case of a single accused person while Section 239 applies to the joint trial of more than one person, yet the interpretation we put upon Section 121A and Section 123 of the Indian Penal Code shows that the trial is not open to objection on the ground of misjoinder of charges. See Janhi v. Emperor 11 C.L.J. 182 : 11 Cr.L.J. 244 : 5 Ind. Cas. 769 which is not really in conflict with Bishnu Banwar v. Empress 1 C.W.N. 35 and in re Bal Gangadhar Tilak 33 B. 221 : 10 Bom. L.R. 973 : 4 M.L.T. 450 : 9 Cr.L.J. 226 : 2 Ind. Cas. 277. In the second place, it is plain that the offences charged were committed in the same transaction within the meaning of Section 239 of the Criminal Procedure Code. But I must further add that the objection as to the joinder of charges proves wholly unsubstantial, also from another point of view. It appears that as soon as objection was taken on this ground before the Court of Session, application was made on behalf of the Grown for leave to withdraw the charges under Sections 122 and 123 of the Indian Penal Code. The learned Judge, however, felt constrained to refuse this application in view of the decision in Empress v. Poreshollah 7 C.L.R. 143 as also of the circumstance that there is no express provision in the Code which authorises the withdrawal of a charge in the events which have happened. The result was that the charges remained nominally unaltered; but the prosecution directed the evidence towards the proof of the charge under Section 121A. alone. In my opinion, the application for withdrawal of the charges to which exception had been taken ought to have been allowed and the Court had inherent power to make the appropriate order. Criminal Courts, no less than Civil Courts, exist for the administration of justice, and Courts of both descriptions have inherent power to mould the procedure, subject to the statutory provisions applicable to the matter in hand, to enable them to discharge their functions as Courts of justice. From every point of view, therefore, the objection as to misjoinder of charges is unfounded and mast be overruled.

261. I shall now proceed to examine the merits of the appeal. The case for the prosecution is that the Dacca Anusilan Samity, of which many of the appellants were members, was a revolutionary society, the object of which was ultimately to deprive the King-Emperor of the sovereignty of British India, or at any rate of a part thereof. The theory of the prosecution is that the Partition of Bengal which came into force on the 16th October 1905, exasperated the Hindu inhabitants of the Province and specially of the newly constituted Province of Eastern Bengal. Political

agitation was vigorously carried on in various parts of the country, and, to use the language of Mr. Justice Fletcher in Peary Mohan Das v. Weston 16 C.W.N. 145 at p. 152 : 13 Cr.L.J. 65 : 13 Ind. Cas. 721 speeches were delivered against the Partition, the swadeshi movement came into being, akhras or gymnasiums and Samities or societies were formed or extended, attempts were made to enforce the swadeshi movement by criminal intimidation, force and violence, volunteers originally enrolled for the purpose of keeping order at political meetings were subsequently employed for picketing the markets in order to enforce boycott, and finally literature including periodicals and books, which preached revolutionary doctrines and destruction of Europeans-, came into existence. On behalf of the Crown; it is asserted in substance that the Dacca Anushilan Samity was formed for purposes of revolution, though its ostensible object was to encourage physical exercise. The case for the defence, on the other hand, is that the ostensible was the real object of the Samity and that its founder and promoters entertained no secret or sinister purpose. In fact, it is asserted on behalf of the defence that the effect of the agitation which followed the Partition of Bengal was not merely to cause complete estrangement between Hindus and Mahomedans, but also to create a feeling of active hostility of the Mahomedans towards the Hindus which exhibited itself in what has been described as various acts of insult and oppression. The defence urge that the position of the Hindus became so insecure that Pulin Behary Das, who was himself an expert lathi player, at the instance of the leading people of the town of Dacca, started this Samity on the 6th March 1907 for the physical improvement and ultimate regeneration of the Bengali race. It is further asserted that the idea of the Samity was borrowed from the well known work "Anushilan" or "culture" by the celebrated Bengali novelist, Babu Bankim Chandra Chatterjee. The substantial question in controversy, consequently, is, what was the true character of the Dacca Anushilan Samity. Was it, as the prosecution alleges, a revolutionary society the funds of which were obtained by dacoity, and the object of which was to be attained by means of bombs and arms; or was it, as the accused assert, a society for not merely a harmless but also a praiseworthy purpose, namely, the physical and moral improvement of the Bengali race, but the object, whereof has been grievously misrepresented by untrustworthy Police officers and unscrupulous spies? In the Court below, a considerable mass of evidence was adduced to establish the precise time when the society was formed, and it appears to have been assumed that if the society was established towards the end of 1905, immediately after the Partition of Bengal, as the prosecution asserts, its object must have been revolutionary while if it was really founded on the 6th March 1907, immediately after and in view of the various disturbances at Comilla, Jamalpur, and in other places, its purpose must have been laudable. But it is manifest that neither of these assumptions may be well founded. The precise point of time when the Samity was instituted, if it can be ascertained, may possibly indicate the ostensible purpose of its establishment; but it is by no means conclusive as to its true character. It is obvious that a society of this description could hardly have been founded, much less successfully

extended through various districts, unless the antecedent events and surrounding circumstances had prepared the way therefor. It is, therefore, not very material to consider whether the organization was started on the 6th March 1907 as the defence assert or more than a year earlier as the prosecution alleges. It is plain beyond controversy that at or about the time to which we are referring, considerable ill-feeling existed between Hindus and Mahomedans, and the evidence further points to the conclusion that in Jamalpur, and possibly in other places also, infuriated Mahomedan mobs had, to some extent, got beyond the effective control of the authorities entrusted with the duty of keeping the peace. There was thus a widespread panic among Hindus that they might be insulted or outraged by Mahomedans with impunity, and also a belief that the authorities were either unable or unwilling to afford them adequate protection. It is not necessary for the purposes of the present case to investigate whether and how far this panic was well founded; nor is it pertinent to the present inquiry to determine who were to blame for the highly strained feeling between the Hindus and the Mahomedans. I am concerned only with the fact, firmly established by the evidence, that there was widespread panic amongst the Hindus and that means of self-protection were deemed necessary by men of intelligence and respectability. Under such circumstances, the formation of a society avowedly for the development of physical culture and the rapid extension thereof in different districts is by no means a matter for surprise. That Pulin Behary Das was himself an expert lathi player is clear on the evidence, and he is said to have learnt the tricks of the art from a master named Murtaza and to have developed the system to a considerable extent. That lathi play by itself is perfectly harmless has not been disputed; and, as was pointed out by the learned Chief Justice in a recent case, lathi play standing alone cannot be treated as evidence of a conspiracy to wage war. To attach sinister significance to the mere association in play or pastimes of those that live in the same village or attend the same school, would be dangerous, specially when these exercises were undertaken with a complete absence of secrecy and rather with a courting of publicity: Emperor v. Noni Gopal Gupta 15 C.W.N. 593 : 38 C. 559 : 12 Cr.L.J. 286 : 10 Ind. Caa. 582. I propose, therefore, to leave the evidence of lathi play alone, and to endeavour to determine the object of the society from the official documents and from the evidence of its activities.

262. On behalf of the Crown, upon whom rests the burden of establishing the alleged conspiracy, reliance has been placed upon two classes of documentary evidence. In the first class, are comprised what have been called the official documents of the Samity. In the second class, are included documents found in the Samity premises at the searches of the 10th August, 5th November, and 15th November, 1903,, as also documents proved to have been written by individual accused persons or found to have been in their possession at the time of various other searches. In addition to the effect of these documents, we have been invited by the Crown to consider the evidence of numerous overt acts as indicative of the true nature of the society,

manifested by the activity of members thereof.

263. In so far as the official documents are concerned, they have been classified under seven heads: (1) vows; (2) Rules for the conduct of members; (3) the Paridarsak, an essay by Pulin Behary Dass which sets forth the nature of the society; (4) Sampadaker Kartabya, or Duties of the Secretary; (5) village notes; (6) notice for organising Samities; (7) Unity leaflet and Independence leaflet.

264. As regards the vows, it is necessary to state at the outset that it was an essential pre-requisite for the admission of an adult member into the society that he should take a vow. The vows were four in number, and were of gradually increasing degree of solemnity. They were known as the Adya pratijna or initial vow; the Antya pratijna, or final vow; the Pratham bishes or the first special vow and the Dvitia bishes or the second special vow. An elaborate argument has been addressed to the Court by the learned Counsel for the appellants as to the order in which the vows were administered. But, in my opinion, the contention, ingeniously put forward, that, the first special vow was administered first, completely failed. The internal evidence is conclusive that the vows were administered in the order I have named them. The initial and the final vows were meant for all ordinary members, the initial to be taken at the time of admission into the Samity, and the final, after the novice had reached a certain stage of culture or attainment. The two special vows were intended only for the members of the inner circle, and amongst them also there was obviously a gradation. The initial vow is harmless. The member undertakes never to separate himself from the Samity, to be loyal to its interests, to keep his own character immaculate, to carry out the orders of the authorities without question, to be diligent in gymnastics and drill, to keep secret from all non-members the art of self-defence, and to work out the welfare of the country and gradually of the world. The final vow opens with a declaration that no internal matters whatever of the Samity were to be divulged to anyone ; nor were they to be even discussed unnecessarily. The member who took this final vow undertook to carry out unquestioningly the orders of the parichalak or the head of the Samity, to keep him informed of his own whereabouts wherever he might be, to inform the Chief of the existence of conspiracies against the Samity and under his orders to remedy them,, to return to duty whenever the President might command, to consider no kind of work as humiliating, to cultivate self, abnegation and self-sacrifice and to keep Secret from all persons not equally bound by oath, the instruction that he had received. The first special YOW is couched in more solemn language, and the member undertakes to remain attached to the circle till its object has been fulfilled, to sever the tie of affection for parents and relations, for hearth and home, to render absolute obedience to the leader in the work of the circle, and to give up vicious habits of all descriptions. The second special vow is couched in still more solemn language, and the member undertakes to stake his life and all that he possesses to accomplish the work of the circle, called the circle for the

enhancement of good sense, to keep the inner secrets inviolate and never to discuss or mention them, to carry out commands without question, to preserve secrecy of the Mantras, to conceal nothing from the leader, never to deceive the leader by untruth, to be engaged always in the practice of religion, and finally to mete out just punishment to those who are antagonistic to it. With reference to these vows, it has been argued on behalf of the Crown that they plainly indicate that the society had a secret object which was not to be mentioned, not even needlessly discussed. In answer to this contention, it has been argued on behalf of the defence that the object of the society was physical improvement of the race, to be attained by stick play and dagger play, and that this object is fairly obvious from the vows themselves. I am not at all impressed with the suggested explanation. It may be conceded that the members of the Samity might well be anxious to keep secret from their Mahomedan opponents the details of the elaborate system of lathi play invented or perfected by their leader. But this does not carry us appreciably nearer to what is described as the internal secrets or the internal matters, which were not only not to be divulged but not even discussed. The other provisions, to preserve the secrecy of Mantras, to guard the society against conspirators, and finally to mete out just punishments to all antagonists, do seem remarkable in what, it is contended, was perfectly innocuous society with legitimate aims and aspirations. Stress need not be laid upon the provision which implies complete severance from home and family and unquestioning submission to a leader. But it is plain that vows of this special and remarkable character do not by any means seem needful for, even if they be assumed to be consistent with the purposes of a society of the harmless character suggested by the defence. The true object of the society, however, is to be determined not merely from the contents of the vow's but also from the other documents which we shall presently examine.

265. When we turn to the rules for the conduct of members, we find the same remarkable provision for the preservation of an unnamed secret. With this end in view, all unnecessary discussion even amongst the members themselves was strictly prohibited. They were not even to write letters to their friends and relations without the permission of the leader, and all letters for and from the members were to be shown to him. Members were also to cut themselves off completely from their relations and friends, and if they obtained any money from them, it was to be regarded as the common property of the Samity and the circle. Each member was also required to take both the sets of the vows of the Samity, i.e., the initial and the final as also the special vows of the circle. Every, member was further expected to get by heart the vows, the duties of a manager, the Paridarsale, the lathi play book and the regulations. Finally, every member was bound to bring to the notice of the Chief whatever drawback he might notice in any of the other members, and if the concealment of the fault of the member by another should be detected, both of them were to be punished. These rules plainly indicate that the members were to be subject to the absolute control of the head of the Samity and that all possible precautions

were to be taken for the preservation of an undisclosed secret.

266. The third official document, which requires examination, is the Paridarsak or the visitor. This is an elaborate statement of the method to be pursued for the establishment of new Samities in new places. The visitor, who was to be entrusted with this responsible duty, was furnished with a series of plausible and captivating arguments to be used by, him for inducing people to inaugurate societies. To take one illustration: people who might object to take vows were to be told that otherwise only an undisciplined body would be formed. But we need only confine our attention to the more striking passages of this remarkable document. In the first place, all factions were to be avoided, and strenuous effort was to be made to have the different Samities under a central authority. If the object of the movement was merely to improve physical culture and to afford self protection against the Mahomedans, it is difficult to appreciate why a central association with its branches spread over the whole province was essential. It was a fundamental part of the scheme that no associations were to be tolerated even for the purposes of promotion of physical development, unless they consented to be affiliated to the parent association and adopted its vows, rules and methods of work. In the second place, strict measures were to be adopted to prevent any entrance into the society by persons who had not taken the vows and yet by deception attempted to learn lathi play. Such a parson, when detected, was to be pressed to take the vows, and if he refused, arrangements were to be made fir the complete destruction of his knowledge. This provision has an undoubtedly sinister look, and I am not much impressed with the interpretation suggested by the learned Counsel for the appellants. In the third place, there is a lengthy discussion as to why Mussulmans should not be admitted as members of the society. As the avowed object of the society is assumed by the accused to have been self-protection of the Hindus against the Mahomedans, it is difficult to appreciate how any occasion could really arise for the consideration of this question. At the same time, there is a significant sentence that it would not be proper to show hostile feelings against or to deal unjustly with the Mussulmans as a nation. This document, taken as a whole, clearly indicates, in my opinion, that systematic effort was to be made to have a net-work of Samities throughout the length and breadth of the land, that independent Samities even for physical culture were not to be tolerated, that any attempt to learn the secrets of the society without a vow was to be frustrated by complete destruction of knowledge, and that Mahomedans were to be excluded from the Samity but no hostile feelings were to be shown towards them as a nation. I have not referred to a somewhat ambiguous sentence which appears only in one copy of this document and which might be interpreted to mean that foreign Kings were to be driven out. The learned Judge has treated the passage as capable of a harmless meaning and I shall not consequently draw from it any adverse inference. The same remark, however, does not apply to the passage where reference is made to a possible combination between the British Government and the Mahomedans; this is only

consistent with the theory of a revolutionary conflict between the members of the Samity and their followers on the one hand, and the established Government of the country on the other.

267. The next document which requires consideration is known as the Sampadaker Kartabya or Duties of the Secretary, and describes in minute detail the steps to be taken by the Secretary of every Samity for its maintenance and improvement. Promotion of physical execrise was a prominent object; but complete instruction was to be imparted only to those who had taken both sets of vows in full; steps were to be taken for collection of handfuls of rice as alms and attempt was to be made to secure pecuniary help. But the accounts were to be rendered every week to the Chief Secretary of the Central Samity and were to be open to inspection by visitors appointed by him. All changes in organisation or personnel were to be promptly reported to the Chief Secretary. A register was to be kept of members of the Samity with full details as to antecedents and previous connection, if any, with affiliated Samities. Provision was also made for the punishment of delinquent members; but, in no circumstance, were they to be allowed to leave the Samity. Effective inquiries were to be made us to the existence of conspiracies against the Samity, and steps were to be taken for the remedy thereof. There was finally a noticeable rule that those, who were under 12 years of age and were incapable of understanding the spirit of the vows, were to be designated as the external limbs of the Samity; such boys were only to have the vows read out to them and were to be made to observe them. They were to be taught only certain defined exercises, while those who had taken the initial vow were to have no other lessons imparted to them than specified courses in play with big and small sticks and also daggers. These rules emphasise the importance of the vows and also indicate the complete subordination of branch associations to the leader of the Central Samity. The rules also indicate that although members were to be punished for their delinquencies, every effort was to be made to retain them within the folds of the society; expulsion of persons already initiated into the secrets of the society, was obviously inconsistent with the preservation of the secrecy of its aims and objects.

268. The fifth document which requires consideration is what has been described as the village notes. The society was to send out inspectors to every village throughout the length and breadth of the Province and information was to be collected and entered under various heads about all conceivable topics relating to each village and its condition. The learned Counsel for the appellants has contended that the information sought to be collected was of a perfectly harmless character. This may be conceded. But the question obviously arises, what was the object with which all this statistical information was to be collected on an extensive scale. It was unquestionably needless for the purposes of the physical improvement of the Bengali race; but it would indubitably be of great assistance if a revolution was to be ultimately achieved or even if dacoities were to be committed to procure funds for a revolutionary society. It is worthy of remark that to each village note was to be attached a map to indicate the roads and rivers,

meadows and canals, houses and gardens, and the specimens on the record indicate fairly with what minuteness the information had been collected and depicted on the map. In my opinion, although the village note by itself may be a harmless document, it furnishes some indication of the ultimate aims of the society; and the defence has not been able to suggest even a plausible explanation of the purpose for which the information contained in a document of this character might be needed for the accomplishment of the objects of a society for the physical and moral improvement of the Bengali race.

269. The sixth paper which requires examination is the form of notice for the organisation of new Samities. This was issued publicly, and opinion was invited as to the best method for the establishment and maintenance of Samities all over the country. The document, however, makes it plain that the object of Pulin Behary Das was to divide the whole of Bengal into divisions and sub-divisions and to have branch associations at every place of any note or importance.

270. The last document to which attention need be directed is what has been described as the unity leaflet or the independence leaflet. This was printed and circulated publicly. It may be described as full of patriotic sentiments. But its central idea is that there is no possibility of unity unless subordination to one leader is accepted. The object of Pulin Behary Das plainly was to be this leader, a leader into whose hands, as he puts it, individual freedom was to be totally surrendered in order that national and social freedom might be achieved. The full significance of this may be appreciated when taken in con-j unction with the passage in the Paridarsak where reference is mad a to the career of Napoleon.

271. These then are the official documents of the Samity, and their significance is by no means difficult to ascertain. The Samity had undoubtedly for one of its objects the improvement of physical culture of the Bengali race. But there was a secret object which was not only not to be disclosed but was not even to be discussed amongst the members themselves. Pulin Behary Das was to be the leader of the Samity, to whose orders unquestioning obedience was to be rendered by all the members. The members themselves were to be admitted to the fraternity only after they had taken the most solemn vows in the presence of an image of the Goddess Kali. Secrecy was to be maintained by every possible device; if any outsider, who had not taken the oath and who refused to do so, by deception obtained entrance into the society, his knowledge was to be destroyed; members, who had taken the oath and presumably had been initiated into the secrets, were, in spite of their delinquencies, to be retained in the folds of the society. This organisation was ultimately to spread over the whole Bengal; the condition of every village and town was to be minutely examined and recorded, and detailed geographical information was to be embodied in a series of maps. Independent Samities were not to be tolerated much less encouraged. Every branch association was not merely to be affiliated to the central Samity, but was to be in complete

subordination thereto, even in matters financial. The object of Pulin Behary Das was plainly to create an imperium in imperio with himself as the leader. This view receives considerable support from, the other documentary evidence which we shall now proceed to examine.

272. The non-official documents may be classified under two heads; namely, first, those that were found at the premises of the Samity in Dacca; and secondly, those that were found in the possession of individual accused persons when their residences were searched. Before I deal with these documents, I may observe that in order to make them admissible, one of three conditions will have to be satisfied, viz., first, a document may be proved to be in the hand-writing of an accused person, by comparison with an admitted or proved specimen of his hand-writing, in the light of the testimony of expert witnesses, as explained in Barindra Kumar v. Emperor 37 C. 467 : 7 Ind. Cas. 359 : 14 C.W.N. 1114 : 11 Cr.L.J. 453 and R. v. Harvey (1860) 11 Cox. C.C. 546; secondly, a document may be proved to be in the possession of an accused person, as in Empress v. Malhari 6 B. 731; Emperor v. Hari 6 Bom. L.R. 887 : 1 Cr.L.J. 960 and Jogjiban v. King-Emperor 9 C.L.J. 663 : 13 C.W.N. 861 : 2 Ind. Cas. 681 : 10 Cr.L.J. 125: or thirdly, a document may be admissible as falling within the scope of Section 10 of the Indian Evidence Act. Tested in the light of these principles, what is the result of the non-official documents? As regards the first class of documents, reliance was placed in the Court below upon books which formed the library of the Samity. The collection was of a miscellaneous character and consisted of over a thousand volumes. Many of the books were such as are usually read by boys and young men in schools and colleges; but there were some books characterized by the prosecution as objection able books, indicative of the mental tendency and aspiration of the members of Samity. I feel bound to record my opinion that a great deal of misapplied ingenuity was vested on behalf of the Crown in a fruitless effort to condemn as objectionable, literary, historical and religious books to which no reasonable exception could be taken by any unbiassed person. An effort was also made to invite the Court to form an opinion as to the true tendency of books from translations of isolated passages. If a book, however, be tested in this fashion, it is obvious that an erroneous estimate may easily be formed of the true import and value of some of the noblest writings in any language. It is a truism that books mast be judged as a whole. But, apart from this, the mere circumstance that a book of an objectionable character is present in the library of an individual or of an association, does not necessarily justify the inference that the teachings of the book are approved and adopted by persons who have access to it. I shall not, therefore, repeat the unsatisfactory effort which was made in the Court below to judge of the mental tendencies of the members of the Samity, by versions of isolated passages from books in the library. It is admitted, however, on behalf of the defence, that there were two books in the library, of a distinctly revolutionary character, namely, the Mukti kone Pathe or which way is salvation," a collection of articles reprinted from the notorious seditious newspaper Juguntur; and secondly, the Bartaman

Rananiti or Modern Art of War," a treatise on arms and ammunitions intended obviously to be used by promoters of the revolutionist propaganda. But it is to be borne in mind that these books were at the time sold publicly, and till they were recently suppressed, were widely circulated throughout the country. The former had been published on the 15th January 1907, reprinted on the 23rd February 1908, and reviewed in the Calcutta Gazette on the 26th August 1908; the latter had been published on the 24th September 1907 and similarly reviewed on the 10th June 1908; they were not proclaimed till the 5th May 1910. The mere circumstance, therefore, that they were in the library of the Samity and were now and then read by some of the members--as a matter of fact, they were taken out by members on much fewer occasions than many other books--would not conclusively show that the object of the society was revolutionary: Emperor v. Noni Gopal Gupta 15 C.W.N. 593 : 38 C. 559 : 12 Cr.L.J. 286 : 10 Ind. Caa. 582. Amongst other documents found in the Samity premises, we have what may be described as a considerable quantity of seditious literature, essays and songs, many of them proved to be in the hand-writing of one or other of the members. These indicate plainly violent hatred, animosity towards the British Government, and contain inspiriting calls to arms for the subversion by force of British Rule and for the destruction of the "oppressor." Many of them contain appreciation, in highflown language, of anarchical outrages by notorious murderers. The presence of seditious literature of this description, written, by numbers of the Samity, is an important element furnishing a clue to their tendencies and designs, R. v. Watson (1817) 2 Starkie 116 at p. 147 : 32 Howell St. Tr. 354: East on Pleas of the Crown, 119, though we must distinguish between disaffection and conspiracy, that is, as Harington, J., puts it in Barindra Kumar v. Emperor 37 C. 467 : 7 Ind. Cas. 359 : 14 C.W.N. 1114 : 11 Cr.L.J. 453 between those whose minds have been poisoned by pernicious literature and imbued with a hatred towards the British, and those who have gone a step farther and have become parties to an agreement to destroy that Government. It is thus more important to consider what the members of the Samity wrote than what they read, and still more vital to find out what they did than what they read and wrote. And this brings one to the consideration of the overt acts imputed by the prosecution to the Samity and relied upon as concrete manifestations of the object of the society.

273. The overt acts upon which reliance is placed may be tabulated as follows in order of date. 1. Barrah dacoity (2nd June 1908). 2. Satirpara boat theft case (14th August 1908). 3. Naria dacoity (30th October 1903). 4. Murder of Sukumar (13th November 1903). 5. Murder of Priya Mohan (2nd June 1909). 6. Rajendrapur train dacoity (11th October 1909). 7. The Agartala incident (24th November 1909), 8. Find of arms at Adabari (12th December 1909). 9. Find of arras at the shop of Mohin Modi (30th July 1910). 10 Find of bombe at Munshigunge (5th September 1910). Several other incidents were mentioned as overt acts such as the Victoria Park Stabbing case on the 5th August 1907, the Wari Affray case on the 17th November 1907, the find of arms at

Kalma in April 1909, the Dariapur dacoity on the 16th October 1909, and the Rajnagar dacoity in November 1909. No serious effort, however, was made to connect these acts with the alleged revoluntionary object of the Samity, and they, turned out to be either not connected with the society at all or connected only with individual members in their private capacity. I shall, therefore, confine ray attention to an examination of the ten incidents I have mentioned.

274. As regards the Barrah dacoity, which was committed on the 2nd June 1903, the attempt of the prosecution to connect it with the Samity has signally failed. Immediately, after the dacoity, four persons in no way connected with the Samity were prosecuted by order of the Local Government; but after a protracted trial by a Special Tribunal in this Court, the accused were acquitted, as the case for the prosecution completely broke down. The theory now started is that the dacoity was committed by the members of the Dacca Anushilan Samity. But no connection. has been established between the dacoity and the Samity as a whole or its members individually, and I entirely fail to appreciate hoar the Court can be seriously invited to treat this dacoity as an overt act of the Samity, upon aeries of speculative arguments based literally upon no evidence.

275. As regards the Satirpara boat theft, which took place on the 14th August 1908, there has been protracted discussion at the bar as to the true character of the incident; but the matter is reasonably free from difficulty. That the boat, the property of one Nilmoney Nath, was taken by the accused Jadu and Binode from Cowadi to Naraingunga cannot be disputed. They were arrested at Naraingunge on the 16th August 1903, and were subsequently prosecuted aid convicted of theft of the boat. But the substantial question is, whether, as the prosecution asserts, the boat was taken by Jadu and Binode under orders from Pulin, with a view to join a party who would proceed on a dacoity expedition. In my opinion, this theory has not bean established, and I am not prepared to rely upon the evidence of the accomplice witnesses, Hemendra and Nagendra. It is clear from the testimony of Mr. Dawson that these accomplice informers did not at the time mention to him the name of Pulin and did not suggest that the boat had been stolen for the purposes of a projected dacoity; we have, farther, the important fact that the letters now produced to connect Pulin with the incident were not produced in the boat theft case, and, for some unexplained reason, did not see the light till quite recently, on the 24th January 1910. There are also material variations between the depositions of Hemendra and Nagendra in the Court of first instance and in the Court of Session, and the comment of the defence is fully justified that they have improved upon their testimony and supplied the missing links. They have further completely failed to explain the unaccountable delay which took place at Naraingunge in arresting the boat and its occupants. The long search throughout the day to discover the boat is wholly inconsistent with the story narrated by Hemendra and Nagendra that they had accompanied Jadu and Binode in the boat and on arrival at Naraingunge had gone, in the morning, to the Sub-Divisional Officer to give him information of the projected dacoity. The

theory that a boat would have come from Dacca to join in the contemplated dacoity expedition seems very improbable, because though two of the men in the boat are stated to have started off to meet Pulin at Dacca, no boat as a matter of fact ever came from Dacca. In my view, the prosecution have failed in their attempt to connect the Satirpara boat theft case with the Dacca Anushilan Samiti.

276. As regards the Naria dacoity, there can, I think, be no doubt on the evidence that a dacoity was committed, as alleged by the prosecution, on the 30th October 1908. There was considerable discussion upon the question whether a parcel of books forwarded to a customer by a Calcutta firm of book, sellers was taken away by the dacoits from the steamer officer premises. In my opinion, the effect of the evidence is to show that the parcel was so taken away. The letter of advice was posted in Calcutta some hours after the delivery of the parcel to the postal authorities, and this is consistent with the story that the parcel had reached Naria before the dacoity was committed. Portion of the cover of the parcel of books was found in a boat several miles away from Naria in the river, and this fact satisfactorily establishes the identity of the boat, as one of those used by the dacoits. In this very boat, were found fragments of a village note and of the notice for formation of societies, two of the official documents of the Samity. The inference may thus legitimately be drawn that the boat in which the dacoity was committed was used by persons who had Samity papers in their possession. The only theory advanced by the defence to meet this case is that the Police officers might have put the papers into the boat with a view to connect the dacoity with the Samity. But no foundation was laid in the cross-examination to support this hypothesis. No suggestion was made that the investigating Police officers had access to these papers at or about the time when the incident took place, and some weight must be attached to the observation that if the Police really intended to manufacture a case in the manner suggested, they might have made it much stronger and practically conclusive. After an anxious consideration of the evidence on this part of the case, I must hold that the prosecution has established a prima facie case that the Samity or some of its members were connected with the dacoity, and that the defence have failed to rebut it. I may add that I do not feel pressed by the argument that as proceedings taken against some of the members of the Samity, such as Santipada and Asutosh, for participation in the dacoity were dropped, and as the evidence is not sufficient to bring home the offence against any individual member, a charge of conspiracy cannot be maintained. The cases relied upon in support of this proposition, Emperor v. Noni Gopal 15 C.W.N. 593 : 38 C. 559 : 12 Cr.L.J. 286 : 10 Ind. Caa. 582; Reg. v. Rowlands (1851) 17 Q.B. 671 : 5 Cox. C.C. 436 : 2 D.C.C. 364 : 21 L.J.M.C. 81 : 16 Jar. 268 : 85 R.R. 615 and Rex v. Boulton (1871) 12 Cox C.C. 87 do not lay down any inflexible rule of law, and the case before us illustrates how convincing evidence may be available to show that a set of parsons had conspired to commit a crime, though it may be impossible to identify any individual of that set as

the person who carried out the object of the conspiracy and actually committed the crime, This only illustrates the truth of the elementary doctrine that the criminality of the conspiracy is distinct from and independent of the criminality of the overt acts: Rex. v. Button (1848) 3 Cox C.C. 229 : 11 Q.B. 929 : 18 L.J.M.C. 19 : 12 Jur. 1017; Rex v. Thompson (1851) 16 Q.B. 832 : Dears C.C. 3 : 20 L.J.M.C. 183 : 17 Jur. 453 : 5 Cox. C.C. 516; Rex. v. Kohn (1864) 4 F. & F. 68 and Rex. v. Whitechurch (1890) 24 Q.B.D. 420 : 69 L.J.M.C. 77 : 62 L.T. 124 : 38 W.R. 336 : 16 Cox C.C. 743 : 54 J.P. 472.

277. As regards the murder of Sukumar which took place on the 13th November 1908, there is no evidence that any member of the Samity was connected with the crime. The theory of the prosecution is that Sukumar had, on the 10th November 1908, made a statement to the Inspector Asutosh Banerjee, who thereupon arrested him and released him on bail on his giving an undertaking to appear at Daca two days later. The prosecution asserts that the statement made by Sukumar was prejudicial to the Samity and that the members, apprehensive of a further damaging statement from him, murdered him while he was on his way to Dacca. The theory, however, is not supported by the evidence. The statement made by Sukumar was not in any special way detrimental to the society. Sukumar is not shown to have taken any vow or to have been acquainted with the secrets of the society. There is also no evidence to show that the members at Dacca had received any intimation of the statement made by Sukumar in his native village of Chandandhul situated at a distance of 24 miles. It must further be remembered that on the 4th November, 1908, Pulin Behary Das and all the other members resident in the society premises had been arrested on a charge of having kidnapped a boy, Ananta Mohan Chatterjee, one of the new recruits of the society, and although the members were released on bail, their leader was still in custody. On the evidence, I am unable to hold that the Samity or any member thereof has been connected with this murder.

278. These are all the incidents before the deportation of Pulin Behary Das which took place on the 14th December 1908. The society was declared illegal the next day, and suppressed. Pulin Behary Das continued to be a state-prisoner till the 13th February 1910, when he was released. But the case for the prosecution is that although the leader had been deported and the society suppressed, the combined activities of its members were silently and secretly continued.

279. As regards them under of Priya Mohan, which was undoubtedly of the most brutal and determined character, we have no evidence to connect it with the society. The case for the prosecution is that the members were incensed with the brother of Priya Mohan, one Gobesh, who was a member of the Anushilan Samity and had made a compromising statement before the Magistrate of Faridpore. They, therefore, determined to remove Gobesh from the way of further complication; but not aware that he was absent from home, they by mistake murdered his brother

Priya Mohan. The s accused Surendra Mohan Ghose was tried for this murder and was acquitted. It is now sought to be made out that the crime was committed by the Samity in furtherance of its aims and objects. Of this there is no evidence. In so far as the accused Surendra Mohan Ghose is concerned, it cannot be disputed that the judgment of not guilty fully establishes his innocence: Rex. v. Plummer (1902) 2 K.B. 339 : 71 L.J.K.B. 805 : 86 L.T. 836 : 51 W.R. 137 : 66 J.P. 647 : 20 Cox C.C. 243 : 18 T.L.R. 659 and Emperor v. Noni Gopal 15 C.W.N. 593 : 38 C. 559 : 12 Cr.L.J. 286 : 10 Ind. Caa. 582. In so far as the other accused are concerned, I am unable to hold that there is any evidence to connect them with the crime, nor is there any evidence to connect the Samity as a body with the incident.

280. The next incident upon which reliance is placed as an overt act is the Rajendrapur train dacoity, which was committed on the 11th October 1909. The dacoity was of a most determined and desperate character, and the person, travelling in the train in charge of the sum of money robbed, was killed. One Sures Chandra Sen was prosecuted and tried for the offence. The Sessions Judge refused to accept the verdict, of acquittal returned by the Jury; ultimately, that verdict was set aside by this Court and, the accused was convicted and sentenced. There is, however, no reliable evidence to connect that Sures Chandra Sen with the Dacca Anushilan Samity, and the oral evidence that he was seen to have indulged in lathi play at Madhyapara proves illusory, as there were several persons of that name at the place, some of whom were members of the Jnan Bikashini Sava. On the whole, therefore, the conclusion seems inevitable, that the prosecution has failed to connect the Samity with the Rajendrapur train dacoity.

281. The next incident, known, as the Agartala incident, may be very briefly discussed. On the 24th November 1909, three youths dressed as Sanyasis were noticed at Agaitala where the Lieutenant-Governor was to proceed on the occasion of the instalation of the Maharaja of Tippera. The incident aroused suspicion, but nothing incriminating was found on the person or in the possession of the youths who were arrested; and the evidence does not justify the imputation of any sinister significance to this incident.

282. I now come to the find of arms at Adabari on the 12th December 1909. The evidence when scrutinised reduces to the testimony of one eye-witness, Hosain Ali, who went to a garden near his house and found the accused Aboni Mohan Ganguly and several other persons running away from the scene. Subsequenly, arms were discovered underground in the place. The time was in the evening and the witness admits that it was a little dark. Even if it be assumed that the arms were actually found on the spot mentioned, the evidence of identification is by no means conclusive. Besides, as Aboni was prosecuted and acquitted, in so far as he is concerned, must hold, upon the authority of the decision in Emperor v. Noni Gopal Gupta 15 C.W.N. 593 : 38 C. 559 : 12 Cr.L.J. 286 : 10 Ind. Caa. 582 that the incident cannot be used against him, and there is

no evidence to connect the other accused of the Samity as a whole therewith. My conclusion is that the arms alleged to have been discovered at Adabari are not shown to have belonged to or to have been in the possession of the Samity or of any of its members.

283. The next incident which requires examination is the find of arms at the shop of a grocer by name Mohim on the 80th July 1910. It will be observed that this incident took place after the commencement of the present prosecution, and it has been contended with reference to this find, as also the next following one, that they were not admissible in evidence, on the authority of the ruling in Rex v. Hardy (1794) 24 Howell St. Tr. 718. This contention is, in my opinion, too broadly formulated and is really not supported by the case mentioned. When persons have been taken into custody and are in a condition which makes it impossible for them to act in aid or furtherance of the conspiracy, that is, when so far as they are concerned the conspiracy has come to an end, it may be contended that acts of persons who were members of the conspiracy and who are still free to act in pursuance thereof, are not admissible as against them; these acts, indeed, can no longer be deemed the acts of co-conspirators. The incident now before us is of a different description. No doubt, the discovery of the arms was made after v the arrest of the accused. But the case for the prosecution is that the arms belonged to the Samity and were deposited in the place where they were found many months earlier when the activities of the Samity were in full operation. I am, therefore, of opinion that the evidence is admissible and must be scrutinised. The view I take is supported by the case of Rex v. Watson (1817) 2 Starkie 116 at p. 147 : 32 Howell St. Tr. 354 where reliance was unsuccessfully placed upon the dictum in Rex v. Hardy (1794) 24 Howell St. Tr. 718. See also the illustration to Section 10 of the Indian Evidence Act. The prosecution seek to connect the arms with the Samity, because along with them was found one of their official papers. It is clear, however, that the particular paper was not, as was supposed at one stage, a wrapper for the arms, but was used by the grocer for the purpose of recording his sale accounts. The society had, as a matter of fact, been proclaimed illegal about 20 months earlier, and the premises which were near the shop of the grocer had been abandoned and cleared out. The explanation is suggested by the defence that when the Samity was dissolved after the deportation of its leader and the premises were vacated, their papers might have been thrown into the street and could have been picked up by any passer by. This seems plausible. At any rate, there is no satisfactory evidence to connect the society with these arms and I must add that the oral testimony is by no means convincing.

284. The last incident which is sought to be connected with the Samity as an overt act is the find of bombs in the house of one Lalit Chandra Chowdhury at Munshigunge on the 5th September 1910, some weeks after the commencement of the present prosecution. Lalit Chandra was prosecuted before the Sessions Judge of Dacca and convicted. That conviction was affirmed by this Court: Lalit Chandra v. Emperor 39 C. 119 : 13 Cr.L.J. 433 : 16 Ind. Cas. 65. He is not on his

trial for conspiracy and the prosecution have, therefore, to establish, in his absence, that he was a member of the alleged conspiracy. The prosecution must further prove if the membership of Lalit is established, that he was in possession of the bombs at the time when the present appellants were still members of the conspiracy, that is, before they were taken into custody. The evidence, however, does not establish either of these facts. The only connecting link between the accuse in the bomb case and the Samity is a letter written by one L. Chowdhury to Pulin Behary Das on the 9th September 1908. This letter has not been proved to have been written by the Lalit Chowdhury who was convicted in the bomb case. The identity has not been established. In fact, the evidence on the present record upon this part of the case is very meagre, and evidence which was produced at the trial of Lalit Chowdhury under the Explosives Act has not been adduced here. But even if the identity had been proved, matters would not have been advanced very much further. The letter shows, on the face of it, that the writer was not known to Pulin. There is nothing to show that the letter was received and acted upon. Rex v. Boulton (1871) 12 Cox C.C. 87. Indeed, there is nothing to show that Pulin ever sent a reply to this letter. Under these circumstances, I find it impossible to hold that Lalit Chowdhury was, at the time the, bombs were in his possession, a member of the Dacca Anushilan Samity or of any conspiracy of which the appellants were members.

285. Upon a review then of the entire evidence as to each of the alleged overt acts, it is plain that the only one which has been prima facie connected with the Samity is the dacoity committed at Nana on the 30th October 1908. There may be supicious circumstances in connection with some of the other incidents, but none of them has been linked with the Samity by legal evidence upon which alone a Court can be invited to rest its conclusions.

286. I may add that I have not placed any reliance upon oral testimony as to the secret object of the Samity. Evidence of witnesses like Hemendra, Nagendra and Upendra, who started as accomplices and ended as Police spies, do not favourably impress me. Assertions by witnesses of this type that they were in formed by members of the Samity that their ultimate object was the overthrow of the British Government, can hardly be tested by means of cross-examination, and cannot be accepted without independent corroboration in every important detail. It has been argued, however, by the learned Counsel for the Crown that the testimony of these witnesses does not require corroboration as they were spies, and reference has been made to the decision in Emperor v. Chatur Bhuj Sahu 15 C.W.N. 171 : 38 C. 96 : 8 Ind. Cas. 119 : 11 Cr.L.J. 560. I am not prepared to accept this contention as well founded. There is a clear distinction between persons who enter a conspiracy for the sole purpose-of detecting and betraying it, and others who concur fully in the criminal designs, for a time and join in their accomplishment, till, from alarm or from some other cause, they turn upon their former associates and give information against them. These latter persons, as Manle, J., points out in Rex v. Mullins (1848) 3 Cox. C.C. 526

may be truly called accomplices. There is not on the part of such persons an original purpose of discovering the secret designs of the conspirators and of disclosing them for the benefit of the public, which is the vital element in this class of cases, as mentioned by Lord Ellenborough in Rex v. Despard (1803) 28 Howell St. Tr. 429. The distinction appears to have been overlooked in Queen v. Shunker (1888) Ranchhoddas 428 which was based upon the comprehensive statement of the rule in Taylor on Evidence, Section 971. The distinction is clearly brought forward by Wigmore in his work on Evidence, Section 2060; "When the witness has made himself an agent for the prosecution before associating with the wrong-doers or before the actual preparation of the offence, he is not an accomplice; but he may be, if he extends o aid to the prosecution until after the offence is committed. A mere detective or decoy is not, therefore, an accomplice nor an original confederate who betrays before the crime was committed; yet an accessory after the fact, would be if he had before betrayal rendered himself liable as such." This distinction is of fundamental importance in the case of conspiracies, because, as Brett, J.A., observed in Rex v. Aspinal (1876) 2 Q.B.D. 48 at p. 58 : 46 L.J.M.C. 145 : 36 L.T. 297 : 25 W.R. 283 : 13 Cox C.C. 563 "the crime of conspiracy is completely committed, if it is committed at all, the moment two or more have agreed that they will do, at once or at some future time, certain things; it is not necessary in order to complete the offence that any one thing should be done beyond the agreement; the conspirators may repent and stop, or may have no opportunity, or may be prevented, or may fail; nevertheless, the crime is complete; it was completed when they agreed." Now, if the testimony of the witnesses in this case is believed, it is clear that they were members of the conspiracy; they were accomplices and continued to be confederates after the crime had been committed. The fact that out of fear or repentance, they subsequently trans-formed themselves into spies and informers does not, in my view, render corroboration unnecessary, and the corroboration which is needed is of the same extent and character as in, the case of accomplices. Apart from the documents I have mentioned, there is no such corroboration. But there is no reason why the documents themselves should not be treated as primary evidence indicative of the true object of the Society and I have preferred to deal with them as such.

287. The question now arises, what legitimate inference may be drawn from the evidence we have examined as to the true character of the Samity? The organization, as we have already stated, had for one of its objects,--possibly the object which was most prominently announced and intended to attract members from all classes of the Hindu community--the improvement, physical and moral, of the Bengali race. At the same time, the Samity had a jealously guarded secret, and every effort was made to preserve it inviolate. The members were bound by solemn oaths of secrecy and willingly subjected themselves to semi-military discipline. The Samity was to be the central institution to which societies with the same object and scope were to be affiliated in all parts of the country. The leader was entitled to complete and unquestioned supremacy and

control, and every effort was to be made to prevent the growth of rival institutions even for the promotion of physical culture, the avowed object of the Samity. Many of the members of this association, so far as can be gathered from what they wrote, entertained feelings of the bitterest hostility towards the British Government, and in one instance, namely at Nana, a dacoity was committed by persons who must have been closely connected with the Samity. We have further a description of the daily life of the members resident at the premises of the Samity. There is no room for controversy that in addition to gymnastics, drill and other forms of physical exercise, there was a systematic discussion of the objects of the society as set forth in the Paridarsak. All these plainly indicate to my mind that the Samity was a revolutionary society. I must that I was not much impressed with the effort made at the Bar on the side of the appellants to show that the main features of the Samity were borrowed from the work on Anushilan or culture by Bankim Chandra Chatterjee, nor was I much impressed by the similar effort made on behalf of the Crown to show that the promoters of the society had imitated with profit the plan of work outlined in the Mukti Kon Pathe. As I have already stated, it is of little importance to trace the source from which inspiration was drawn: the vital point is to determine, what the members of the Samity themselves wrote and how they acted; judged from their methods of work and from the nature of their proved acts, there, is no room for doubt that their ultimate object was revolutionary. It must be remembered that direct proof can scarcely be afforded of a conspiracy. No doubt, if in a prosecution for conspiracy, the Crown is able to produce a witness, not a co-conspirator, who can testify directly to the fact of combination, the case is easy of proof. But as Erle, J., well says in Rex v. Duffield (1851) 6 Cox C.C. 404 at p. 434 : 2 Den. 364 : 17 Q.B. 671 it does not happen once in a thousand times that anybody comes before the Jury to say: "I was present at the time when these parties did conspire together and. when they agreed to carry oat their unlawful purpose." Hence, the Courts have consistently held that the prosecution is not obliged to prove that the persons accused actually met and laid their heads together and after a formal consultation came to an express agreement to do evil. On the contrary, if the facts as proved are such that the Jury "as reasonable men can say there was a common design and the prisoners were acting in concert to do what is wrong, that is evidence from which the jury may suppose that a conspiracy was actually formed." Rex v. Brown (1858) 7 Cox C.C. 442. It is from this point of view that the overt acts may properly be looked to as evidence of the existence of a concerted intention; indeed, the conspiracy is usually closely bound up with the overt acts, because in many cases, it is only by means of the overt acts that the existence of the ' conspiracy cam be made out. But the criminality of the conspiracy is independent of the criminality of the overt acts, as is expressly laid down in the explanation to Section 121A of the Indian Penal Code. Heymann v. Rex (1873) 8 Q.B. 102 : 12 Cox C.C. 383 : 28 L.T. 162 : 21 W.R. 357 O' Connell v. Rex (1844) 11 C1. & F. 155 : 1 Cox C.C. 413 : 9 Jur. 25 : 65 R.R. 59 and Rex v. Duffield (1851) 6 Cox C.C. 404 at p. 434 : 2 Den. 364 : 17 Q.B. 671. In the case before us, although the prosecution has failed to

connect with the Samity most of the overt acts imputed to the association and although the direct oral evidence of a conspiracy is entirely untrustworthy as the uncorroborated testimony of co-conspirators, yet the conspiracy must be taken to have been established from the contents of the vows and the other official documents of the Samity as also from the method of work and activity of the members.

288. The question next requires consideration, what was the extent of the activities of, the Samity? The prosecution has asserted and sought to prove that it had branches in numerous places, which were all animated by the same revolutionary purpose. This attempt has, in my opinion, failed to a considerable extent. The mere fact that the members of an association have adopted the same system of lathi play as was organised by Pulin Behary Das, obviously does not prove that the association was a branch of the Dacca Anushilan Samity. Lathi play, as is abundantly clear from the evidence, was in vogue in various parts of Bengal, and it became popular by reason of the feeling of panic which pervaded large sections of the Hindu community in Eastern Bengal shortly after the Partition. In order to connect any Samity with the Dacca Institution, it has to be established that there was an agreement, which is the gist of conspiracy, between the members of the parent society and the alleged branch. Such inference may be justified by the surrounding circumstances, for instance, upon proof that the branch Samity rendered pecuniary help to the central association and accepted a position of absolute subordination thereto as contemplated by the rules. No such evidence has been adduced in the present case. The matter, in fact, is not of much practical importance, except in the case of one association, viz., the Jnan Bikashini Sava of Madhyapara: there, some of the accused persons were sought to be connected with the conspiracy, not by evidence of direct membership or participation in the work of the Dacca Samity, but merely by evidence of work in the Madhyapara Samity itself. The case of this association, therefore, requires special consideration. In so far as the Brati Samity, the Bandhab Samity, the Satirpara Samity, the Habiganj Samity and the Sonamaye Samity are concerned, the investigation of their alleged connection with the Dacca Samity becomes unnecessary, because the accused connected with these Samities are also sought to be directly proved as members of the conspiracy.

289. In so far as the Jnan Bikashini Sava of Madhyapara is concerned, it is clear that there was a debating club of that name so far back as 1868. It was revived in 1907, and we have on the record minutes of proceedings of the association during the summer session of 1908. The association had no fixed habitation as in the case of the Dacca Samity and, moreover, its activity was of an intermittent character. The members came home twice in the course of the year, during the summer and the Puja Holidays, and during these periods, there was an exuberant manifestation of their energies. They read selections from the Jugantar some of which have been identified; some of them read lectures or poems on political subjects which have been recovered

at a search by the Police. There can be no room for reasonable doubt that many of the members were deeply imbued with seditious tendencies, and, as a matter of fact, proceedings were taken against some of them under Section 109 of the Criminal Procedure Code. But although it is conceivable that some of the members might have been successfully prosecuted for an offence under Section 124 A. of the Indian Penal Code, the question still remains, whether the Madhyapara Samity was a branch, or, as the learned Counsel for the Crown put it, an overflow of the Dacca Anushilan Samity. This question, in my opinion, must be answered in the negative. It is plain that one at least, possibly some, amongst the leaders of the Madhyapara Samity belonged to the Dacca Association as well, and I feel little doubt that the theory of the Crown about the connection between the two Samities is substantially based on the fact that they had some members in common. But the connection between the two has not been established; much less has the suggested identity been proved. The entries in one of the books containing the rules of mock fight are consistent rather with the theory that they were distinct, but had some members in common, and it is very remarkable that among the numerous documents discovered, there is not one which indicates that the members of the Madhyapara Samity had to take vows. My conclusion, therefore, is that the Madhyapara Samity had not been proved to be a branch of the Dacca Anushilan Samity. The prosecution has failed to prove that, in the language of Lord Campbell in Rex v. Brown (1858) 7 Cox C.C. 442 the one Samity had with the other "a joint design, a joint combination." See also Rex v. Barry (1865) 4 F. & W. 389 at p. 399; Mulcahy v. Rex (1868) L.R. 3 H.L. 306 at p. 316; Rex v. Ranks (1873) 12 Cox C.C. 393 at p. 399. I have arrived at a similar conclusion as regards the Brati Samity at Naraingunge. In fact, the letter from the "Captain" to the accused Aswini, who was the Secretary to the Brati Samity, is consistent only with the view that the one Samity was not a branch of the other, but that the two had members in common. The same inference is irresistible in respect of the Serajgunge Bandhab Samity, the Sonamaye Samity and the Habiganj Samity. They were obviously independent Samities, and although they might have imitated the plan of lathi play as developed by Pulin Behari Das, there is nothing to show that these were branches of the Dacca Samity and that the members thereof were associated with the conspiracy of which Pulin Behari Das was the leader and the moving spirit. It is not necessary, however, to examine in detail the activities of these Samities, because we are concerned with them only in relation to individual accused persons whose cases will require separate examination.

290. I shall now proceed to consider the evidence against individual accused persons. But, in the examination of the evidence, it is useful to remember that, as laid down in King v. Gil (1818) 2 B. & Ad. 204 : 20 R.R. 407 combination is the gist of the offence of conspiracy; nothing turns upon the word "conspiracy" Rex v. Murphy (1837) 8 C. & P. 297 at p. 310; as Lord Campbell puts it in Rex v. Hamp (1852) 6 Cox C.C. 167 at p. 173 conspire is nothing, agreement is the

thing." It is, of course, not necessary to establish by direct evidence that the accused persons did enter into such agreement. Barindra Kumar Ghosh v. Emperor 37 C. 467 : 7 Ind. Cas. 359 : 14 C.W.N. 1114 : 11 Cr.L.J. 453. As Coleridge, J., said to the Jury in Rex v. Murphy (1837) 8 C. & P. 297 at p. 310 "if you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, and the other another part of the same act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect the object." To the same purpose was the instruction of Erle, J. in Rex v. Duffield (1851) 6 Cox C.C. 404 at p. 434 : 2 Den. 364 : 17 Q.B. 671: "if you see several men taking several steps, all tending towards one obvious purpose, and you see them through a continued portion of time, taking steps that lead to an end, why, it is for you to say whether these persons had not combined together to bring about that end, which their conduct so obviously appears adapted to effectuate." To the same effect is the dictum of Grose, J. in King v. Brisac (1803) 4 East 164 at p. 169 : 7 R.R. 551: "conspiracy is a matter of inference deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them and which hardly ever are confined to one place." It is from this point of view that letters passing between the accused may be offered to prove or disprove the conspiracy. Rex v. Banks (1873) 12 Cox C.C. 393 at p. 399 and Rex v. Whitehead (1824) 1 C. & P. 6(sic)7. In this connection, I must advert for a moment to the contention of the learned Counsel for the appellants that before a document in the possession of any of the accused persons can be used in evidence against the others, it must be completely established by independent evidence that they were conspirators. This argument is too broadly formulated and is negatived by Section 10 of the Indian Evidence Act, which provides that where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. It is clear, therefore, that for the admission of such evidence, what has to be established is that there is reasonable ground to believe in the existence of a conspiracy among such persons. See Queen Caroline's case (1820) 2 B. & B. 284 at p. 302 : 22 R.R. 662; Rex v. Jacobs (1845) 1 Cox C.C. 173; Rex v. Duffield (1851) 6 Cox C.C. 404 at p. 434 : 2 Den. 364 : 17 Q.B. 671. Russell on Crimes 7th Edition, Vol. 1 p. 192. The reason for this doctrine is plain. The criminality of the conspiracy lies in the concerted, intention, and once reasonable grounds are made out for belief in the existence of the conspiracy amongst the accused, the acts of each conspirator in furtherance of its object are evidence against each of the others; and this, whether such acts were done before or after his entry into the combination, in his presence, or in his absence. Blunt's case (160O) 1 Howell St. Tr. 410 at p. 412. As Coleridge,

J., well says in Bex v. Murphy (101) : It is not necessary that it should be proved that these defendants met to concert the scheme, nor is it necessary that they should have originated it. If a conspiracy be already formed and a person joins it afterwards, he is equally guilty." As Sir Robert Wright puts it in his Monograph on Criminal Conspiracies (page 70), there can be no doubt but that a person may involve himself in the guilt of a conspiracy by his mere assent to and encouragement of the design, although nothing may have been assigned or intended to be executed by him personally. If he joins a conspiracy already formed, he cannot in general be affected by what has been already done, except in so far as this may, in conjunction with more specific proof, indicate the nature of the purpose in which he joined; though a different rule may apply in treason, and perhaps in a conspiracy in pursuance of which a felony has been committed. If he quits a conspiracy, there is no reason to suppose that he is in general affected by any act done after he has severed himself from it, except in so far as that act may have been done in execution of the design as it stood when he was a party to it." Hence, as soon as it is shown with regard to an individual accused that he was in privity with the combination and its object and had adopted the acts already performed, he as a conspirator becomes bound by the antecedent and the consequent acts of his co-conspirators Rex v. Read (1852) 6 Cox C.C. 134; Rex v. Stenson (1871) 12 Cox C.C. 111 : 25 L.T. 666. To sum up, it cannot", be, maintained that by this principle conspirators are subjected to punishment for offences committed by their fellows ; since the crime lies in the concerted intention to be gathered from the acts done, such acts, preceding the entry of a particular person into the combination, are evidence to show the nature of the concert to which he becomes a party, and the subsequent acts of the other members indicate further the character of the common design in which all are presumed to be equally concerned. Wright on Conspiracies, page 71; O'Keefe v. Walsh (1903) 2 Ir. R. 681. In the light of the principles explained, I shall now examine the evidence against each individual accused.

291. The appellants fall into two well marked classes, in the first of which are comprised those who deny all connection with the Dacca Anushilan Samity, while in the second are comprised those who admit connection with the society, inclusive of those who, though in the society, deny that they had advanced far enough to be entrusted with its secrets.

292. Amongst members of the first class, the most prominent is the group of the seven accused connected with Madhyapara. Of these, four, namely, Sukhendra Kumar Sen Gupta, Pares Chandra Sen Gupta, Hem Chandra Sen Gupta, and Sarada Charan Datta Gupta are not shown to have been directly connected with the Dacca Anushilan Samity. They were members of the Madhyapara Sava, and it is fairly patent from the proceedings of the association that their minds were deeply imbued with seditious ideas; but, as they are in no way connected with the Dacca Anushilan Samity, and as the Sava of which they were members has' not been proved to be a branch, they cannot be convicted on the charge of the particular conspiracy brought against them

: Emperor v. Noni Ghopal 15 C.W.N. 593 : 38 C. 559 : 12 Cr.L.J. 286 : 10 Ind. Caa. 582. In my opinion, their convictions cannot be sustained.

293. As regards Bhupati, Mohan Sen Gupta, Charu Chandra Sen, and Nripendra Mohan Sen Gupta, they were all members of the Madhyapara Sava. Though I have held that the Madhyapara Sava was not a branch or an overflow of the Dacca Samity, yet the question remains whether these three accused persons have been directly connected with the Dacca Samity. In so far as the accused Bhupati is concerned, the letter of Nripendra Mohan Sen Gupta to his brother, dated the 12th January 1908, apparently in reply to a letter of inquiry from the latter dated the 4th January 1908 about the Madhyapara boys then resident at the Samity premises, makes it clear that Bhupati at the time was in residence there, and that he was one of a band of young men who played lathi, had dedicated themselves to the cause of the Samity, and could not think of worldly affairs. I was not much impressed with the argument addressed to us upon the question, whether the letter spoke of "Bhupati, Gopal Sen," or of "Bhupati Gopal Sen." The internal evidence indicates plainly that the accused Bhupati was the person mentioned in the letter. There are also letters from Pulin to Bhupati and to the father of the latter, dated the 25th October 1997 and 4th February 1908, which establish close intimacy between the two families and render probable the residence of the accused Bhupati at the Samity premises. His name further appears in more than one place in the Samity papers. That he was a young man full of extreme revolutionary ideas is clear from his compositions discovered at Madhyapara, I think it is reasonably plain that Bhupati was a member of the conspiracy.

294. The case of Nripendra Mohan Sen Gupta stands upon a similar footing. He is the writer of the letter to which reference has just been made, and he was one of the accused in the Wari Affray case. The papers found at Madhyapara also indicate his tendencies and aspirations. I think he has been proved to be a member of the conspiracy.

295. In so far as Charu Chandra Sen is concerned, his case stands on a somewhat different footing. There is no oral evidence to show that the accused Charu was at Dacca. On the other hand, there is sufficient indication that another man of the same name, son of one Sarat Chandra Sen, was a member of the Samity. This accords with the statement of Pulin that a Charu of Outsahi was a member of the Samity. The accused contends that exhibits and incidents, which refer to Charu of Outsahi, have been sought to be used against him. There is some foundation for this suggestion, and two witnesses, Nagendranath Dutt and Akhil-chandra Chowdhuri, who profess to have seen a Charu on Samity business at Sherpur, are unable to identify the accused Charu. There is no independent evidence to prove that the accused went to Sherpur as a Paridarsak. The name of a Charu appears in books and papers found at the Samity but he is not identified with the accused. One lathi play book found in the house of another accused Santipada

is alleged to have been written by him, but does not contain his name, and it is noteworthy that it does not Contain the vows. In my opinion, the evidence is not sufficiently precise to enable us to pronounce with any approach to certainty the opinion that the accused Charu was a member of the conspiracy. In my view, his conviction cannot be supported.

In so far as Abani Mohan Ganguli is concerned, although he denies that he was a member of the Dacca Anushilan Samity, yet it is clear that he was connected with it. No doubt, he was acquitted in the Adabari Arms Act case, and the judgment in that case must be treated as conclusive evidence that he was not guilty of the offence with which he was then charged Emperor v. Noni Gopal 15 C.W.N. 593 : 38 C. 559 : 12 Cr.L.J. 286 : 10 Ind. Caa. 582. But the question still remains, whether, notwithstanding the failure of the prosecution to bring home to the Samity the alleged overt act, his connection with the Samity has not been established. Now, one of the entries in the library issue register is undoubtedly in the handwriting of this accused, and the suggestion of the defence that there was a member of the name of Ajit Commar, through whom Abani took out books, is not supported by the evidence. On the other hand, the similarity of the handwriting with the admitted signatures of Abani strengthen the conclusion of the expert witness. I think it established beyond all doubt that Abani was a member of the Samity and that he had an assumed name Ajit. The next question is, what was his status in the society and was he acquainted with its secret object. This in fact is the fundamental question, very often not free from difficulty, in respect of each individual accused. In the case of Abani, an attempt has been made to identify his signature with Ajit Kumar on a village note. If this attempt had succeeded, it would have gone some way to indicate that he was entrusted with important work in the Samity. The theory, however, has failed. The position, therefore, is that although his name, either as Abani or as Ajit, finds a place in Samity papers, there is no evidence to show what rank he had attained therein. No revolutionary literature in his handwriting has been found. On the other hand, his comparative youth--he is stated to have been 12 or 13 years old in 1908--points to the conclusion that lie could hardly have been entrusted with the secrets of the society. There is also nothing to show that he had taken the final vow, even if it be assumed that the initial vow had been administered to him. Under all these circumstances, I am of opinion that he has not been proved to be a member of the conspiracy and his conviction cannot be sustained.

296. In so far as the accused Akshoy Kumar Dutta is concerned, the evidence against him is mainly oral. He was an expert wrestler and took prominent part in December 1907 in the Gandaria mock fight. He was of a religious turn of mind and appears to have presented to the library of the Samity a number of philosophical and religious books, on some of which his name has been found, and from the library register he appears, on one occasion, to have taken out a copy of the Gita. His name does not appear on any of the documents of the Samity, though a report of Inspector Asutosh Banerjee recites that he was awarded a silver medal for proficiency

in wrestling in August 1908. The fact that he was permitted to compete at these wrestling displays does not necessarily indicate membership of the Samity. I think it is plain from the evidence that non-members also were allowed to compete. The display was not limited to lathi play but included wrestling and various other forms of exercise, as to which there is no suggestion that the society had any secrets to maintain. Besides, the notices about these displays were printed and widely circulated and the exhibitions were held with great publicity in the presence of officials as well as non-officials. Participation at these public exhibitions does not, in my opinion furnish any indication of membership of the society. The accused is also stated have been leader of a branch at Chandni Ghat, but the evidence upon this point is contradictory. His name does not appear in any Police report, and there is not sufficient corroboration of the evidence of the witnesses who acted as accomplices or spies. On the other hand, the evidence of Padmini Bhusan Rudra, a witness of undoubted respectability, weakens, if it does not completely destroy, this, evidence. Nor can any reliance be placed upon the circumstance that on one occasion he was allowed to borrow a copy of the Gita from the library Even if it be assumed that the library was open for the use of members alone, his case might, as has been suggested, have been very well treated as an exception, as he had presented a number of books. On the whole, I am of opinion that, so far as Akshoy Kumar Dutt is concerned his complicity in the conspiracy is not proved and his conviction cannot be sustained.

297. With regard to Aswini Kumar Ghosh he is stated to have been leader of the Brati Samity at Naraingunge which according to the case for the prosecution is a branch of the Dacca Anushilan Samity The identity of the two Samities has not however, been established. The evidence makes it plain that at Naraingunge there were two Samities--the Anushilan Samity where lathi play wept on and the Barty Samity where wrestling was practised. The former alone, so far as I can judge, may possibly have been a branch of the Dacca Samity. One of the letters on the record written by the captain of the Anushilan Samity to the accused Aswini is conclusive upon this question. It shows that the two Samities were distinct and that the captain of the Anushilan Samity had no authority to issue orders to the members of the Brati Samity. We must take it, therefore, that the connecting link has not been furnished. But the question remains, whether the direct connection of this accused with the Dacca Samity has not been proved. The strongest evidence against him is a manuscript book with his name on it, which contains the rules and vows of the Anushilan Samity at Naraingunge, in terms similar to those of the Dacca Samity. It is to be observed, however, that this is dated the 6th November 1906 and recites that lathi play had commenced on the 9th September previous. A possible explanation in favour of the defence is that this note-book was prepared at a time when the Anushilan Samity had just been started at Naraingunge, and that subsequently Aswini started the Brati Samity ; this is in fact what he suggests when he maintains that he severd his connection with the Samity of Pulin because he was unwilling to

take the vows. This looks plausible. Further, it is plain that no revolutionary literature has been traced to his exclusive possession, and it is fairly clear upon the evidence that the Mukti Icon Paths found at' the search of his house belonged to his uncle, Kalachand. A further difficulty is created by the fact that the original search-list was lost and has been re-placed by one prepared from memory. It is therefore, impossible to affirm with certainty that any incriminating papers found in the house were really in his possession. Under all these circumstances, I am unable to hold that his connection with the conspiracy has been established; and, in my opinion, his conviction cannot be sustained.

298. In so far as Bankim Chandra liai is concerned, he is said to have been the leader of the Bandhab Samity at Serajgunge. It is alleged by the prosecution that this Samity was a branch of the Dacca Anushilan Samity. This, I do not think, is established, because it is clear that, at one stage at any rate, a Mahomedan teacher was employed to teach lathi play, which would not be tolerated by Pulin Behari Das in the central association or in any of its branches. But, apart from the Bandhab Samity, the close connection of Bankim with Pulin and his association is established. At the search in his house, important official documents of the Dacca Samity were found. Under his bed was found the paper signed by Pulin Behari Das, which describes the necessity for the institution' Samities. In his possession was also found lathi play and sword play books proved to have been written with his own hand. The suggestion has been ingeniously made that these books might have been written by Bankim for his friend the accused Profulla, who, as we shall presently see and as is indeed not seriously disputed, was a prominent member of the Dacca Samity. The suggested explanation is not very convincing. No doubt, Bankim and his wife were on very friendly terms with Prafulla and Dinesh. But that circumstance itself may indicate that Bankim, Prafulla and Dinesh were animated by the same motives and aspirations. There are also two letters on the record, one from Bankim to Prafulla and Dinesh and another from Bangadada or the accused Gopiballabh to the same two persons, which indicate plainly that the intimacy between Bankim and Pulin arose out of the work of the Samity. In fact, the several books on lathi play according to the system of Pulin togethei with the initial and final vows do tend to indicate that Bankim was thoroughly biassed and personally interested therein. On the whole, therefore, the con-elusion appears to me to be irresistible that this accused was aware of the secret object of the Dacca Anushilan Samity and was a member of the conspiracy.

299. In so far as the two accused Benode Behari Chakrabarti and Jadu Nath Das are concerned, they have been sought to be connected with the Samity by means of the Satirpara boat theft incident; in view of my conclusion as to the true nature of that incident, it is clear that the conviction of these two accused cannot be supported. There is no reliable evidence to establish their membership of the Dacca Anushilan Samity, and if the theft of the boat for which they were convicted did not take place at the instance of Pulin Behari Das for the purpose of the alleged

projected dacoity in pursuance of the objects of the conspiracy, their "guilt, so far as the present charge is concerned, cannot be deemed to have been established.

300. In so far as Dinesh Chandra Guha is concerned, the evidence is mainly oral, supplemented by the fact that his name appears as that of a competitor in the athletic display held in August 1908. This latter circumstance by itself is not conclusive, because it is fairly clear that non-members were also allowed, in fact invited, to take part in these exhibitions. The oral evidence is of a wholly inconclusive character. The accused is supposed to have been the leader of a branch of the Samity at Rajardewri near the Court premises in Dacca. But his name does not appear in any of the Police reports, not even in the one which mentions the Rajardewri Samity -and gives the names of several captains and many expert lathi, players. This is obviously very significant, when we find it stated by Inspector Sarat Chandra Ghose that he had known this accused from 1907. It is further clear that during a considerable portion of 1903, this accused was a student at Calcutta, and was at Dacca only during the summer and the Pujah holidays. The reason apparently wly he has been charged with conspiracy is that he was one of the three youths found in the garb of ascetics at Agartolah on the 24th November 1909. That incident, as I have already held, has not been proved to have any sinister aspect and is, therefore, not sufficient to connect him with the conspiracy. No manuscripts containing revolutionary sentiments have been proved to have been written by him. His name does not appear on any of the Samity papers, and there is nothing to show that he had taken any vows. At the search of his house, no papers connected with the Samity were traced; not even was a lathi play book found. Under these circumstances, 1 am of opinion that his connection with the Samity as a conspirator has not been established and his conviction cannot be supported.

301. In so far as Gurudayal Das is concerned, he was the leading spirit of the Sonamoye Samity. The prosecution has failed to prove that this Samity was a branch of the Dacca Society. In fact, an examination of their proceedings dated the 5th May 1907 and of their vows, makes it clear that the two societies were not constituted oy the same basis. The remarkable point of divergence was that the Sonamoye Samity offered to protect such Mahomedans as evinced any sympathy for the Hindus. The vows also were of a substantially distinct type, and there does not appear to have been a determination to guard an undisclosed secret. But apart from the Sonamoye Samity, the question arises, whether Gurudayal was not directly connected with Pulin. According to the prosecution, the link is furnished by a letter alleged to have been written by Guru-dayal to Pulin on the 11th October 1908, which, if genuine, is conclusive. The letter in fact shows that Gurudayal was acquainted with the details of the constitution of the society, sent his brother Nrisingha for enrolment as a member of the Circle, and asked for copies of the preliminary and final vows and Duties of Secretaries. He also offered to take the monthly subscription with him on the occasion of his next visit. The hand-writing expert proves the signature on this letter to be

by the same Gurudayal as executed a bail bond, on the 7th November 1908, for the release of his brother Nrisingha, who had been arrested at the Samity on the 4th November 1908 in connection with the kidnapping of Ananta Mohan Chatterjee. It has been argued that this bail bond was not duly proved and could not, therefore, be accepted as the standard under Section 73 of the Indian Evidence Act; see Barindra Kumar Ghose v. Emperor 37 C. 467 : 7 Ind. Cas. 359 : 14 C.W.N. 1114 : 11 Cr.L.J. 453. Now what happened was that the Mukhtear Behary Das who wrote the bail bond did, not, whether from design or otherwise is immaterial, identify the accused Gurudayal as the Gurudayal who had executed the bond in his presence. It may be conceded that the statement made by Gurudayal on the 7th November 1908 to Inspector Sarat Chandra Ghose, while the latter was investigating the kidnapping case, was not admissible in evidence under Section 162 of the Criminal Procedure Code. But we have the fact that Gurudayal Das, son of Raj Kishore Das, on the 7th November 1908, executed a bail bond for the release of his brother Nrisingha Das from the Dacca Samity. We have further the evidence of Sarat Chandra Ghose that it was the accused Gurudayal who went to have his brother Nrisingha Das released. We have also no foundation laid in the evidence for a possible suggestion that there is another Gurudayal Das at Sonamoye, also son of Rajkishore Das, who had a brother Nrisingha Das arrested at the Dacca Samity. We have further independent oral testimony that the accused Gurudayal had a brother Nrisingba Das who was arrested. From these facts, the conclusion is well nigh irresistible that it was the accused Gurudayal who signed the bail bond. Once the genuineness of the bail bond is established, there is no room for controversy that the accused wrote the letter to Pulin dated the 11th October 1908. That letter connects him completely and conclusively with the conspiracy. His conviction, therefore, must be affirmed.

202. In so far as the accused Jogesh Chandra Routh is concerned, the evidence adduced to link him with the conspiracy is entirely oral. He is alleged to have attended a meeting in 1905, where Bepin Chandra Pal delivered a speech, and to have responded to a patriotic call for devotion to the cause of the country. This evidence is not very convincing, and, even if accepted, proves very little. The accused is stated to have been leader of a Samity at Jindabahar in the town of Dacca itself, but the evidence to connect that society with the institution of Pulin Behari Das is rather unsatisfactory. Inspector Rati Lal Ray assumes the two to be connected because they had some members in common, who are not even named. Evidently, this is not conclusive. But the strongest point in favour of the accused is that process was taken against him in connection with the Medical Hall stabbing incident which took place on the 4th September 1907. Jogesh absconded and did not surrender till June 1908. He was subsequently discharged. If he had been seen in the interval by a Police officer, as the oral evidence would seem to indicate, he would have been undoubtedly arrested in execution of the warrant issued against him. The oral evidence of the accomplice Hemendra and the spy Upendra is clearly untrustworthy. The name of the

accused does not appear in any Police report; in fact,' in one document where the Jindabahar Samity, is named, three other names are mentioned, but JogBsh does not appear either as a captain or as an expert lathi player. His name does not appear in any Samity paper; his house was searched and no paper or article of art incriminating character was found. He was arrested in connection with, the Rajnagore dacoity case but was ultimately discharged on the 17th November 1909. The defence suggests that he has been brought into the present case because the Police suspected, notwithstanding his aquittal in the Medical Hall stabbing case and in the Rajnagore dacoity' case, that he was connected with those incidents. This is not improbable. But whatever the theory may be on which the prosecution case against him may have been based, the evidence does not establish his connection with the conspiracy, and, in my opinion, his conviction cannot, be sustained.

203. The accused Nishibhushan Mitter was admittedly connected with the society. His explanation is that he used to correct exercises written by the Samity boys. This, no doubt, was one of his functions, but the question is what was his true position. A photograph was discovered at the Samity premises at the search of the 5fch November 1908, in which he is found with sword in hand between two of the Samity boys similarly dressed. He looks obviously more like a man of the sword than a man of the pea. It is extremely unlikely that a man would be allowed by Pulin Behari Das to occupy the responsible position of a teacher in the Samity and to reside on the premises unless he had taken the vows. We farther find from his diary written in July and August 1909 that he was deeply imbued with revolutionary sentiments. Under these circumstances, the inference is legitimate that he was aware of the secret object of the Samity and was a member of the conspiracy.

204. In so far as the accused Nisikanta Rai Chowdhury is concerned, the evidence against him is in the main oral. He is stated to have been connected with the Habigunge Anushilan Samity in Sylhet. In fact, he admits that he was there a salaried instructor in lathi play. But there is nothing to show that the Habigunge Samity was a branch of the Dacca Samity. The suggestion that the two were connected rests on a very slender foundation, namely, on a parwana or authority to inspect Samities. But the form of the document makes it paten that it was distinct from the instrument of authority contemplated by Pulin in the Duties of Secretaries. Further, the fa(sic) that it was not issued by Pulin Behary Das makes it conclusive that the Samities were not identical. The oral evidence of an alleged admission by the accused when he was arrested with the parwana in hand that he had come from Dacca is unreliable. The document shows on the face of it that it had been issued by the Habigunge Samity and it is inconceivable that he should have made a statement contradictory to the paper in his hand and obviously of no advantage to him. Further, the evidence of association of this accused with members of the Samity at Dacca is untrustworthy. It is clear that there was another person of the same name who played lathi at

Nayabazar and was the son of one Rajani, while this accused is the son of Basantalal Ray of Olepur in Faridpur and is clearly not the same man as is mentioned in the Police report of Inspector Sarat Chandra Ghose. It is not necessary for me to examine whether the witnesses have, deliberately or by mistake, substituted the present accused in place of the other Nisikant. It is sufficient to hold that he has not been connected with the conspiracy either directly or through the Habigunge Samity. His conviction, therefore, cannot be sustained.

305. The accused Radhika Bhushan Ray was involved in the Wari Affray case which took place on the 17th November 1907. Prima facie, therefore, he was residing at the Samity premises at that time. The question is, what was his position in the Samity. There is evidence to show that he went to Noakhali on behalf of the Samity as » Paridarsak. The attempt made to shake the testimony of Kali Oharan Das, the contractor employed by Radhika at Noakhali to erect a hut for lathi play, has not been successful. This evidence by itself is sufficient to prove his presence at Noakhali on the important business of the Samity. I do not rely upon the statement of Inspector Bankim that on the 2nd December 1908 when he went to the Samity premises, on inquiry he learnt from the accused Asutosh that Radhika had gone to Noakhali. The statement of Asutosh is not admissible in evidence under Section 10 of the Indian Evidence Act; it cannot be treated as something said by one of several conspirators in reference to their common intention. As Radhika is proved. to have been a Paridarsak, he obviously occupied a position of trust and importance in the work of the Samity. His name also appears on a book named Jagaran or Awakening, full of revolutionary sentiments. Under these circumstances, I think it is fairly clear that Radhika was a member of the conspiracy.

306. In so far as the accused Surendra Mohan Ghose is concerned, the evidence against him is admittedly meager. He was tried for the murder of Priya Mohan but was acquitted. The three witnesses who speak of his presence in Dacca make qualified statements from which no definite conclusion can be drawn. At the search of the Samity on the 15th November 1908, three documents were found which contained his name or signature; but they do not connect him with the conspiracy or any criminal object whatever. There is no evidence to show that the accused lived at the Samity or was a member thereof. In my opinion, the evidence against him is wholly insufficient to support his conviction.

307. In so far as Sures Chandra Sen is concerned, the evidence against him is both meagre and unsatisfactory. He had been arrested in the Wari Affray case but was discharged. There is no evidence to show that he resided at the Samity premises or was a member thereof. One of the documents, supposed at one stage to be in his handwriting, is now admitted to have been erroneously "identified by the handwriting expert. The entry in the library issue book is not shown to refer to this accused. In fact, witness Upendra proves that there was another Sures, the

son of one Ram Chandra, while the present accused is the son of one Nibaran. In my opinion, there is no reliable evidence upon which the conviction of Sures Chandra Sen can be supported.

308. The accused Sachindra Mohan Banerjee is sought to be connected with the Samity upon oral evidence alone. That evidence is not very trustworthy and the allegations of the witnesses, who had acted as accomplices and subsequently as spies, are not corroborated by independent evidence. The name Sachi occurs in two of the Samity papers. But this is not conclusive, because the evidence of Padmini Bhushan Rudra shows that there was in the Samity another person of the name of Sachindra Chandra Chanda On the other hand, in the register of names of members, we find, it noted against Sachindra Mohan, Banerjee: present from to-day; not regular; he comes twice or four times a month." He is not sbown to have taken any vows nor is he connected with any revolutionary literature. Even if he is assumed to be a member, he is not shown to have been initiated into the secrets of the society. His conviction, therefore, as a member of the conspiracy cannot be sustained.

309. With regard to the accused Nitai Chand Saha Banikya, I have already held that the find of arms alleged to have been deposited in the shop of the grocer Mohim cannot be treated as evidence of the activities of the Samity. But the question remains, whether he has been connected with the conspiracy by any direct evidence. The oral evidence is of an inconclusive character, and the circumstance that no sanction to prosecute him was obtained till the 13th August 1910, that is, till two days after his conviction in the Arms Act case, unquestionably tends to weaken the effect of the oral testimony. At the same time, it is reasonably plain that he was a member of the Samity. In his confession in the Arms Act case on the 31st July 1910, he stated that he was a member of the Samity. On the 11th August 1910, he retracted the confession but adhered to his statement that he was a member of the Samity. I am not unmindful of the criticism, based on the cases of Amir Khan v. Emperor 7 C.W.N. 407 and Emperor v. Tripura Shankar Sarkar (Salindra Kumar) 37 C. 618 : 14 C.W.N. 767 : 6 Ind. Cas. 476 : 11 Cr.L.J. 360 that a confession made after apparently needless remand and long Police custody must be jealously scrutinised. Nor am I unmindful of the criticism based on the case of Emperor v. Annya 3 Bom. L.R. 437 that the evidential value of the statement of a co-accused before he has been sentenced is open to serious question. But in the present case, the effect of the Police custody, the length of which is not very satisfactorily explained, was, as far as the particular question now before me is concerned, only to confirm the initial confession. Under these circumstances, although on the authority of the case of Emperor v. Abani Bhusan 15 C.W.N. 25 : 38 C. 169 : 8 Ind. Cas. 770 : 11 Cr.L.J. 710 the retracted confession is valueless against the other accused, the statement of Nitai, in his confession of the 31st July, 1910, that he was a member of the Samity is good evidence against him. We take it, therefore, that he was a member of the Samity. But the question still remains, what was his status. There is nothing to show that he resided in the premises or acted as

Paridarsak. If he had filled any position of trust or importance, one would have expected to meet with his name in the Police reports, and his name would have been included in the sanction first granted. He is, further, not shown to have taken any vows; nor is he connected in any way with revolutionary literature. The fact of his conviction in the Arms Act case is also clearly no evidence of participation in the conspiracy: Emperor v. Noni Gopal Gupta 15 C.W.N. 593 : 38 C. 559 : 12 Cr.L.J. 286 : 10 Ind. Caa. 582. On the whole, therefore, although Nitai upon his own statement was a member of the Samity, he is not proved to have been a member of the conspiracy and his conviction cannot be supported.

310. I shall now proceed to deal with the accused of the second class who were all admittedly members of the Dacca Samity.

311. The accused Gopal Chandra Ghose was apparently only 12 years old when he joined the Samity, and at the time of his arrest in August 1910 was a student in a Calcutta College. He was a member apparently from September 1908 till the suppression of the Samity two months later. In view of his age and the short period' of his connection with the Samity it is not likely that he could have been entrusted with revolutionary secrets. This is consistent with the statement of Pulin that the accused had taken one vow only. His name is not connected with any revolutionary literature found in'the premises of the society. Under these circumstances, there is not, in my opinion, sufficient evidence to connect him with the conspiracy and his conviction cannot be supported.

312. The accused Radhika Mohan Banerjee was also known as Karunakant. He is not shown to have been connected with the society before the 29th September 1908, certainly not before the 10th August 1908. The suggestion against him is that the youngman Sukumar, who was murdered, was first brought into the Samity by his persuasion. But, under Section 10 of the Indian Evidence Act, this statement of Sukumar to the officer inquiring into the kidnapping case of Ananta is not admissible in evidence. Nor is the document containing the statement, by the accused, made under Section 161 of the Criminal Procedure Code to the Police Officer inquiring into the case of the murder of Sukumar, admissible under Section 162. There is, consequently, no reliable evidence that he actually resided at the Samity premises, specially as some of the witnesses, who spoke of his presence there in the Court of Session, failed to identify him in the primary Court. He is not connected with the composition of revolutionary articles, and, as>he is stated by Pulin to have taken one vow only, it is unlikely that he was initiated into the secrets of the Samity. In my opinion, his participation in the conspiracy is not established, and his conviction cannot be supported.

313. In so far as the accused Manikya Chandra Guha is concerned, it cannot be disputed that he frequented the Samity premises. But it is clear that he was only what Pulin Behary Das called an

external limb of the Samity. He was stated to be nine or ten years old by Inspector Asutosh Banerjee in 1905, and when, on the 4th November 1908, he was arrested in connection with the kidnapping of Ananta, he was so young that the Magistrate thought it best to hand him over to his father, a Pleader at Dacca. "Later on, after the return of Pulin Behary Das from deportation, when Inspector Ratilal Ray was set to watch the latter, Manikya assaulted him and was convicted. But the evidence proves conclusively that he was under 12 years of age at the time when he went to the Samity and the vows could not have been administered to him under the rules. On the whole, therefore) although he had given striking indication of a vicious tendency, I think he cannot be treated as one of the members of the conspiracy and his conviction cannot be supported.

314. The accused Surendra Chandra Ray is admitted to have been a member of the society and to have taken two vows. The strongest evidence produced against him is a manuscript note book inside the cover whereof is to be found a list of chemicals. But it is fairly clear that this has no sinister significance. It is more than probable that the writing in pencil was on the yellow sheet before it was used as a cover for the note book; at any rate, the writing has not been identified with that of this or any other accused. Besides, there is no evidence that the chemicals when combined in the proportions stated would make an explosive. The only other incriminating object found in his possession at the search of the 3rd August 1910 is a copy of the newspapers Nabasakti, said to contain a seditious article on a revolutionary leader, an editor of the Yugantar, who had been convicted and sentenced to imprisonment. On examination, however, it transpired that the issue of the paper was dated the 27th July 1907 and had evidently been placed inside a steel trunk as a wrapper to protect the clothes from rust. Finally, some evidence has been adduced to show that the accused had been seen at Comilla as a Paridarsak on behalf of the Samity. This testimony, however, is not quite reliable as the witness who is said to have watched him could not-identify him in Court. In my opinion, the evidence is not sufficient to prove that this accused participated in the conspiracy and his conviction cannot be supported.

315. The accused Gopiballabh Chakrabarti admits membership of the Dacca Samity but denies membership of the Serajgunge Bandab Samity. This latter circumstance is immaterial, because he is connected with the Dacca Samity by direct evidence. The letter dated the 31st October 1908 and proved to have been written by him though signed Rangadada (which was one of the three names by which he was known in the Samity, as appears from a list in the handwriting of Pulin himself), shows conclusively that he worked as an Inspector or Paridarsak, on behalf of the Dacca Samity. This letter is addressed to the accused Prafulla and another person Dinesh and shows that the writer was anxious to work in conjunction with them for the society aid that otherwise his enterprise and enthusiasm would vanish. His name appears in numerous documents found at the Samity premises. There can be no doubt that he was a member of the conspiracy and

held a position of trust and importance.

316. The accused Khirode Chandra Guha, also known as Hiranmay, is a nephew of the accused Gurudayal. At the search of his house was found a manuscript which contained the vows as also writings fall of revolutionary sentiments. The letter of Gurudayal, dated the 11th October 1908, to which reference has already been made, shows conclusively that the present accused at that time resided in the Samity premises and was thought sufficiently reliable to be entrusted with the official documents of the society, the Duties of Secretary and the preliminary and 5nal vows. There can be no reasonable doubt that be was a participator in the conspiracy.

317. As regards Prafulla Chandra Sen Gupta, he was admittedly a member of the Dacca Samity. He denies membership with the Madhyapara Sava; but that is immateral, as I have already held that the two associations were not connected. That he was a leading member of the Dacca Samity is amply established from the library issue book and from the lathi play books containing not merely the initial and the final vows but also the special vows. There is, moreover, reliable evidence to show that he acted as Paridarsak or Inspector} His participation in the conspiracy is clearly proved.

318. The accused Promode Behary Das is a brother of Pulin Behary Das. It is not disputed that he resided with his brother at the Samity premises. But it is urged that he left after the Wari Affray case. It is clear, however, that though another house was taken and the ladies of the family were removed, he continued to occupy the position of a member of the Samity; in fact, it is not disputed that he was a member and had taken two vows. Even in September and October 1908, we find that he took out books from the Samity library as a member would do. "We have further a parwana by Pulin authorising Promode to supervise the work of the branch Samities as Paridarsah. No doubt, this was discovered on the 3rd August 1910 in a box of Pulin, and on this circumstance has been based the argument that if it had been acted upon, it ought to have been in the possession of Promode. The criticism would have been weighty but for the fact that Pulin and Promode were brothers and lived, if not in the same premises, at least in adjoining houses. We have further the evidence of Annadakanta Chakrabarti that in July 1907 Promode was seen at Lakshipore and, when asked, stated that he had come from Dacca to teach the school boys lathi play. Finally, it has been suggested that Promode has been prosecuted because he is the brother of Pulin. But it has been pointed out by the prosecution that Pulin had another brother Nalini who has not been charged with conspiracy. The evidence, in my opinion, establishes the participation of this accused in the conspiracy.

319. The accused Santipada Mukerjee was admittedly a member of the Samity and had taken two vows. His house was searched in May 1909 and numerous lathi play and sword play books were found, one of which had the initial and the final vows in it. He was arrested on the 4th

November 1908 in connection with the kidnapping case of Ananta and the oral evidence indicates that he must have been at the Samity premises from at least the beginning of 1907. He was thus closely connected with the Samity for over two years and was an active member of the conspiracy.

320. Finally, as regards Pulin Behary Das, Asutosh Das Gupta and Jyotirmay Ray, no detailed statement is necessary. They were unquestionably deeply involved in the conspiracy. Pulin was the founder of the society and Asu and Jyotirmay were his principal supporters. Asu was the leader in the absence of Pulin, and in the house of Jyotirmay, which was one of the earliest places to be searched on the 5th September 1907, copies of the principal documents were discovered in his beautiful hand-writing. Pulin states that both Asu and Jyotirmay had taken three vows, so that their participation in the conspiracy cannot be doubted.

321. My conclusion, therefore, is that the convictions and the sentences must be set aside in the case of the following 21 accused persons:

Dinesh Chandra Guha, Manikya Chandra Guha, Sukhendra Kumar Sen. Gupta, Pares Chandra Sen Gupta, Abani Mohan Ganguli, Akshyay Kumar Datta, Joges Chandra Rauth, Surendra Mohan Ghose, Surendra Chandra Ray, Gopal Chandra Ghose, Sures Chandra Sen Gupta, Hem Chandra Sen Gupta, Charu Chandra Sen, Aswini Kumar Ghose, Binode Behari Chakrabarti, Sarada Charan Datta Gupta, Nishikanta Ray Bose Chaudhuri, Jadu Nath Das, Nitai Chand Saha Banikya, Radhika Mohan Banerjee and Sachindra Mohan Banerjee.

322. The convictions must be affirmed as regards the following 14 accused persons.

323. Pulin Behari Das, Asutosh Das Gupta, Jyotirmay Ray, Bhupati Mohau Sen Gupta, Prophulla Chandra Sen Gupta, Nisi Bhushan Mitra. Gurudayal Das, Nripendra Mohan Sen Gupta, Gopiballabh Chakrabarti, Bankim Chandra Bay, Santipada Mukerjee, Radhika Bhushan Ray, Promode Behari Das and Kshirode Chandra Guha.

324. The question next arises as to the sentences appropriate for the accused whose convictions are affirmed. Here the elements to be taken into consideration are not only the gravity of the offence but also the extent to which the conspiracy had been carried on, the nature of the only overt work associated with the society, the time that has elapsed since the society was suppressed and the length of the period during which the accused have been in custody. A distinction must also be made between the leaders of the movement, three of them men of mature years and of some education and experience, and the others, less important members of the conspiracy, most of them young men in the prime of life, misguided into dangerous tracks by their elders who might be expected to have known better. In view of all these circumstances, I hold that the justice

of the case would be met by the following sentences.

325. Pulin Behari Das : Transportation for seven years. Asutosh Das Gupta: Transportation for six years. Jyotirmay Ray: Transportation for six years. Garudayal Das: Rigorous imprisonment for five years. Bankim Chandra Ray: Rigorous imprisonment for five years. Bhupati Mohan Sen Gupta: Rigorous imprisonment for three years. Prafulla Chandra Sen Gupta: Rigorous imprisonment for three years.

326. Santipada Mukerjee: Rigorous imprisonment for three years.

327. Radhika Bhushan Ray: Rigorous imprisonment for three years.

328. Kshirode Chandra Guha: Rigorous imprisonment for three years.

329. Nisi Bhushan Mitra: Rigorous imprisonment for two years.

330. Niripendra Mohan Sen Gupta: Rigorous imprisonment for two years.

331. Gopiballabh Chakrabarti: Rigorous imprisonment for two years.

332. Promode Behari Das: Rigorous imprisonment for two years.

333. As we have taken into account the periods during which the accused have been in custody, as also the short time for which the sentence of the Court below was executed before it was suspended by order of this Court, the periods mentioned above will in each case run from this date.

Caspersz, J.

334. The reasons, upon which I would base my judgment in this appeal, are substantially those which have been given in the judgments just delivered. My conclusions are that the points of law raised on behalf of the appellants must be overruled: that the Dacca Anusilan Samity was a revolutionary society : that, of the overt acts imputed to the Samity, the Nana dacoity is the only case indisputably proved to have been the work of that society, four others (the Munshigunge and Adabari cases and the murders of Sukumar and Priya Mohan) being cases of suspicion only: and that fourteen of the appellants, and no more, must be convicted on the evidence in the record. The cases of two of the appellants, Charu Chandra Sea and Surendra Chandra Roy, are very near the line, but I am not prepared to differ as to their acquittal Having regard to the findings arrived at in this Court, 1 also accept the modifications of the sentences passed upon the appellants whose convictions are now affirmed.

335. I, therefore, agree in the orders proposed by my learned colleagues.