Privy Council Appeal No. 111 *of* 1931.
Patna Appeals Nos. 45 *of* 1930 *and* 9 *of* 1931.

Dwarkanath Varma - - - - - - *Appellant*

v.

The King-Emperor - - - - - - - *Respondent*

Gaya Prasad - - - - - - - *Appellant*

v.

The King-Emperor - - - - - - - *Respondent*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH JANUARY, 1933.

Present at the Hearing:
LORD ATKIN.
LORD THANKERTON.
LORD WRIGHT.
SIR LANCELOT SANDERSON.
SIR GEORGE LOWNDES.

[*Delivered by* LORD ATKIN.]

These are two appeals against conviction and sentence by the High Court of Judicature at Patna. The appeal of Gaya Prasad was brought by special leave of the Privy Council after an application for leave to appeal had been refused by the High Court. The appeal of Dwarkanath Varma was by leave of the High Court granted after the special leave had been given to the other appellant. Both appeals were consolidated by order of the High Court. The accused were tried before a Bench of the High Court consisting of the Chief Justice and Kulwant Sahay and Dhavle, JJ. and a special jury of nine persons, on an information exhibited by the Government Advocate by the direction and

with the sanction of the Local Government pursuant to section 17 of the Letters Patent constituting the High Court and section 194 of the Code of Criminal Procedure, 1898. The appellant, Gaya Prasad, an assistant Civil Surgeon, hereinafter called the doctor, was convicted of perjury and sentenced to five years' rigorous imprisonment; the appellant Dwarkanath Varma, a sub-inspector of police, hereinafter called the sub-inspector, was convicted of conspiring with Ritbhanjan Singh, Subedar Singh and Ramdhani Singh and Gaya Prasad to fabricate and give false evidence in Court with the intent to procure conviction for a capital offence of six named persons in breach of section 120B of the Indian Penal Code; and was also convicted of fabricating evidence in six particulars intending to cause the same six persons to be convicted of culpable homicide amounting to murder in breach of section 194 of the Indian Penal Code. He was sentenced on each of these charges to 10 years' rigorous imprisonment, the sentences to run concurrently.

At the conclusion of the appeal their Lordships announced that they would humbly advise His Majesty to allow both appeals and to set aside the convictions, and would give their reasons later, as they now proceed to do.

The case was one of some complexity involving questions of considerable medico-legal interest. It has resulted in a miscarriage of justice which has caused two persons of apparently hitherto unblemished reputations to be wrongly convicted of serious offences and to receive sentences of long terms of imprisonment, part of which they have had to undergo. It will be necessary to go into some detail in order to explain in what circumstances this unfortunate result occurred.

On the 2nd August, 1928, the Sub-Inspector, who was stationed at Rohtas in the Province of Bihar and Orissa, was in the course of his duties when in the afternoon complaint was made to him by two men, Ritbhanjan Singh and Subedar Singh, of the village of Balbhadarpur, that at about 2 p.m. of that afternoon they and Ramdhani Singh had seen in Ritbhanjan's paddy field six men, Issardeyal Singh, Sheotahal Singh his son, Lokan Singh, Muneshar Singh and Mundrika Singh (sons of Lokan) and Jitu Singh assaulting Rhitbhanjan's nephew, Jamadar Singh, with kicks, blows and sticks. Jamadar Singh told them that the bullocks of Issardeyal and Lokan were grazing in the field and that he was driving them away to impound them when he was attacked. The three men carried Jamadar to the village and there he died. They had left the dead body on the ground and had run to report the occurrence to the Sub-Inspector. Proceeding to the village he met Issardeyal and Muneshwar; they denied the charge, and alleged that while in their field they had been told by Dhanmantia, daughter of Lokan, that Jamadar had died; and that Jamadar's relations had assaulted Phulkumari, a female relative of Issardeyal, on the ground that by witchcraft she had brought about Jamadar's death. They said that

Jamadar had been ill of cholera for three or four days and had died of it that day. The Sub-Inspector proceeded to make inquiries. In the result he arrested the six accused men for murder. He came to the conclusion that the story of the assault on the old lady was false. That same evening, in accordance with his duty, he dispatched the body of Jamadar for post-mortem examination to the nearest civil surgeon who was at the hospital at Sassaram 50 miles away. With it he sent four bearers for the body had to be carried by hand on a *khatoli*; and an escort of three police officers under Constable Girwar Singh, who was entrusted with the necessary documents, accompanied by two relatives. The documents should have included the *surathal*, or inquest report, which was drawn up by the Sub-Inspector and the *challan* which described the escort and the circumstances in which the post-mortem was required. It is clear that by mistake two copies of the *challan* alone reached the doctor. The material part of it is in the column marked [5.] "History of the cause of death which is at present ascertained." "As far as is known of the case at present the death of the deceased is said to have been due to severe assault by means of blows, kicks and butt ends of sticks. The deceased complained of severe pain on the left side of the chest before he expired. No apparent mark of injury is found on the person of the deceased." The body reached the hospital on the morning of the 4th August, and the post-mortem dissection began at about 10.30 a.m., *i.e.*, 42–43 hours after death. Decomposition had obviously commenced. The doctor in charge of the hospital was the appellant Gaya Prasad. He was a young medical practitioner who took his degree of M.B. at Calcutta University in 1925 and had been appointed Assistant Surgeon by the Government of Bihar and Orissa in June, 1926, and in August, 1928, was on duty at the hospital Sassaram. His chief, Dr. Tarak Nath Mitra, was at that time stationed as Civil Surgeon at Arrah. In that capacity he would have submitted to him the post-mortem reports sent out by the Assistant Surgeons at the various hospitals in this district as was done in this case. The doctor duly made the post-mortem examination and filled up the report. As the case against him turns on this report it is desirable to set it out verbatim.

Station—Sassaram, dated 4.8.28.

1. Name, caste and residence, if known—Jemadar Singh, of Balbhadarpur, police station, Rohtas.

2. Sex and age—Hindu Male, aged 28 years.

Hence brought.

3. Village—Balbhadarpur.

4. Police station—Rohtas.

5. Distance from dead house—50 miles.

6. Names of constables and relatives accompanying the corpse—(1) Girwar Singh, (2) Jharul Dusadh of Anandichak, (3) Jagpat Lall of Purnadih, (4) Subedar Singh, (5) Birich Singh.

Date and hour.

7. Of despatch from village—8 p.m., 2.8.28.

8. Of arrival of dead house—9.45 a.m., 4.8.28.

9. Of post mortem examination—10.30 a.m., 4.8.28.

10. By whom identified to medical officer—(1) Constable Girwar Singh, (2) Choukidar Jharul Dusadh of Anandichak, (3) Dafadar Jagpat Lal of Purnadih, (4) Subdar Singh of Balbhadarpur, (5) Birich Singh of Balbhadarpur.

11. Clothes and articles sent in with corpse—(1) Maskin dhoti 1, (2) Markin gamcha 1, (3) Motia dohar 1, (4) Janaoa (sacred thread) 1, (5) Danda 1.

12. Remarks—No Surathal was supplied by the S.I. Rohtas nor there is any mention of name or address on challan certificate. The name and address is got from the command certificate.

I. External Appearances.

1. Condition of subject-stout, emaciated, decomposed, etc.—The deceased is of average built R. M. passing—Sinuous fluid from the mouth and lips and nostril was coming out. Pupils were dilated. Mud was on all the exposed parts of the body mouth slightly open.

2. Wounds-position, size, character—

Bruises, position, size, nature—(1) 5 ecchymosises irregular *ante mortem* over the pit of the stomach just over and around the zitisternum more on the abdomen in an area of 3 inches. (2) Slight scratch with ecchymosis on the right side of back, 1½ inches above the waist.

4. Mark of ligature on neck, dissections, etc.

II.—Cranium and Spinal Canal.

1. Scalp, skull and vertebrae—Nil.

2. Membranes—Congested.

3. Brain and spinal cord—Congested the cerebrum slightly decomposed.

III.—Thorax.

1. Walls, ribs and cartilages—

2. Pleura—

3. Larynx and trachea—

4. Right lung—Highly congested, specially at the base and posterior side.

5. Left lung—Highly congested.

6. Pericardium—Pericardial cavity contained 4 ounces of bloody fluid and some clot.

7. Heart—The right auricle at the antero latteral was ruptured. Both chambers empty.

8. Large vessels—Full of bloody fluid.

IV.—Abdomen.

1. Walls—

2. Peritonium—

3. Mouth, pharynx and œsophagus—

4. Stomach and its contents—was congested outside and inside contained some gas and one and a half of fæcal matter. There was some bile stain on the part surface of it.

5. Small intestine and its contents—The duodenum was ruptured on the latteral aspect just where the bile duct opens into it.

6. Large intestine and its contents—A linear rent of the ascending colon just at the bend of the hepatic flexure.

7. Liver—Ruptured at one place see detail description to injury. Weight, 16½ ch.

8. Spleen—Weight, 6½ ch.

9. Kidneys—Left. Weight, 3 inches. Right kidney was ruptured. Weight, 3½ ch. See detailed description of injury.

10. Bladder—Full, about 6 ounces of urine.

11. Organs of generation, external and internal—

V.—Muscle and Bones.

1. Injury—

2. Disease or deformity—

3. Fracture—

4. Dislocation—

VI.—More Detailed Description of Injury or Disease.

1. Five ecchymosis over the pit of the stomach as described was irregular more on the abdomen than on chest over and around the zitisternum to an area of 3 inches, ante-mortem.

2. Scratch with ecchymosis on the right side of the back 1½ inches above the waist.

3. Congestion of the brain and membranes.

4. Pericardial cavity contained 4 ounces of bloody fluid with some clot.

5. A linear rupture of the right auricle ¼ inch long and ⅛ inch broad, direction being from above downward and taking on the antero latteral aspect near the opening of the superior vinacava.

6. Both chambers empty.

7. Abdominal cavity had fæcal odour and some fluid was in it.

8. Stomach was congested both inside and outside there was bile stain. It contained 1½ ounces of fæcal substance.

9. A linear rupture of the second part of the duodenum ⅛ inch by ⅛ inch extending from above downwards on the antero latteral aspect near the opening of the bile duct into it.

10. A linear rupture of the ascending colon on the antero latteral aspect 3 inches by ½ inch just at the zenu of the hepatic flexture, ½ inch of the rent was above the zenu and 2½ inches below it, from above downwards.

11. A linear rupture of the liver ½ inch by ¼ inch on the posterior side ½ inch above the lower margin of the right lobe. The direction being parallel to the lower margin.

12. A linear rupture of the right kidney 1 inch by ½ inch on the posterior aspect ½ inch from the hilum. The direction being from above downwards and innerwards.

VII.—Opinion of Sub-Assistant Surgeon as to Cause of Death.

In my opinion death is due to shock due to the injuries detailed above.

(Signed) G. Prasad, *Assistant Surgeon*,
Sassaram.

Dated 4.8.28.

VIII.—Remarks by Civil Surgeon.

I agree.

(Signed) T. N. Mittra,
Civil Surgeon of Shahabad.

Their Lordships will revert to this document later. In the meantime it is desirable to notice that the information received in the *challan* that the death of the deceased was supposed to have been due to severe assault by means of blows, kicks and butt ends of sticks appeared to have been confirmed by the very serious internal injuries found to exist. One of the constables stated at the doctor's trial that he had told the doctor that the man had died of ras disease, a disease which is variously described

by witnesses as being due to constipation, over-eating and purging or vomiting. No one at the trial suggested that the condition described indicated such a disease. The doctor, in his statutory explanation, denied that he had been so told ; but it seems reasonably obvious that no one who found the appearances mentioned, and believed that they were the result of an assault before death, would attribute any importance to such a statement by a constable.

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

DOCTOR GAYA PRASAD,

Will you kindly let me know your opinion on the points suggested by the S.I. The reply may be sent per bearer as the case is being delayed simply for want of your opinion on these points.

(Signed) R. N. SINHA,
D.S.P., 19.8.28

The probable cause and nature of weapon inflicting the injuries are as follows :—

1. May be caused by severe blows or with blows by the ends of blunt weapons, *e.g.*, lathi and the like or might be due to friction against rough surface.

2. Same as No. 1.

3. Congestion of the brain might be due to the injuries described.

4. Might be due to hypertension and rupture.

5. Same as No. 4.

6. In this case due to blow given on the pit of the stomach and subsequent hæmorrhage and clot in the pericardial cavity.

7. Abdominal cavity had the odour due to rupture of the large intestine due to the blow over the kidney region (No. 2).

8. The staining of the outside stomach of bile is due to the rupture of the duodenum due to blow over the pit of the stomach (No. 1). The evidence of fæcal substance ought to be accounted for the anti-perstalsis of the ruptured large intestine (*i.e.*, vomiting caused by the rupture of the large intestine).

9. Due to blows given over the pit of the stomach and sides of the abdomen and back. The blows must have been severe and may have been inflicted by blunt ends of lathis or some such blunt weapon or fist or heel and the like.

10. Same as No. 9.
11. Same as No. 9.
12. Same as No. 9.

(Signed) G. PRASAD, *A.S.*,
Arrah, 20.8.28.

On the 30th August the accused appeared before the District Magistrate, when most of the prosecution witnesses were called, including the doctor. Cross-examination was reserved. The doctor's evidence merely repeated the post-mortem report together with his further report as to the cause of the particular injuries. He added that the deceased would ordinarily die within two hours after receiving the injuries and might have been in a position to make a coherent statement up to the time of his death. At a further hearing before the magistrate defendants' advocates gave notice that they wanted to cross-examine the doctor at the Sessions Court and that they would file a list of defendants' witnesses on the 10th September. On that day the list was filed and the accused committed to Sessions on the charge of murder.

On the 5th-8th December, 1928, the charge was heard before the Sessions Judge and four assessors. On the 5th December the doctor was called and the complete record of his evidence given to the Court is as follows :—

Copy of deposition of DR. GAYA PRASAD, *Assistant Surgeon, before the Sessions Judge, on the 5th December*, 1928.

Deposition in lower court read out and admitted under section 509, Criminal Procedure Code.

Further examined.

There was no sign of cholera. The man did not die of cholera.

I found fæcal matter in the body cavity. It was semi-solid. It was a healthy stool.

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

Cross-Examined.

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

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

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

I can't say how many hours before my examination he died.

Cross-examined by permission.

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

The whole of the first paragraph of his answer to the Court was at the present trial assigned as perjury, on which he was convicted. The accused were convicted of murder by the Sessions Judge and sentenced to death. They appealed to the High Court, and on the 9th January, 1929, the High Court affirmed the conviction, but reduced the offence to culpable

homicide not amounting to murder, and altered the sentence to imprisonment for life, except for a younger prisoner whose sentence was reduced to 10 years' imprisonment.

After the conviction of the accused before the Sessions Judge Phulkumari had been charged before the magistrate under section 182 of the Indian Penal Code with giving false information to the police as to the assault on her. It is noteworthy that when the charge was heard on the 26th January, 1929, she pleaded guilty. The note of the District Magistrate on the order sheet is as follows :—

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

Any question as to the murder of Jamadar now seemed to be settled. But dramatic developments soon occurred. The village was in a state of unrest at the result. In particular Issardeyal's wife was untiring in seeking to establish that injustice had been done. The police authorities directed Mr. A.R.P. Sinha, the Deputy Superintendent of Police at Patna, to hold an inquiry. As the result of his report and further inquiries by higher police officials the Local Government appear to have been satisfied that a miscarriage of justice had taken place. They remitted the unexpired portion of the sentence on the six convicts, and in January, 1930, appear to have directed the Government Advocate to exhibit an ex-officio information against the three original accusers Rhitbhanjan, Ramdhani and Subedar, who will hereafter be called the prosecutors, and the Sub-Inspector for fabricating and giving false evidence on a capital charge.

The power to exhibit an information to the High Court is given by section 194 (2) of the Criminal Procedure Code, 1898, which provides that with the sanction of the Local Government the Advocate General (which term by the definition clause section 4. 1 (*a*) includes Government Advocate), may exhibit informations for all purposes for which His Majesty's Attorney-General may exhibit informations on behalf of the Crown in the High Court of Justice in England. By section 1 (*d*) the High Court may make rules for carrying this section into effect; but no rules appear to have been made. By section 17 of the Letters Patent constituting the High Court at Patna, the High Court is given original criminal jurisdiction to try any person residing in places within the jurisdiction of any Court subject to its superintendence on charges preferred by any magistrate or other officer specially empowered by the Government in that behalf. Their Lordships do not propose to determine finally the question of jurisdiction raised by the appellants' objection to the procedure in this case.

They content themselves with saying that as at present advised the section of the Criminal Procedure Code and the clauses of the Letters Patent appear to show the objection to be ill founded.

The procedure was in any event novel, and their Lordships are unable to commend the forms adopted. It is well established that an ex-officio information should contain a statement of the charge as certain and detailed as an indictment. The first document filed by the Government Advocate was styled a petition exhibiting an information in the matter of sections 184 and 195 of the Criminal Procedure Code not under section 194 at all. Later amendments refer to it as an information exhibited under section 194. The so-called information entitled in the matter of the Sub-Inspector and the three prosecutors sets out the facts of the original trial, recites the attitude taken up by the public in the village, and the subsequent police inquiries, and states that the Local Government were satisfied that the whole case against the accused Muneshwar and others was false and had directed the release of the original accused and feel that the fresh materials upon which they came to this conclusion should be placed before their Lordships so that their Lordships might take such action as they might think proper. It is to be observed that no criminal charge is formulated against any one; and the allegations as to the opinion of the executive are quite out of place in a criminal information, likely to be very prejudicial to the accused, and ought never to have been included. The High Court, however, seem to have thought that they were justified in ordering the four accused to be arrested. On the 6th March the Government Advocate applied to amend the original information by adding a paragraph that the petitioner, having carefully examined the papers, also came to the conclusion that grave miscarriage of justice had occurred, due to the conduct of the 4 accused, and that there were strong reasons to believe that the accused had committed offences under sections 120B and 194 of the Indian Penal Code. The form of this amendment does not appear to be much better than the original. On the same day, however, the Government Advocate did file an information with detailed charges against the accused. The first five paragraphs repeat the statements in the original information, and are subject to the criticism already made. Paragraph 6 formulates the charge of conspiracy against the four accused and is as follows:—

> 6. That your petitioner charges the opposite party above-mentioned, viz.:—(1) Dwarka Nath Varma, (2) Ritbhanjan Singh, (3) Subedar Singh, and (4) Ramdhani Singh, that they between the 2nd and the 20th day of August, 1928, at Balbhadharpur, Sasaram, and other places in Shahabad agreed among themselves to fabricate and to give false evidence in court with the intent to procure conviction for capital offence of (1) Muneshwar Singh, (2) Mundrika Singh, (3) Lokan Singh, (4) Isserdeyal Singh, (5) Jitu Singh, and (6) Sheotahal Singh, residents of Balbhadharpur, police station, Rohtas, and thereby they committed an offence punishable under section 120B of the Indian Penal Code and within the cognizance of this court.

Paragraph 7 in the first part formulates the charge of perjury against the Sub-Inspector as follows :—

7. That your petitioner charges accused Dwarka Nath Verma as follows :—

That he on the 6th day of December, 1928, at Arrah, in the course of trial No. 37 of 1928, before the Sessions Judge of Shahabad, made the following statements, each of which he knew or had reason to know to be false :—

(*a*) " I recorded the First Information Report (exhibit No. 1) at Tipa Pahari. It was at 3 p.m."

(*b*) " The corpse was covered with mud."

(*c*) " I then went to the place of assault. In several sub-plots I found marks of grazing and of the feet of cattle. In one plot where the assault was said to have taken place I found marks of men's feet and disturbance of the mud and seedlings as if there had been a struggle."

(*d*) " Then I examined. Ramnandan Singh before 7 p.m."

It then formulates the charge against the Sub-Inspector of fabricating false evidence as follows :—

And he fabricated the following evidence to wit :—

(*a*) So wording the First Information Report that it appeared as drawn up and signed at Camp Tipa Pahari while in fact it was done at Balbhadharpur.

(*b*) Falsely recording the statement in diary No. 1, dated 2.8.1928, viz. :—

" No. 5 (Ramchandar Chaubey) stated that he was uprooting seedling in the field of Ramdayal Singh near village Uli. He was alone there. Ramkhelawan Dusadh and Tulsi Dusadh, sons of Harungi Dusadh, of Balbhadharpur, who were bringing bundles of seedling from the field of Ramdeyal from near the Ahra of the village, told him that some fighting was going on near the field of Ritbhanjan Singh for grazing the field with bullocks. They did not name the members of the party. As he was far off he could not see nor he went there."

(*c*) Falsely recording the statement in Diary No. 11, dated 3.8.1929, viz. :—

" I came to the field of occurrence and as pointed out by the complainant I found marks of bullocks, hoofs in the field and outside on the western side both directing to and from the field. I found marks of rustling on the ground in the seventh portion. The plants of that place have been crushed in about 10 yards and the ground thoroughly trampled with footsteps."

(*d*) Falsely recording statement in Diary No. 11, dated 3.8.1928, viz. :—

" Examined Gopi Koeri, of Uli. He said that he never went to village Balbhadharpur to treal Jamadar Singh or any one . . . and in the afternoon went to Nauhatta Bazar and in the afternoon he heard there that Jamadar Singh had been killed in a Marpit while taking cattle to the pound from his paddy field by some men of his village."

(*e*) Falsely recording the statement in Diary No. 111, dated 4.8.1928, viz. :—

" I had a talk with several men of Naudiha. Anandichak and Nimhat and came to learn confidentially that this case was quite true and that the case of the Musammat Phul Kuer was totally false."

(*f*) Falsely recording the statement in Diary No. IV, dated 5.8.1928, viz. :—

" He (Girwar Singh) has brought the result of the post-mortem examination."

(*g*) Falsely recording the statement in diary No. VI dated 7.8.1928, viz. :—

" From the face of Tulsi it appears that he is concealing the truth. I tried my best to find out the truth from him but in vain, as he seemed to have received a very strong tutoring."

(*h*) Falsely antedating the initial on the post-mortem report.

Intending thereby to cause or knowing it to be likely that he will thereby cause the following five persons :—

" (1) Muneshwar Singh, (2) Mundrika Singh, (3) Lokan Singh, (4) Isserdeyal Singh, (5) Jitu Singh, and (6) Sheotahal Singh, residents of Balbhadharpur, police station, Rohtas, to be convicted of the offence of culpable homicide amounting to murder which by the law of British India is Capital, and thereby committed an offence punishable under section 194 of the Indian Penal Code and within the cognizance of this court."

The information then proceeds to charge each of the other three accused with perjury in their story of the assault and Rhitbhanjan and Subedar with fabricating false evidence in smearing the dead body of Jamadar with mud.

On the same day the trial having been fixed for the 24th March, the Government Advocate exhibited an information against the doctor which is as follows :—

The humble petition of the above-mentioned petitioners

Most respectfully sheweth :—

1. That your petitioner craves leave to invite your Lordships' attention to the information exhibited by him on the 16th January, 1930, and the supplementary petition filed by him containing particulars of charges against the opposite party named and specified in the said petition. The petitioner prays that the said petition and the annexures thereto be also treated as parts of this petition.

2. That the opposite party, Dr. Gaya Prasad, is an Assistant Surgeon, and in the month of August, 1928, he was posted as such in the sub-division of Sasaram in the district of Shahabad.

3. That on the 4th August, 1928, the said Gaya Prasad held post-mortem on the dead body of a Jamadar Singh at Sasaram Hospital, and made a report upon examination of the injuries found on the person of the said Jamadar Singh that these were caused before his death, and that he had died from the effects of the said injuries.

4. That as a result of the enquiries held by Mr. A. K. P. Sinha, Deputy Superintendent of Police, C.I.D., Patna, and Mr. Sealy, Deputy Inspector General of Police Crimes, Patna, which are more fully described in paras. 3 and 4 and 6 of the petition filed by the petitioner on the 16th January, 1930, it appears that the said report was deliberately false inasmuch as the injuries found on the person of Jamadar Singh were inflicted after death.

5. That the petitioner has examined the papers and materials connected with the enquiry above-mentioned and has come to the conclusion that there are good and sufficient reasons to believe that the opposite party above-named had committed various offences under the law, and your petitioner with the sanction of the Local Government invites your

Lordships' attention to the information contained in the annexures to the petition filed on the 16th January, 1930, and begs to charge the accused on counts more particularly stated hereunder.

6. That your petitioner charges the said Dr. Gaya Prasad that he with (1) Dwarka Nath Verma, (2) Ritbhanjan Singh, (3) Subedar Singh, and (4) Ramdhani Singh between the 2nd and 20th August, 1928, at Sasaram and other places in Shahabad agreed among themselves to fabricate and to give false evidence in court with the intent to procure conviction for capital offence of (1) Muneshwar Singh, (2) Mundrika Singh, (3) Lokan Singh, (4) Isserdeyal Singh, (5) Jitu Singh and (6) Sheotahal Singh, residents of Balbhadharpur, police station, Rohtas, and thereby he committed an offence punishable under section 120B of the Indian Penal Code and within the cognizance of this court.

7. That your petitioner charges accused, Dr. Gaya Prasad, that he between the 4th and 7th August, 1928, at Sasaram, fabricated the following evidence, viz. :—

(1) " Five ecchyommosis (?) over the pit of the stomach as described was irregular, more on the abdomen than on the chest over and around the ziphisternum to an area of 3 ' circular ante-mortem.'

(2) " In my opinion death is due to shock due to the injuries detailed above."

And the petitioner further charges the said Dr. Gaya Prasad with having made the following statements on the 5th December, 1928, at Arrah in the course of his deposition in trial No. 37 of 1928 before the Sessions Judge of Shahabad, each of which he knew or had reason to know to be false, viz. :—

" In my opinion the rupture of the organs was ante-mortem. The congestion of blood in some of the organs and the *ante peristaltic* action of the intestines causing the fæces to come back into the stomach indicated this. At the sites of the ruptures there was cloths (?) of blood indicating that the injuries were ante-mortem."

Intending thereby to cause or (knowing it to be likely that he would thereby cause) the following persons :—

(1) Muneshwar Singh, (2) Mundrika Singh, (3) Lokan Singh, (4) Isserdeyal Singh, (5) Jitu Singh, and (6) Sheotahal Singh, residents of Balbhadarpur, police station, Rohtas, to be convicted of the offence of culpable homicide amounting to murder which by the law of British India is capital, and thereby committed an offence punishable under section 194, Indian Penal Code, and within the cognisance of this court.

8. That the petitioner begs to state that the Local Government have accorded sanction under sections 194 and 197, Criminal Procedure Code for the prosecution of the said Dr. Gaya Prasad.

It is, therefore, prayed that your Lordships may be pleased to order that the opposite party named above be arrested and placed in custody and that he be jointly tried along with the order (?) accused persons named in the petitioner's petition, dated 16.1.30 by this Honourable Court on charges specified above or pass such other orders as may appear fit and proper.

And for this the petitioner shall ever pray.

It is to be noticed that the charge of perjury as against all the accused is drawn incorrectly. It charges the accused with having made statements in their depositions " which they knew or had reason to know to be false." It should be unnecessary to

point out that a man may make a statement in the belief that it is true, though good reasons exist for knowing it to be false, for, unfortunately, man's beliefs are not always influenced by good reasons. The Indian Penal Code, section 191, defines the offence of giving false evidence as " making a statement which he either knows or believes to be false and does not believe to be true," and the information should have conformed to the code. The prisoners were arraigned before the jury on the charge in this information; but the Chief Justice in summing up read to the jury the words of the code, and though criticism was addressed to a particular passage in his address which appeared to indicate that a witness might be guilty of perjury if he omitted to tell the whole truth their Lordships taking as a whole the direction on this part of the law, find no reason to suppose that the jury were in any way likely to be misled.

On the 24th March the case came on before the Chief Justice, Mr. Justice Kulwant Sahay and Mr. Justice Davle and a special jury of nine. It lasted 50 days.

On the 4th June the Chief Justice summed up. He directed the jury that it was unnecessary for them to give a separate verdict on each assignment of perjury or each charge of fabricating evidence. The jury found the three original prosecutors guilty on every charge. They acquitted the Sub-Inspector of perjury, but found him guilty of conspiracy, and of fabricating false evidence. They acquitted the doctor of conspiracy, and of fabricating false evidence, but convicted him of perjury. Thereupon the accused were sentenced to the terms of imprisonment already mentioned.

Dealing first with the charge against the doctor their Lordships are satisfied that his conviction for perjury was not justified, and cannot be allowed to stand. The substance of the case against him was that he did not in fact hold the opinion that the injuries were ante-mortem. Now this statement had appeared in the post-mortem report, and in respect of it the jury had acquitted the doctor of fabricating it, following an intimation from the Chief Justice that they would be well advised to find that the charge of fabricating the report had not been made out. Appreciating the absence of any sufficient evidence that on the 4th August in stating his conclusion in the post-mortem report, the doctor was stating something that he knew to be untrue, the Chief Justice suggested to the jury that on the perjury charge which related to the 5th December, they might find that the accused did not in fact hold the opinion he expressed in the witness box by considering those things which were before him on the 5th December quite apart from the things which were before him on the 4th August. But oddly enough there were no further facts before the doctor at the Sessions except two which would undoubtedly tend to confirm his opinion, viz.:— (1) That his chief had endorsed in writing agreement with his conclusion; (2) that the prosecutors had already before the

magistrate given evidence that Jamadar had in fact been assaulted; and there had been no cross-examination to indicate that their evidence was false. The facts that the Chief Justice impressed upon the jury were in no sense new facts at the Sessions. They were that at the present trial, the accused being asked for an explanation of the congestion of the organs, attributed the injury to the heart to hypertension, and that that theory must be newly formed or it would have been cross-examined to; and secondly that when asked generally whether he wished to add anything he did not refer to the suggested absence of blood in the abdominal cavity.

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

The fact is that the case for the prosecution broke down as

soon as they failed to establish that the doctor was a party to a conspiracy with the prosecutors and the Sub-Inspector to bring a false charge against the then accused. On this point the prosecution failed to show that the doctor had ever heard of the deceased or his relatives or the accused. It was suggested that he knew the Sub-Inspector, and had recent written communication with him. Evidence to establish this was entirely lacking, and there can be no question that the verdict of the jury on this charge was inevitable. But on this footing there never was any motive at all for the doctor deliberately giving a false opinion. The charge of perjury could never have been even put on its legs if it were not for the excessive importance attached by the Chief Justice to the evidence of the doctors called by the prosecution that they would have expected much more blood in the pericardial cavity. The Chief Justice seems to have left the jury the choice of alternatives. " I must point out to you that the very considerations to support the theory that his opinion was honestly given are those upon which it can be most satisfactorily shown that at any rate he must be a most infernal fool." " If Jamadar died of disease and if, as the doctor says, no blood was found in the abdomen that fact should have struck him at once as conclusive against the view that the injuries were antemortem. On the other hand supposing Jamadar did die of injuries then the abdomen would have been full of blood and in that case he was a fool not to have noticed it. In any case he would seem to be a person who is not fit to do post-mortem work. If that be the state of his intellect then it may be that he might have held such an opinion as he expressed."

After opinions so expressed the jury may well have thought that any one possessing a medical degree from Calcutta University and appointed an Assistant Civil Surgeon could not have reached the depth of incompetence suggested, and that they were driven to the only other alternative, perjury.

It seems to have escaped them and the Chief Justice that the same considerations apply to the opinion expressed in the post-mortem report in respect of which the doctor was acquitted. It is not necessary here to discuss the degree of lack of skill in making the mistake if mistake it were of omitting to infer from the absence of the expected amount of blood that the ruptures were caused post-mortem. In view of the statement in the report that the abdominal cavity had faecal odour and some fluid and in the deposition that in the body cavity there was some solid faecal matter it was not correct to tell the jury that the doctor said that there was no blood in the cavity. In discussing the actual condition which might be expected it seems probable that the time that had elapsed since death, and the conveyance of the body on a stretcher over 50 miles of country, some of it a rough jungle track, would have to be considered. But when it is remembered that the story presented to the doctor was one

of alleged assault; that the internal injuries found were obviously the result of violence, that at no relevant stage was it ever suggested to the doctor that violence had been applied after death, and that the only suggested disease cholera was clearly negatived, it does not seem remarkable that a medical man even with greater experience than this doctor should honestly have come to the conclusion that death was due to the alarming injuries which he found. In their Lordships' opinion there was no evidence of any kind upon which he could properly have been found guilty of perjury. Their Lordships feel bound to express the opinion that Dr. Gaya Prasad has been the victim of a serious miscarriage of justice and that the result of the hearing is to leave no stain on the integrity of his character as a professional man.

It is right to add that on the close of the case for the appellant leading counsel for the Crown with the candour which always characterises him announced that in view of the acquittal of the doctor on the other charges he could not support the conviction, and did not contest the allowance of the appeal.

It is now necessary to deal with the charge against the Sub-Inspector of Police. The charges upon which he has been convicted are :—

1. Conspiring with the three villagers to fabricate and give false evidence with the intent to procure conviction of the six accused of a capital offence.
2. Fabricating evidence as to seven cases by entries in his diary—in the fourth case by altering an initial in the post-mortem report. Of the seven diary cases the prosecution abandoned 1 and 5 and the Judge ruled that there was no evidence as to 7.

On the question of conspiracy the Judge directed the jury that though the accused believed that the story of murder was true he might yet have conspired with the prosecutors that they should give the detailed evidence which they did give and that he should make false entries in his diaries. This appears to their Lordships likely to mislead the jury. There was no direct evidence of concert between the alleged conspirators. It had to be inferred from a number of facts. No doubt it is possible that the offence of fabricating evidence to obtain a capital conviction can be committed though the offender believes the accused to be guilty, and indeed though the accused is in fact guilty. And if the offence can be so committed, in like manner a conspiracy so to commit the offence may be established. But in this case the substance of the case is that the prosecutors invented the whole story of an assault and of course knew their story to be false. If the Sub-Inspector similarly knew or believed the charge to be false, and fabricated evidence in support of it, one can understand a jury being asked to infer a concert of the Sub-Inspector with the prosecutors to achieve the wicked result both are aiming for. But if one set of alleged conspirators know the

charge to be false, and the other alleged conspirator has no such knowledge but believes the charge to be true, and it is his duty if true to pursue it, the inference of any concert between the two sets of conspirators is so far weakened as, measured by the standard of proof required in a criminal case, to disappear. But the summing up on this point is attacked on another point which it was essential to the accused Sub-Inspector to have put before the jury, and which does not appear to have been mentioned to them in this connection. The case of conspiracy against the Sub-Inspector is based upon his treatment of the villagers who supported the case for the defence that Jamadar had died a natural death from cholera, and that the injuries might have been caused artificially; and his omission to record statements to that effect in his diaries. It is also stated that he delayed the arrest and charge of the accused until he ascertained whether there was any bribe forthcoming from them. But it is obvious that whatever doubts the Sub-Inspector may have had in the first two days of the inquiry would be removed as soon as he received the post-mortem report, which now must be taken to have been made independently by the doctor without conspiracy between him and the Sub-Inspector. A charge of murder by assault is made; the post-mortem discloses the most serious internal injuries with the opinion of the Assistant Surgeon confirmed by the Civil Surgeon that death was caused by the injuries. It is difficult to imagine what view would be formed by any intelligent policeman other than that the prosecution story was true and the defence story was false; and that whatever wealth of evidence was forthcoming in support of the defence merely indicated that the village possessed a horde of liars. This was the actual effect produced on the mind not only of the Sub-Inspector but also of his superior officers whose position in the matter was strangely depreciated in the summing up. In India, as elsewhere, a charge of murder is not left to the discretion of a Sub-Inspector of Police. The Superintendent and the Deputy Superintendent investigate for themselves, check the report of the Sub-Inspector, and the Superintendent or some higher official determines what charge is to be made. This course was followed.

The Superintendent went to Rohtas; the Deputy Superintendent, Ram Narayan Singh went to Balbhadarpur, and, independently of and in the absence of the Sub-Inspector, took the evidence of witnesses and heard villagers put forward the case for the defence that the death was due to cholera and that the injuries must have been caused artificially. He laughed at the suggestion. He was called as a witness for the prosecution, and his evidence at page 454 in answer to the Court, who asked if it struck him as unimportant, was " At that time it appeared to me absurd and we simply laughed at the defence set up. We thought it absurd in the face of the medical opinion." Elsewhere, at p. 419, he said " he was already overwhelmed with the

medical opinion that the death was due to the injuries and that they were ante-mortem"; and at p. 447 the following question and answers appear to represent accurately the official view.

"Q. Is it true that during the police investigation or supervision by the higher officials the doctors opinion is the guiding factor in the cases? A. Yes, plays a very important part. Q. And in this case, too, so far as your supervision was concerned the doctor's opinion was the guiding point? A. Yes, my supervision, and the Superintendent of Police's supervision."

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

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

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

the case for the defence of the Sub-Inspector was not left to the jury, and that there was no evidence upon which any jury could come to the conclusion that the Sub-Inspector had conspired to fabricate or give false evidence. Their Lordships have no hesitation in coming to the conclusion that the conviction on this charge must be set aside.

The conviction for fabricating evidence must also be set aside. A question of law arose at the trial upon which the learned judges do not appear to have been in agreement, whether to enter a false record in a police diary can be said to be fabricating evidence at all, especially as clauses 162 and 172 of the Criminal Procedure Code appear to negative the admissibility of the entry as evidence save for the purpose of contradicting a witness whose statement is recorded in writing, or of contradicting the police officer himself. Their Lordships did not find it necessary to hear argument on this point from the appellant's counsel, and they do not propose to give any decision upon it. They leave the doubt to be resolved on another occasion. But the charge as framed is one of making false entries in diaries under five different dates as well as making an alteration in the post-mortem report. This charge involves at least six different offences, the falsity of each entry and the intention with which each was made require to be separately ascertained and established in each case to the satisfaction of the jury. The distinct offences were, it appears, separately charged in the information sufficiently to comply with section 233 of the Criminal Procedure Code. The Chief Justice, however, directed the jury that if any one item were established against the Sub-Inspector they could give a general verdict of guilty on the charge of fabricating evidence. The result is that it is impossible to know whether the jury convicted on all or only one of the offences alleged, and if on one on which. A notable instance is item C, which records that the Inspector went to the place of assault and found hoof marks and the ground trampled with footsteps. This statement was repeated by the Sub-Inspector in his deposition at the Sessions and was assigned as perjury in the perjury charge upon which the jury acquitted him. And on this very charge the Chief Justice directed the jury that they should be very slow to come to the conclusion that it was perjury; and that the evidence was slender that at the Sessions Court the Inspector knew that this was a false case and that he was putting up a case of murder against men whom he knew to be innocent. "I think," he said, "you will be very slow to come to that conclusion!" It was part of the case for the prosecution that some of the diaries were written up together on the 6th August; and it is quite possible that if the jury had been directed that if they believed that to be done the writing up at one time might constitute one offence if the entries were false. But they were not so directed and some of the items stand as separate quite apart from such evidence.

Their Lordships do not find it necessary to discuss the specific facts of each item. It is sufficient to say that the considerations which they have expressed as to the conspiracy charge apply to these items, and that if they had been presented to the jury the verdict would almost inevitably have been different. The result is that on this charge also the conviction should be set aside.

For the above reasons at the conclusion of the argument their Lordships humbly advised His Majesty both appeals should be allowed and that the convictions of both Mr. Gaya Prasad and of Dwarkanath Varma should be set aside.

Their Lordships cannot part with the case without recording their opinion that the procedure adopted in this case of an ex-officio information was unfortunate and was undoubtedly prejudicial to the accused. It was a case where witnesses who were available at the former trial but not called, were called for the first time; and where witnesses who had given evidence at the former trial were called to contradict that evidence at the present trial. If the ordinary procedure had been adopted the evidence would have been given before a committing magistrate and the accused would have had ample notice and time to prepare. As it was there was no preliminary hearing, and though they received from the Crown in advance statements of what the witnesses would say, such statements had not been made on oath, and in some cases there is complaint of their being handed to the defence very late. Some of the evidence appeared to have been obtained while the trial was proceeding. This case did not differ from other cases of perjury and conspiracy which have been tried by the ordinary procedure; and its result it is to be hoped will be to discourage the recourse to unusual procedure in similar cases in the future.

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

In the Privy Council.

DWARKANATH VARMA

v.

THE KING-EMPEROR

GAYA PRASAD

v.

THE KING-EMPEROR.

(*Consolidated Appeals.*)

DELIVERED BY LORD ATKIN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1933.