

Abdullah and ors. Vs. Emperor

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Court : Allahabad

Decided On : Apr-30-1923

Reported in : AIR1924All233; 92Ind.Cas.145

Judge : Grimwood Mears, C.J. and ;Piggott, J.

Appellant : Abdullah and ors.

Respondent : Emperor

Judgement :

1. Their Lordships after referring to the incident and commending the bravery of the Police and the admirably way in which the lower Court and Counsel had handled the case, proceeded:

2. The charges against all the accused were six in number. There was a seventh charge affecting twenty-six only out of the entire number and an eighth charge affecting the same twenty-six and twelve others in addition. These charges are set forth in detail in the opening pages of the judgment under appeal and we do not propose to recapitulate them. They admit, however, of a certain classification. We have already spoken of the crowd which attacked the Police as an assembly of persons moving in a certain formation and animated by a definite purpose. It is an essential part of the case for the prosecution that the nucleus of this crowd consisted of a body of perhaps 1,000, perhaps 1,500 persons, which set forth from the little village of Dumri Khurd, situated some two miles or rather less from

Chaura Police Station. It is alleged as against all the accused persons that they formed part of this original assembly at the village of Dumri and that before their departure from that place, they had entered into an agreement amongst themselves to do certain illegal acts of such a nature as to render them liable to punishment under Section 120B of the Indian Penal Code. This has been spoken of in argument as the 'conspiracy charge' and we propose to refer to it hereafter under that designation. For the present, the point which we have to note is that it was an integral part of the case for the prosecution in the Court below that the events which occurred later in the day, in the neighbourhood of Chaura Police Station, followed upon this alleged criminal conspiracy at Dumri Khurd in such a manner and were so connected therewith not merely by sequence of time, but by the link of causation as to make the conspiracy at Dumri and the subsequent assault on the Policemen at Chaura parts of the same transaction, within the meaning of that expression in Section 239 of the Cr. P.C.

3. The next five charges, Nos. 2, 3, 4, 5 and 6, relate to what took place on the afternoon of the 4th of February 1922, at Chaura Police Station and in its immediate neighbourhood. They may be described as different presentations of one and the same charge in lesser or in more aggravated forms. They suit with the second charge, which simply alleges as against all the accused persons that they were members of an unlawful assembly, within the meaning of the definition in Section 141 of the Indian Penal Code, at the time when force or, violence was used by members of the said assembly, in prosecution of the common objects thereof. This charge is, therefore, laid under Section 147, Indian Penal Code. It is further the case for the prosecution that the, force or violence thus used extended to the murder of twenty-three Police and chaukidars, the plundering of property belonging to the said officials and to Government, the destruction by fire of the Police Station buildings and the voluntary causing of hurt to various Police and ckaukidars. We have, therefore, charges drawn up under Sections 302, 395, 436 and 332, Indian Penal Code, read in each case with Section 149 of the same Code.

4. The seventh and eighth charges', which affect some of the accused persons only, may be grouped together. They deal with the damage inflicted on the

Railway line and on the telegraph wires and are framed respectively under Section 126 of the Railways Act IX of 1890 and under Section 25 of the Indian Telegraph Act No. XIII of 1885.

5. There is, as a matter of fact, one further charge of such slight importance that it had been almost overlooked. It affects a single one of the accused, the appellant Sikhari, and is framed under Section 412, Indian Penal Code. In substance it refers back to the charge of dacoity under Section 395/149, Indian Penal Code, in which Sikhari was already involved, and alleges against him, in the alternative, that, if he was not actually concerned in the said dacoity, he was at any rate subsequently found in possession of property which had been stolen in the course of the same. The charge is somewhat loosely worded and does not allege against Sikhari the essential point that he knew that the possession of the property in question had been transferred by the commission of dacoity, but this is not a matter upon which we find it necessary to insist.

6. Now the case for the appellants is that no offence of criminal conspiracy was committed by any persons at Dumri Khurd on the morning of the 4th of February 1922; or in the alternative that, if there was such conspiracy, it was not one in respect of which a prosecution could be instituted without an order in writing by the Local Government in view of the provisions of Section 190-A of the Indian Penal Code. To this contention we shall have to revert later, The point immediately before us is that, whatever offence may or may not have been, committed at Dumri Khurd on the forenoon of the 4th of February 1922, it was not one BO connected with the offences committed at Chaura later in the same day that it could fairly be regarded as 'committed in the same transaction' within the meaning of Section 239 of the Cr.P.C. Upon this plea the appellants base the further contention that there has been a misjoinder of charges, sufficient to invalidate the entire trial in the Court below. We think we do no injustice to Pandit Madan Mohan Malaviyd, the very able Counsel who argued this part of the case on behalf of the appellants, when we say that it is not our impression that he seriously pressed this argument to the logical conclusion that, if we found it correct, we should have no option but to order a re-trial of the entire case. He is certainly not to be blamed if he hesitated to face the possible consequences of such a contention, were it to

prevail with the Court. Our own view of the question has been already indicated by the expressions we have used in setting forth the charges, but we should perhaps amplify it. When the learned Sessions Judge entered upon the trial of this case, and was faced with the question, whether the provisions of Section 239, Cr.P.C., did or did not authorise him, not merely to try the 225 accused persons before him at one and the same trial, but to try them on each and all of the charges set forth against them under the order of the Committing Magistrate, he could not possibly know what conclusion he would arrive at after hearing the whole of the evidence. He had to look to the case for the prosecution as set forth in the charges themselves. He was, therefore, for the reasons which we have already indicated, warranted by law in entering upon this trial of the 225 accused on the charges as framed. The convictions which he has recorded are warranted by the conclusions at which he arrived on the evidence. As he had to regard merely the 'charges,' it was not necessary for him to consider what the position would be, if he had eventually come to the conclusion, either that no offence punishable under Section 120 B, Indian Penal Code, was committed by any persons at Dumri Khurd on the forenoon of 4th February 1922, or that if any offence was so committed it was one excluded from his cognizance by Section 196-A of the Cr.P.C. In any event, the acquittal of all the accused persons on the conspiracy charge would have removed any possible objection to the validity of the trial. It is possible that in certain events the prosecution may have to suffer the penalty of having attempted to prove too much, by seeing a verdict of acquittal recorded which might otherwise have been avoided.

7. We do not feel that we are greatly concerned at this stage to discuss the form of the various charges, so long as we are satisfied that there has been no such misjoinder of charges as to force upon us the duty of vindicating the law by quashing all the convictions upon this ground alone, and the consequent responsibility of considering the question of the ordering of a new trial upon such charge or charges as we might direct to be framed. On the case for the prosecution, the three groups of charges as we have set them forth were in respect of offences committed in the same transaction within the meaning of Section 239, Cr.P.C. The final charge against the accused Sikhari alone, was really in the nature of an alternative to one of the others. There was nothing illegal

in the procedure adopted by the Trial Court. The conception we have formed of our duty in this matter is that we ought to concentrate our attention upon the one substantial charge in the case. There is not one of the appellants now before us who has been convicted upon any of the other charges, but has been also convicted of the offence of murder committed in the course of a riot and punishable under Section 302-149, Indian Penal Code. In respect of any of the appellants against whom this charge is not, in our opinion, satisfactorily proved, but who is not entitled to a clear verdict of acquittal upon all the charges, the only offence, in our opinion, established is that of simple rioting punishable under Section 147, Indian Penal Code. This offence is set forth in the second of the charges framed. As regards the conspiracy charge there are certain aspects of the case which we shall have to consider further, because of their bearing upon the important and essential question of the common object or objects of the unlawful assembly around Chaura Police Station referred to in the charge of murder. Otherwise we propose to concentrate our attention on the charge under Section 302/149 of the Indian Penal Code and to consider whether this is established against all or any of the appellants. The question of sentence can be completely and adequately dealt with under that single charge. So far as this Court is concerned no lesser sentence than that of transportation for life can lawfully be imposed on any accused person found guilty upon that charge.

* * * * *

8. On the occasion of the Wednesday market--the 1st of February 1922--a body of volunteers, thirty to forty in number, moved upon Mundera and halted outside the village in the morning, waiting to commence operations as soon as the bazaar was fairly under way. The shop-keepers and the agents of the substantial land-owner of the village were on the alert. The latter came out and questioned the volunteers and told them bluntly that Babu Sant Bakhsh Singh would not allow them to interfere with his market. Reading a little between the lines of the evidence there can be no doubt that any attempt at actual coercion on the part of the volunteers would have been resisted by force. Moreover, it is clear that word had been sent to the Local Police Station, for Sub-Inspector Gupteshar Singh marched into Mundera with a considerable body of Police and chmtkidars. Before his arrival,

however, the volunteers had abandoned their enterprise. In face of the resolute attitude of the agents in charge of the bazaar, the volunteers felt themselves too few in number to attempt anything. They scattered and most of them returned to their homes.

9. Two points, however, require to be noticed. The leaders of the volunteers, before they went off, distinctly told their interlocutors that they would return on the following market day (Saturday, the 4th of February) in such numbers as to enforce compliance with their demands. There is naturally some room for controversy as to the precise language used; but that it was a threat, and was understood as such, is fully proved, not only by the direct evidence, but by the fact that the landholder sent a trusted agent to Gorakhpur to appeal personally to the District Magistrate for special Police protection for his market on the following Saturday. There can be no doubt whatever that such an appeal was made, and that it resulted in the arrival by train at Chauri Chaura Railway Station, at about 9 A.M., on the 4th of February of a small body of armed Police, nine muskets in all.

10. The other circumstance, trifling in itself but of far reaching consequence, is that a few volunteers did enter the Mundera bazaar after the gathering had dispersed. There is no evidence worth speaking of that they actually did anything provocative, and we give accused generally the benefit of, our belief that the volunteer enterprise had really been given up for the day and that the individuals who entered the bazaar did so on private business of their own. Unfortunately, their mere presence in the bazaar proved, under the circumstances, to be provocative. Sub-Inspector, Gupteshar, Singh reached Mundera under the impression of an emergency calling for action on his part and he found the persons in charge of the bazaar excited and alarmed. There is some conflict of evidence as to the details of what followed. Indeed the one witness from whom one would have expected a clear and coherent account, Police Constable Siddiq (the one Constable who survived the massacre) is confused and self-contradictory. Taking the evidence as a whole, it seems clear to us that the Sub-Inspector was, at some time in the forenoon, at the office of the local land holder, when certain, volunteers were brought before him by Policemen who had found them in the bazaar. There were probably only two of them; there may have been three or four, but one of them

was certainly the accused Bhagwan Ahir, whom we have spoken of the 'drill-instructor.' The Sub-Inspector spoke roughly to the volunteers. His wrath was particularly directed against Bhagwan, whom he abused for drawing a pension from Government while taking an active part in an 'unlawful association,' whose ostensible object was the overthrow (no matter by what means) of the Government whose salt: he was eating. There is an allegation that Bhagwan answered insolently; there is also a suggestion that the Sub-Inspector was in some way further inflamed against the man by one of the landholder's agents named Raghubar, Dayal. What we are certain of is that the Sub-Inspector thoroughly lost his temper and struck the man; we hold it proved that he gave him two cuts with a light cane, and he very probably also struck him with the open hand.

11. Bhagwan and any volunteer or volunteers with him thereupon decamped and left Mundera altogether. No arrests were considered necessary by the Sub-Inspector and no official report was ever made as to any collision on that date between the Police and volunteers. A curious fact is that we have it, not only from the evidence of Siddiq but from a statement made by the accused Bhagwan himself (Ex. 256), that the latter voluntarily presented himself at the Police Station the following morning (the 2nd of February) and had an explanation with Sub Inspector Gupteshar Singh. As might be expected the accounts of this explanation differ somewhat; but they agree to this extent, that explanations and apologies were tendered and received and that, as between the principal actors in this episode, the unfortunate incident seemed to have been brought to a conclusion satisfactory to both parties.

12. There were nevertheless other interested parties who saw in the Sub-Inspector's loss of temper and his unjustifiable action a lever which might be worked with impressive results. For what immediately followed we turn to the evidence of the approver Sikhari. We agree with the learned Sessions Judge that this man was endeavouring to earn his pardon by making a clean breast of all facts within his knowledge. We find moreover abundant corroboration of all matters in his evidence which strike us as essential. He tells us that on the evening of the thwarted enterprise at Mundera, that is on Wednesday, the 1st of February 1922, there was a small gathering at his house. Bhagwan Ahir was

present, and so also were ringleaders such as Nazar Ali, Lal Mohammad, Mahadeo, son of Thag, and Ramrup ibarhai). What Sikhari understood from the conversation which followed was that, not Bhagwan only, but Mahadeo and Ramrup as well, had been beaten by Sub Inspector Gupteshar Singh. It was asserted that Babu Sant Bakhsh Singh (the owner of the Mundera bazaar) had caused them to be seized and brought to his office at Mundera, where they were beaten by the Police. On this it was agreed that letters should be sent out to volunteer associations in neighbouring villages, with a view to their assembling in a body strong enough to warrant them in paying a visit to the Sub Inspector and 'asking him why he had beaten our men.' Early on the following morning (Thursday, the 2nd of February 1922) the same persons came together again at Shikari's house and as the officials and ringleaders were illiterate, a body of eleven, this witness Nakched P.W. No. 125), was employed to transcribe (sic) copies of a letter to be sent out as a summons to neighbouring volunteer. There was some discussion as to the actual place to be chosen for the proposed gathering. Someone seems to have observed, shrewdly enough, that if this were fixed in the immediate neighbourhood of Chaura Police Station, the Sub-Inspector would break up the gathering by arresting the volunteers piecemeal as they arrived. Eventually a threshing floor at Dumri Khurd, in the immediate neighbourhood of Sikhari's house, was fixed upon for the meeting place. It was determined that the volunteers should first march to Chaura Police Station to settle their differences with Sub-Inspector Gupteshar Singh and thence proceed northwards to the Mundera bazaar in order to impose their will on the re-calcitrant shop-keepers of that place. There would thus be a long day's work before them, which could scarcely be undertaken fasting. Arrangements were, therefore, made for the collection of supplies in the shape of raw sugar which could be distributed to those attending the meeting. We have independent evidence that this was actually done. The five letters actually issued were to serve as summonses for five hundred to seven hundred and fifty men; but we note with interest that Sikhari says they were confident from the outset that more than this number would assemble once the news got abroad. They expected a gathering of between two and three thousand men.

13. The boy Nakched was perhaps a little confused under the stress of a severe cross-examination; but in the main he has told a consistent story, and we have no doubt he was trying to tell the truth to the best of his recollection. The account which he gave to the Investigating Police on the 16th of February 1922 (vide Ex. 13(sic)) of the contents of the letters he was required to Write was given while his memory was still fresh. As a summary of the essentials of the message it is in complete accordance with the evidence subsequently given by the witness and we are prepared to accept it as an accurate summary It runs as follows:

The Sub Inspector of Chaura seeks out and beats the volunteers; therefore bring all your volunteers to Dumri. We will go and enquire from the Sub-Inspector why he makes a practice of beating the volunteers; if he wants to send us to jailor to arrest us he may do so with all of us.

14. The meaning of this last pharse is obvious enough: the volunteers were to assemble in such numbers as to make it palpably-preposterous for the Sub-Inspector to attempt to arrest all of them. It was suggested in argument that we ought to see in these words a declaration beforehand, on the part of the leaders of the volunteers, that one and all of them would abide faithfully by their pledge to absolute non-violence submitting meekly to arrest or to any other action which the Police might taken within the limits of their lawful authority. We are impressed rather with the ironic turn of the phrase and its dangerous implications. The volunteers had only to assemble in sufficient numbers, and to be resolute enough in their determination that nothing should be done to any one of them which was not clone to the whole body and they impose their own will; the arresting of even a couple of thousand men was a known impossibility.

15. In his evidence at the Sessions trial Nakched attempts a somewhat fuller statement. As we read his evidence, he purports to give from memory a complete transcript of the letters. In this version we find the provocative statement that the Sub-Inspector is seeking out the volunteers in order to beat them. The closing phrase appears in a confused form, with a reference both to beating and to imprisonment. The essential point remains the same: there was to be no beating of individuals, no arresting of individuals. In this version, however, there is a

reference to a further object for the assembly; they were to go on to Mundera and stop the sale of fish and of meat.

16. We do not think it would help the defence if we were to insist on this fuller account of the contents of the letters as it appears at page 543 of our printed record and we are a little sceptical as to the capacity of this boy of eleven to reproduce the entire contents from memory. We think it safer to stand by the summary of essentials which he gave while his memory was comparatively fresh. The volunteers were summoned to Dumri Khurd on the strength of a preposterously exaggerated account of the assault committed by the Sub-Inspector on the accused Bhagwan; the immediate object of the assembly was that they should march in an organized body to Chaura Police Station and ask the Sub-Inspector what he meant by it. The meeting was fixed for Saturday morning, the 4th of February 1922.

17. In the interval, further action was taken about which Sikhari apparently knows little or nothing, but as to which there is plenty of evidence. The accused Lal Muhammad sent in a report to the District head-quarters of the Khilafat Committee at Gorakhpur. The evidence on this point consists partly of documents seized by the Police, when they raided the Khilafat Office on the 5th of February, and partly of the evidence of various members of the Executive Committee of the Khilafat at Gorakhpur, whom the prosecution put into the witness-box one after another, in the hope of getting at the whole truth concerning this important aspect of the case. We do not feel that any very substantial measure of success has been attained. On one matter of detail there is a distinct conflict of testimony. Maulvi Subhanullah (P.W. No. 134y, seems positive that Lal Muhammad either brought his written report to Gorakhpur himself, or at any rate followed it up by a personal visit. The Secretary of the Khilafat Committee, Muhammad Sulaiman Adhami (P.W. No. 170), does not think that Lal Muhammad came to Gorakhpur in person, and is positive that Maulvi Subhanullah is making a mistake if he says (as he apparently does) that Lal Muhammad was sent from that gentleman's house to the office of the Khilafat Committee with his letter, or written report in his hand. There is a conflict of evidence also as to whether the paper, Ex. 95, is this report in original; indeed we are in some little doubt as to whether Lal Muhammad or any other

volunteer had the capacity to draft such a document. We are beyond all question dealing with the testimony of reluctant witnesses, who were as economical of the truth as they dared to be. Certain facts are, however, fully established, Lal Muhammad did cause to be conveyed to the office of the Khilafat Committee a letter or report of which Ex. 95 is at any rate a correct transcript. This report was sent in by hand, so that the information it conveyed could be, and undoubtedly was, supplemented by oral communication with the person or persons who carried it. The communication was one which called for an immediate answer: if any written answer was returned it has disappeared, nor can any trace of it be discovered in the correspondence registers of the Gorakhpur Khilafat Committee. Some sort of answer, oral or written, or both, was unquestionably returned.

18. The letter, Ex. 95, is to the effect that two volunteers, while peacefully engaged about their own marketing (the name of the bazaar is, not given), had been seized and severely beaten by the officer-in-charge of the Local Police Station. 'We, therefore, report this matter to your worships,' the letter concludes, in order that you may come and investigate the matter. It is because of your worships that we (ham-log, i.e., the local volunteers) have not committed any offence of any sort, for whatever action we take will be after inquiring from (you) our superiors.' A book has been produced (Ex. 92) which purports to be the abstract register of correspondence, received at the office of the Khilafat Committee at Gorakhpur: this register the witnesses called from that Committee have (not without some apparent shuffling and hesitation) admitted to be genuine. In this register there is an entry under date the 2nd of February, 1922, of a letter received from Lal Muhammad, Secretary, Chauri Chaura, the recorded summary of which is to the effect that the Sub-Inspector in charge of Chaura Police Station has severely beaten two volunteers, and the 'people of that place' were ready to assault the Police in return, 'but had been with difficulty restrained.' It need scarcely be pointed out that this is not an accurate summary of Ex. 95. There are various points about the appearance of Ex. 92 calculated to suggest a doubt whether this is really the correspondence register, as kept up in the regular course of business. No abstract register of correspondence issued from the Gorakhpur Khilafat Office is forthcoming; and in face of the description of the book Ex. 92 in its own heading we are not prepared to accept the belated assertion of Niaz Ahmad Arif (P.W. No.

172) that this Exhibit is in fact the only register maintained at that office for correspondence received and correspondence issued.

19. In considering the inference to be drawn from this' peculiar state of the evidence we bear, in mind the fact that no official or member of the Executive Committee of the Khilafat at Gorakhpur is now on his trial before us; but we are very definitely called upon to form an opinion as to the objects with which the National Volunteers assembled at Dumri Khurd on the morning of 4th of February and as to the resolutions come to at that gathering before the meeting proceeded to take action in pursuance of the same. Looking at the matter from, this point of view, we feel bound to record our opinion that the whole truth has not been disclosed in the evidence produced at this trial as to the communications which passed between the Executive. Committee of the Khilafat at Gorakhpur and the local leaders of the National Volunteer associations in the neighbourhood of Chaura in the course of the 2nd and 3rd of February 1922. In particular, we do not believe that any written answer was ever returned by or on behalf of the said Executive Committee to the communication received from Lal Muhammad. We strongly suspect, to put it no higher, that the register of correspondence issued from that office has disappeared, not because of anything which it did contain but because of what it did not contain; that is to say, because no entry appeared therein of any written answer to Lal Muhammad's report. It follows that an oral answer was returned and that it was of such a character that those responsible for it could not venture to reduce it to writing. Our suspicions on this point are strengthened by certain evidence, which will be noticed in due course as to what took place at the meeting at Dumri Khurd. These considerations warrant us in putting upon Lal Muhammad's letter the sinister interpretation of which it is undoubtedly susceptible. In substance and in effect this accused reported to his 'office' at Gorakhpur that the local volunteers had been roused by the outrageous conduct of the Sub-Inspector of Chaura to such a state of indignation that, if the officials would only give the word, they were prepared to teach that officer, and the Police generally, a signal lesson: and requested that some one should be sent down to look into the matter.

20. The reply to this communication was, as we believe and have already said, sent by word of mouth. The positive evidence as to its purport is to be found in the depositions of one or two 'Khilafat' witnesses, who say that it was to the effect that the volunteers should be patient. If they were speaking the truth, and a written answer had been returned to this effect, we are confident that either the writing itself would be forthcoming, or reliable secondary evidence as to its purport. We are driven to form our opinion on this point from the evidence as to what actually took place on Saturday, the 4th of February.

21. From early morning on that day preparations were made at Dumri Khurd for the expected gathering. The place-chosen was a threshing floor in front of the house of the accused, Behari (Pasi). The local volunteers arranged the ground, sacking being spread to provide seating accommodation for the central group of leaders. Some modest provision was made for refreshments by way of baskets containing raw sugar. Flowers were collected and made into garlands for the adornment of those whom the assembly might particularly desire to honour. From about seven in the morning a steady stream of volunteers began to flow in. There is evidence scattered about the record, in the depositions of witnesses from various villages within a radius of several miles from Dumri, which shows the manner in which these men had been summoned by messages and mustered in little groups of half a dozen or so, before marching for the appointed rendezvous. Harpal, the village watchman of Dumri (P.W. No. 34), had received instructions beforehand. He watched the proceedings until two or three hundred men were collected, ascertained from the general trend of the conversation that the intention was to march on the Mundera bazaar and then slipped away to report the matter at Chaura Police Station. He says that volunteers were still streaming in when he left Dumri Khurd. The approver Sikhari (P.W. No. 1), estimates that five or six hundred men had come together by about 8 A.M. and that the numbers had increased to about one thousand when the meeting was brought to a close by the organized body of volunteers setting out for Chaura Police Station. So far as we have been able to check this estimate by the evidence of other witnesses, it certainly does not appear excessive: we are satisfied that the men who set out from Dumri Khurd for Chaura Police Station were at least one thousand in number, and may well have been fifteen hundred.

23. For the proceedings at this meeting, generally spoken of in the evidence and in the judgment as 'the Dumri Sabha,' we have before us a very considerable body of evidence. In the first place, we have the depositions of the two approvers, Shikari and Thakur. Next we find references to this matter in statements made under Section 164 of the Cr.P.C., to a Magistrate, before the commencement of the enquiry preliminary to commitment, by a number of accused persons. The most important of these are the statements of Ramrup Baghai (Ex. 225), Bhagwan Ahir (No. 226), Mahabit Saithwar (No. 246) and Haghbir Sunar (No. 251). In the third place, we find more or less detailed accounts of the affair from three witnesses, Jakat Narain Pande (P.W. No. 91), Bhawani Prasad Tewari (P.W. No. 25) and Shankar Dayal Rae (P.W. No. 102). It is quite beyond question that these three men were present at the occurrences they profess to describe. The first strikes us as the sort of vain and irresponsible busy-body whom one so often finds thrusting himself to the front in connection with some political or social movement. The reception he met with on his first arrival at Dumri is enough to show that the peasantry of the neighbourhood not only respected his caste and were inclined to take him at his own valuation professor of religion but looked upon him as a person of some authority in-connection with the non-co-operation movement. We see no reason to believe that he was ever accepted as such by the organizers of the Congress or Khilafat movement in Gorakhpur itself; nor on the other hand do we see any real ground for regarding him as a Police spy, though he was accused, of being one by indignant volunteers before the meeting at Dumri was over. His own account of what took him to Dumri is that he hastened to the place as soon as he heard what was going on because he had formed a low opinion of the character of local volunteers and was persuaded (from what had happened at Mundera on the previous Wednesday) that they were going to get themselves into trouble by acting contrary to the true precepts of non-violence as laid down by 'Mahatmaji' Gandhi. He naturally tries to put his own conduct in the most favourable light, and we are not greatly concerned to inquire how far honest zeal for what he thought right, mingled with mere curiosity and a desire to gratify his self-importance in determining his conduct. He certainly did go to Dumri and he does seem to have exerted himself, to the best of his ability, to prevent mischief. Bhawani Prasad is a land-holder and village headman of Pokharbinda, a hamlet

which had sent a contingent of volunteers to Dumri. He was on friendly terms with Sub-Inspector, Gupteshar Singh and was sent for to the Police Station on the Saturday morning. He was relieved to find the small contingent of armed Police arriving from Gorakhpur, and he went to Dumri, on the Sub-Inspector's suggestion, to see what was really happening and to warn the volunteers that they had better abandon whatever enterprise they were meditating, whether against Ghaura Police Station or Mundera bazaar, especially in view of this re-inforcement which the Police had received. Rae Shankar Dayal is a resident of the Ballia District who was making a living in Gorakhpur out of District Board contracts and a contract which he held in connection with the Mundera bazaar. It was his interest in this matter which took him to Dumri to see what the volunteers were really doing. He has played an ambiguous part in this trial and portions of his evidence have been severely commented on by the learned Sessions Judge. We are satisfied that he may be regarded as a witness distinctly friendly to the accused persons.

24. The effect of this evidence as a whole is to corroborate the account of the meeting at Dumri given by the approver Sikhari, at least in its broad outlines, sufficiently to enable us to feel certain of its straightforwardness and general accuracy. Of the present accused, the men who took the lead were Nazir Ali and Lal Muhammad; also, in a lesser degree, Shyam Sunder and Abdulla alias Sukhi; with these must be placed Sikhari himself, a man of the name of Indarjit whom the Police had not been able to arrest up to the time of the trial in the Court below and an ascetic with a pair of tongs, an article commonly carried by religious mendicants of a certain class. He is frequently referred to in the evidence ; and was probably a mischief-maker from a distance. No one seems to know his name. Jagat Narayan Pande and Shankar Dayal were cordially received on their arrival, garlanded and permitted to address the meeting. The latter was apparently mistaken for some emissary from head-quarters whom the volunteers were expecting, under the description of 'the Ahrauli Babu.' Both tried to persuade the gathering to break up and to abandon their expressed intention of proceeding in a body to Ghaura Police Station and Mundera bazaar. Jagat Narayan especially exerted himself in this sense, appealing to the precepts of 'Gandhiji' and to the fact that armed Police. had reached Chaura. He was violently opposed by Nazar Ali, also by Lal Muhammad, Shyam Sundar and Abdulla alias Sukhi. He was told that

he was no better than a Police spy, ridiculed, abused and finally turned out of the meeting with contumely. Eventually Nazar Ali earned the entire meeting with him in a resolution that they were to march in a body, first to Ghaura Police Station, to ask the Sub-Inspector why he had beaten two volunteers, and thence to Mundera bazaar to stop the sale of intoxicants, of meat and of fish. These objects were to be pursued unflinchingly and carried through in the teeth of any opposition that might be encountered. No one was to start on the expedition who was not prepared to venture his life on the hazard. When challenged to do so by Nazar Ali, all those present bound themselves by oaths to persevere to the end. Anyone who turned back after setting forth with the rest was to be considered, if a Hindu, to have eaten cow's flesh, if a Musalman, the flesh of swine. What may be a coarse variant of the oath, but is more likely to be a description of any defaulter, is mentioned by Sikhari as particularly applicable to anyone 'who should retreat from before the bullets at the thana.' The assembly was a large one and it is easily conceivable that more than one form of oath was used. The coarser one, be it oath or description, was abhorrent in its terms and might well appeal more particularly to those elements-in the crowd, drawn from the lowest strata of society, which are abundantly represented in the list of appellants before us.

25. On all the points hitherto set forth the evidence as to the proceeding at this Dumri Sabha is clear, consistent and overwhelming. There remains, however, one detail which calls for separate consideration. When Sikhari made his first statement before a Magistrate on the 16th of March 1922, he said, speaking of a late stage of the meeting. 'In the meantime two Muhammadans, one of whom was wearing spectacles, came there. I do not know where they lived. They took out a piece of paper and began to read it. Then they began to sing. In this song the names of Muhammad Ali and Shaukat Ali were uttered, again and again, and it was about their imprisonment. After singing the song they went away to the west. Then, we got up and passing along the raised borders of the fields reached the road.' In his evidence at the trial, after speaking of the ejection of Pandit Jagat Narayan from the meeting and the departure of Rai Shankar Dayal--it is curious to note that he ignores Bhawani Prasad altogether--Sikhari goes on to state--'Two other men came, one wearing green glasses who was of my stature, but older, about 32, who from his words appeared to be a Musalman; the other was younger

than I--I cannot say whether he was a Hindu or a Musalman. The man with glasses began to read from a slip of paper singing 'we are going for two years each.' We understood going to jail. Then Nazar Ali stood and publicly administered an oath.'

26. On the 13th of March 1922, the accused Bhagwan Ahir made a statement before a Magistrate, which contains the following passage: 'Then two Muhammadans wearing spectacles came there. They began to sing a song describing the deeds of Shaukat Ali and Muhammad Ali. On hearing the song all became angry and said, 'Come, we will all go to the thana.'

27. Four days later the accused Mahabir, son of Lalsa Saithwar, in a statement similarly recorded, told the Magistrate: 'Two Musalmans came there. One of them was wearing spectacles and the other had a beard. They came there and began to sing. After this all the volunteers, who were about three thousand, got up and started from there crying out, Mahatma Gandhi kijai.'

28. The accused Raghubir, son of Jaddu, is a sunar by caste a man of higher social position than the bulk of the accused. On the 4th of March 1922, he told a Magistrate as follows: 'Lectures were delivered. There was a Babu who in his lecture said that we should not go either to Mundera bazaar nor to the Police Station. If we went in a body there would be a riot. But no one listened to him. A Miyan, whose name and residence. I do not know, delivered a lecture and asked his hearers whether they were ready to die. They replied that they were ready. Then all started from there.'

27. It would be quite possible for us on the evidenee which we have already reviewed, to record our finding as to the nature of the agreement come to by the volunteers assembled at Dnmri Khurd and whether that agreement did or did not amount to a criminal conspiracy. We think it better, however, to proceed with the narrative of events. The evidence as to what the volunteers agreed amongst themselves to do cannot be altogether dissociated from the evidence of what they actually did. We shall have to consider, in connection with certain' statements made by the approvers Shikari and Thakur, if their testimony is or is not borne out by the subsequent conduct of the volunteers.

28. Up to a certain point there is no room for controversy as to the course of events. When the volunteers left the threshing-floor at Dumri, they made their way along the field boundaries to the broad, unmetalled road which runs from Gorakhpur to Deoria, by going eastward along which they would come to the Chaura Police Station, rather less than two miles distant. On this road the men were got into some sort of rough formation. The services of drill-instructor Bhagwan were requisitioned for this purpose. Flags which had been prepared beforehand were sent to the front and the crowd began to move under the guidance of their 'officers,' who halted them and moved them on again by the sound of whistles. They were in an excited mood, continually raising triumphant cries and acclamations. As a point roughly about half way to Chaura they came to Bhopa bazaar, where a road branches off to the left that is to say in a northerly direction, towards a Railway crossing, beyond which it leads directly to Mundera bazaar. This was the route which the crowd would have followed if they had not resolved to visit Chaura Police Station before going to Mundera. At this point they were met by the witness Awadhu Tewari a servant of Babu Sant Bakhsh Singh, the proprietor of the Mundera bazaar. The evidence of this witness as to what he saw at Bhopa corroborates Sikhari. The approver says that by that time the crowd had swollen to a total of 2,500 or 3,000 men. Awadhu puts the number considerably higher, but is probably exaggerating. He says the crowd came towards him carrying flags and raising triumphant cries. The leaders appeared to him to be the accused Nazir Ali and Shyam Sunder and the approver Sikhari. He gives an interesting and obviously genuine account of his conversation with them, when he endeavoured to persuade them to turn back or to disperse. Nazir Ali spoke with great insolence and remarked in an ironical tone that he was going on to the Police Station to get a beating. He raised his flag and the crowd moved on, still crying out 'Victory'. The witness hurried to the Police Station and told the Sub-Inspector what he had seen. In the meantime the crowd moved on as far as a building often referred to in the evidence as the factory of Lala Halwai. This brought them close to the Police Station enclosure which lies in an angle, where a short length of metalled road turns northward from the highway between Gorakhpur and Deoria and leads to a Railway crossing and the bazaar of Ohaura, beyond which it proceeds to Mundera bazaar. The Police Station enclosure

extends practically from the Gorakhpur Deoria highway on the south to the Railway crossing and the line of the Railway on the north side. The entrance to the Police Station is on the east, that is to say opening on to the short length of metalled road leading northwards from the highway to the level crossing. Opposite this entrance, and across the metalled road, were a few buildings, including the private quarters of the Sub-Inspector in charge of the Police Station. According to Sikhari the crowd was continuously increasing in numbers as they moved from Bhopa bazaar towards Chaura. We unhesitatingly accept his evidence as proving that when the crowd came to a halt beyond Lala Halwai s factory it was over 3,000 strong. Sikhari says 'they were in ranks overflowing the road on either side.' He adds: 'When we came to the factory we knew there was danger and that there was a guard with guns at the thana (Police Station). We were ready to sacrifice our Jives. We saw that the darogha (the Sub-Inspector in charge of the Police Station, i.e., Gupteshar Singh) was standing with Police and chaukidars. We supposed he was standing there to beat us. We went on because we considered ourselves to be in overwhelming numbers; and what could he do to us.' We ought perhaps to explain that the vernacular word used by the witness, which had been translated 'to beat,' is a word of wide significance, meaning also 'to strike' and even 'to kill:' it would undoubtedly include striking with bullets or other missiles as well as the infliction of blows in hand-to-hand combat.

29. To resume our narrative: at this point the witness Sardar Harcharan Singh came forward from the direction of the Police Station to meet the crowd. A conference took place between him and their leaders. He estimates the number of the crowd at three to four thousand. Their leaders appeared to him to be Nazar Ali, Shyam Sunder, Sikhari and the unknown ascetic carrying a pair of tongs who has been referred to elsewhere. He found the crowd in a singular state of fierce excitement. He says their leaders addressed him in a tone which was anything but respectful. They told him plainly that they were resolved at all costs to go to the Chaura Police Station and thence through the Chaura bazaar, through the village of Bale, to Mundera bazaar. The witness persuaded them to wait while he went to speak with the Sub-Inspector. It must be remembered that the Police occupied at this moment a position which was strategically sound. They were drawn up across the highway, the breadth of which, would presumably be commanded by the

muskets of the armed Police. These were the men on whom Sub-Inspector Gupteshar Singh would have to rely in the event of an encounter. The four or five men of the Civil Police whom he seems to have kept about him would scarcely count for anything as a fighting force. He had with him also, so far as we can gather, 40 or 50 chaukidars or village watchmen, being in part men whom he may have called in to the Police Station that morning in anticipation of trouble, and in part men whose turn it was to go to the Police Station on that day to draw their pay. These men were efficiently enough armed for an encounter at close quarters with the brass-bound lathis of stout bamboo which formed part of their official equipment. They were, however, a mere collection of village watchmen, wholly unused to acting together in numbers. The records of dacoity cases in this Court afford abundant evidence of the slight reliance which can be placed upon an assemblage of village watchmen as a fighting force. On the other hand no one who examines this record can fail to realise something of the impression produced on the minds of those who saw the crowd at close quarters, not merely, by their numbers but by the spirit which animated them, Bhawani Prasad after seeing them at Dumri advised the Sub-Inspector to bow his head to the storm and let the day go by. He evidently believed that successful opposition to the march of the volunteers was out of the question; that it would be better to let them work their will, for that one day, in Mundera bazaar and to see what could be done subsequently in the way of re-establishing order. Sardar Harcharan Singh was deeply perturbed. We do not think that anything in his conduct bears out the imputations of treachery and double-dealing which have been cast upon him. He returned to the Sub-Inspector, after his interview with the leaders of the volunteers, with the conviction plainly on his mind that there was no stopping these men if they moved forward, as they were evidently determined to do. We take it that there was perceptible in the spirit of this crowd that sort of magnetic force which the ancient Greeks ascribed to supernatural influence, and which has often been noted as emanating from an army destined to be victorious in an impending encounter. Psychologically it has its basis in the recognition on the part of each member of the force that those around him are animated by the same resolution which he feels in himself: he knows that if he elects to go forward, he will not go forward alone. Sardar Harcharan Singh believed that he could exercise sufficient influence

over the crowd and its leaders to ensure their marching, peacefully and without disorder, past the Police Station, if they were allowed to proceed in this way towards their destination at Mundera bazaar. He apparently received some assurance to this effect from the leaders. He says that, in communicating his views to the Sub-Inspector, he suggested that it would be easier to deal with the crowd after they had passed the Police Station.

30. If Sub-Inspector, Gupteshar Singh had followed resolutely the plain dictates of duty, if he had continued to bar the road against the advance of the crowd and had offered them a reasonable time in which to disperse, under threat of opening fire in the event of their refusal, his chances would have depended on the possible intimidating effect of two or three volleys delivered at close quarters into the crowd massed along highway and 'over-flowing.' as Shikari says, 'the road on either side.' If the crowd broke in panic, the miscellaneous force of chaukidars might have been useful enough in completing their dispersal, and possibly in arresting their leaders. If the resolution of the crowd held firm, we very much doubt whether, with the force and with the weapons at his disposal, Sub-Inspector Gupteshar Singh could have prevented the dispersal of his force by sheer weight of numbers, their isolation and subsequent massacre.

31. The matter was not put to the test. The unfortunate Sub-Inspector is not to be blamed, or at any rate to be severely blamed, if his resolution gave away. He had to consider, not only the chances of an actual conflict, but the subsequent justification of his own action against the flood of adverse criticism which would undoubtedly have been let loose upon him. He accepted the advice of Sardar Harcharan Singh, withdrew his force from across the highway and fell back within the Police enclosure. From that moment he and those with him were doomed. The crowd so far kept their express or implied compact with Sardar Harcharan Singh, that they moved in more or less orderly formation along the highway to the south of the Police Station and, turning to their left, began to file past the thana gate towards the Railway crossing, and on beyond into the Chaura bazaar. From this point we have to deal with evidence about which there has been some controversy. We think it useless to enter upon a detailed analysis of all the items of evidence upon which our conclusions are founded. Certain matters of detail must

remain in doubt; but as to the main course of events we believe it possible to formulate conclusions quite sufficient for the determination of all the issues set before us.

32. It must be remembered that, when Nazar Ali and Lal Muhammad called the Volunteers together, they had not done so merely in order to carry out their previous threats against the vendors of intoxicants, of meat and of fish in the Mundera bazaar. They had got together their men on the understanding that they were to go to Chaura Police Station and have it out with the Sub-Inspector about the matter of the beating of the volunteers. We know that highly, exaggerated statements had been put about on this subject. Accordingly, while numbers of the crowd were continuing on their way towards the Railway crossing and Mundera bazaar, some of their leaders, with a considerable body of followers, came to a halt in front of the open gate of the Police Station and demanded to see the Sub-Inspector. Matters about which there has been considerable controversy are the numbers of the men who thus, came to a halt and the question whether, as the movement of the crowd continued, there was ever at any moment a perceptible interval of space between the group which was halted in front of the Police Station and the rest of the crowd. It cannot appear surprising to any one who endeavours to form a mental picture of the scene that the available evidence on question of this sort should be conflicting. We are prepared to believe that the number of those who definitely halted in front of the thana gate, to have it out with the Sub-Inspector, did not exceed three hundred. Events moved rapidly: a crowd of three to four thousand men cannot get along very fast by a narrow street and over a Railway crossing; we very much doubt whether there was at any moment a clear interval of space between those who were still moving on northwards and those, who, whether of set purpose or out of mere curiosity, lingered about the eastern front of the Police Station. The evidence satisfies us that the demand for an explanation in the matter of the beating of a volunteer, or of volunteers, was made in insolent and over-bearing tones and that Sub-Inspector, Gupteshar Singh adhered to the policy which he had adopted by speaking the crowd fair. He told them that the man whom he had beaten (the accused Bhagwan) was not a brother of theirs; that he was a Government pensioner and might, therefore, fairly be regarded as subject to his (the Sub-Inspector's) authority. There are statements

here and there on the record which attribute to the Sub-Inspector words and expressions of more abject apology. Whatever he said, his remarks were received by the crowd, not merely with satisfaction, but with insolent and mocking triumph. Numbers of witnesses depose to a coarse jest which passed from mouth to mouth in the crowd, no doubt with slight variations of form, ascribing abject terror to the Sub-Inspector personally, to the Police generally and even to that abstract entity referred to as 'the Government.' Along with this came a derisive clapping of hands, similar to that which had driven Pandit Jagat Narayan from the assembly at Dumri. Some of the crowd which had halted by the Police Station gate began to move northwards, but we are quite satisfied that the gateway was still beset by numbers of the crowd when the patience of the much tried Sub-Inspector gave way. The man is dead, and we shall never know with certainty what was passing in his mind. We can well believe that he was roused to anger by the taunts of the crowd, their coarse jest and their derisive hand-clapping.

33. It is quite conceivable, however, that it was precisely these taunts which brought home to him the disadvantages of the-position into which he had allowed himself to drift. After all, the armed guard had been sent out, not to defend him personally, but in order that he might use it to protect the licensed vendors and other shopkeepers of the Mundera bazaar against terrorism and mob violence. The organised crowd of volunteers was now moving steadily on towards Mundera, while the Sub-Inspector himself was practically blockaded inside his own Police Station by the crowd which still hung about the gateway. If the volunteers achieved their threatened purpose in Mundera that day, and still more in the not improbable event of the baser elements of the crowd getting out of hand there and plundering shops or the like, he would have to answer to his superiors for the remissness by which he had allowed these things to happen. He may well have felt, and we think that in all human probability he did feel, that the first and most urgent duty incumbent upon him at that moment was to recover his own freedom of action by clearing the road immediately in front of the Police Station. He ordered a number of chaukidars forward for this purpose. As might be expected, the evidence regarding the brief and confused scene which followed is somewhat conflicting. The crowd, undoubtedly, scattered before the advance of the chaukidars; there are witnesses who speak of them as running in different directions. In the main,

however, the natural tendency of the crowd would be to press northward towards the Railway crossing, that is in the direction of their own re-inforcements. Hence we have some of the witnesses who speak of the ehaukidars as driving the crowd towards the Railway crossing, which would in itself be a futile thing for the Police to have done. What precise degree of degree of violence was used by the chaukidars it is impossible to determine. Sardar Harcharan Singh, who was in as good a position to observe what happened as any other witness will not admit that the chaukidars actually struck any one: he describes them as thumping the ends of their lathis on the ground, which is a well-known and frequently adopted method of breaking up, or moving on, a crowd by threatening them with painful, but not serious, injury to their feet. There is no doubt a good deal of evidence to the effect that some of the chaukidars 'beat' some of the volunteers, and we are prepared to take it that blows, were struck. What seems to us the one crucial fact which stands out in plain relief from the evidence is that the crowd generally, and more particularly the volunteers who constituted the back bone of the crowd and the leaders of those volunteers, were prepared beforehand for just such a contingency. As the cry was passed along that the chaukidars were beating the volunteers, whistles were sounded and, upon this pre-concerted signal, the whole crowd swung back upon the Police Station. The men spread themselves out along the Railway line, arming themselves with kankur and brick-bats from the ballast, which missiles were also carried down towards the eastern front of the Police Station. A steady hail of missiles began to overwhelm the scanty Police force, already disorganised and manoeuvred into an untenable position. The firing of the first volley in the air was met by a cry that 'Mahatmaji Gandhi' was working miraculously in favour of the volunteers and was turning the bullets to water. We have plenty of evidence on this record as to the wide-spread belief in this gentleman's miraculous powers. We have no doubt that such a cry was raised and that it put the finishing touch to the resolution of the mob. When the Police began to fire in earnest, and two of the rioters had been shot down and others wounded, the only result was to inflame this resolution into fury. What followed has been already told.

34. In the light of these events we must now go back to the question, what was it that the volunteers assembled at Dumri agreed to do? The case laid before us by

the defence may be fairly summed up as follows. The agreement, undoubtedly, was that the volunteers should go first to Giraura Police Station and thence to the Mundera bazaar. At the former place they were to submit to Sub-Inspector, Gupteshar Singh a sober and dignified remonstrance against his illegal conduct in assaulting individual volunteers. They were to offer themselves to him for arrest in a body, if he was prepared to act upon the view that under the order of Government every enrolled volunteer was ipso facto liable to arrest and prosecution. When this piece of business was satisfactorily settled, they were to move on to Mundera bazaar and there, by peaceful persuasion exercised towards the licensed vendors of intoxicating liquor and drugs, and towards any persons whom they might find attempting to purchase the same, put a stop to the public sale of these harmful intoxicants. They were at the same time to stop the sale of meat and of fish, either absolutely or unless the vendors submitted to the sweeping reduction in price of which we have already spoken. As a matter of fact this latter alternative cannot be seriously considered. Everyone must have known that meat and fish would not be sold at the price suggested by the volunteers and the idea of obtaining meat and fish at reduced prices had by this time been wholly superseded by the idea of punishing the vendors of these commodities in Mundera bazaar for their contumacy by closing their shops altogether. All the evidence on the point is simply and plainly to the effect that the volunteers were to stop the sale of meat and of fish.

35. On this the first comment we have to make is, that the very idea of a body of 3,000 men or more controlling the shops in the Mundera bazaar by means of peaceful persuasion is on the face of it almost grotesque. Whatever may be said in defence of peaceful picketing, when undertaken in the market of a large town by individuals, or by small groups of earnest and enthusiastic men or women, has no application whatever to the proposed flooding of a small bazaar like Mundera by a body of men whose mere presence there would put a stop to all business which could only be carried on with their consent, and indeed with their active assistance. Secondly we cannot deal with the question of the object of the volunteers in moving on Mundera bazaar without taking into consideration the events of the previous Wednesday. The expedition of Saturday, February 4th, was in plain fulfilment of the threats which had been used by Nazar Ali and other

leaders of the volunteers on the previous market day. So far as this part of the case is concerned, we have no doubt, that the agreement come to at Dumri to stop the sale of intoxicants, of meat and of fish in the Mundera bazaar was, under the circumstances, an agreement to commit an offence punishable with rigorous imprisonment for two years at least, namely, the offence of criminal intimidation under Section 508, Indian Penal Code.

36. As regards the visit to Chaura Police Station, it may perhaps be necessary to distinguish between the intention of those who organised the movement and the purpose of the great mass of the crowd who gave their adhesion to the same. Lal Muhammad, Nazar Ali and those who were with them had used very exaggerated versions of the Sub-Inspector's violence towards the volunteers in order to get together the largest possible gathering of their supporters. They were taking them to Chaura for the avowed purpose of asking the Sub-Inspector why he beat volunteers. To the minds of the great majority of the crowd this expression, we have no doubt, carried very much the same significance as that conveyed by the corresponding English phrase in the historic rhyme, which tells how the Cornish men proposed 'to know the reason why' Bishop Trilawny was being prosecuted by King James II. At the same time the purpose actually uppermost in the minds of those who organised this demonstration was to overawe the Police at Chaura into quiescence, before the crowd moved on the Mundera bazaar, in order that, they might be certain of being able to work their will there without interference.

37. From every point of view the agreement come to amounted to criminal conspiracy. There has been much criticism before us, directed against the drafting of the conspiracy charge, and that criticism is not altogether without foundation. As we read the charge, the illegal acts which the accused are alleged to have agreed amongst themselves to do fall under two distinct heads:

(a) to overawe the Police by force or show of force,

(b) to beat the Police, in consequence of what the Sub-Inspector and his subordinates had previously done at Mundera on the 1st of February.

38. The second part of the charge, as thus stated, is not sustainable, if only for the reason that when Sub-Inspector, Gupteshar Singh caned the accused, Bhagwan Ahir, he was not acting in the discharge of his duty. The first part of the charge is, in our opinion, borne out by the evidence. We have also expressed our opinion that the agreement come to as to what was to be done by the crowd when they reached Mundera amounted to criminal conspiracy, although that is not expressly set forth in the charge. As a matter of fact, although we are prepared technically to affirm the convictions recorded under Section 120-B, Indian Penal Code, except where we have arrived at the conclusion that in the case of a particular appellant the evidence is insufficient to support any of the charges, the question is to our minds one of little more than academic importance. What we really have to determine is, whether Sub-Inspector Gupteshar Singh was warranted by law in the action which he took that afternoon at Chaura Police Station, and what was the common object of the crowd there assembled at least from the moment when they began to discharge volleys of missiles against the Police.

39. On the first point we have in substance already expressed our opinion. A statement has been made in evidence that, before calling upon the chaulcidars to disperse the assembly in front of the thana gate, Sub-Inspector, Gupteshar Singh made some attempt to issue a formal command directing the assembly to disperse. It is likely enough that the unfortunate Sub-Inspector did try to strengthen his own position by formal compliance with the provisions of Section 127, Cr.P.C. It would have been no more than a formal compliance at most, and the evidence on point is not particularly convincing. We are, however, abundantly satisfied that, from the moment the crowd of volunteers left Dumri Khurd, right up to the time when they began to file past the gate of Chaura Police Station, they not merely constituted an unlawful assembly, but were conducting themselves throughout in such a manner as to show the firmest possible determination not to disperse if called upon to do so. The Sub-Inspector was, therefore, abundantly justified, under Section 128, Cr.P.C., in attempting the dispersal of the crowd at the moment when he did so. If he failed in his duty at all, it was in not having done so sometime before. Arguments which have been addressed to us at the hearing of this appeal only serve to suggest the storm of criticism which the Sub-Inspector would have provoked if he had resolutely done his duty, as we conceive it, by barring the

further advance of the crowd before they reached the southern boundary of the Police Station. In this connection we are bound to note the great stress laid in argument before us on the fact that the volunteers set forth on this expedition were, generally speaking, unarmed. We agree that the evidence justifies the conclusion that they did so, though we are not prepared to say that numbers of those who joined the crowd on the march were similarly unarmed. It may be matter for consideration also how far the flags mounted on staffs, carried in front of the crowd, were capable at need of being used as weapons. We do think, however, that those responsible for organising this movement did intend that the volunteers should advance on the Police Station without weapons and that, in the main, they succeeded in carrying out this purpose. This finding in no way conflicts with the findings we have recorded as to the unlawful character of the assembly. The crowd was formidable enough, without carrying weapons, to have overwhelmed any resistance offered by the small Police force, provided only they showed sufficient courage and resolution. If their resolution had failed them and they had scattered, after suffering a number of casualties from the muskets of the Police, the fact that they carried no weapons would no doubt have been used to support a story of the wanton massacre of peaceful demonstrators by the agents-of a ruthless Government.

40. The immediate object of the assembly as it reached the Police Station was to threaten and to obstruct Sub-Inspector, Gupteshar Singh and the Policemen with him in the discharge of their duty, an offence punishable under Section 152, Indian Penal Code, an object sufficient in itself, and apart from any of the other Clauses of Section 141 of the same Code, to bring the matter within the purview of the third Clause of the said section. We have, however, already indicated our opinion that a further and more dangerous purpose lurked behind. Shikari stated in his evidence that the resolution come to at Dumri was that, after asking the Sub-Inspector why he had beaten volunteers, they should beat him if his answer was unsatisfactory. The approver Thakur stated that the agreement they had come to was that if he (the Sub-Inspector) 'beat us we should beat him.' We are asked to disbelieve these statements on the strength of various arguments based, in part, upon a comparison of the evidence given by the approvers at the Sessions trial with previous statements which they had made in the Magistrate's Court, or elsewhere.

This evidence, however, and particularly Thakur's version of the scheme as it presented itself to the minds of the volunteers, fits in too well with what actually occurred at Chaura for us to feel any doubt that these controverted statements are substantially true. The instructions which had come down-to the volunteers from their superiors, by what channel we do not know, were that they were not to be the first to use violence; but that, if the Police used force, they were to be at liberty to retaliate in such manner as they might consider best and most effective. The evidence as a whole leaves no doubt whatever in our minds on this point. We know also that the objects which the volunteers had set before them for accomplishment, at Chaura first, and afterwards at Mundera, were such as must sooner or later provoke the most long suffering of Police Officers to the forcible use -of his lawful authority against the lawless crowd.

41. An intention to assault the Police in certain eventualities was, therefore, part of the common object of the whole assembly of volunteers from the time they left Dumri. From the moment the whistles sounded and the crowd turned back and commenced their organised, and, to the extent which we have indicated, their premeditated, attack on the Police Station the object of every member of the crowd was unquestionably to cause the utmost hurt in his power to any Policeman on whom he could succeed in laying hands. After the first effective volley had been fired, and when the crowd continued their attack and pressed it home in face of the casualties they had suffered, their object was, beyond possibility of doubt or contradiction, to do simply what they did, namely, to take life, in revenge for life. The crowd which stormed the Police Station and massacred the Policemen and chaukidars was the same crowd which had commenced the attack with volleys of missiles. The charge drawn up under Section 302/149, Indian Penal Code, is fully established as against any one of the accused persons who is proved by evidence to have continued an' active participant in the riot after the moment when hanker began to be thrown, unless and until it be inferred from credible evidence that fie separated himself from the rest before the offence of murder had been committed by any one of them.

42. Passing on to consider the cases of individual appellants, we find it convenient to depart from the alphabetical order followed by the learned Sessions Judge. Up

to certain point at any rate, it appears to us that we are able to obtain a clearer and more logical view of the effect of the evidence as a whole by grouping the accused persons together, as far as possible, under the head of the villages in which they reside. The prosecution believed that they had evidence in their possession to support the conclusion that contingents of volunteers from no less than sixty villages, situated within a radius of fifteen miles or so from Chaura Police Station, took part in the final encounter with the Police. The list of appellants now before us contains representatives from a large proportion of these villages; but considerable groups come from each of five or six particular localities which have consequently assumed a special importance in the history of the case. We propose to take up these groups first.

43. We begin with the village of Dumri Khurd, which was the rendezvous of the volunteers and from which the nucleus of 1,000 to 1,500 men set forth on their expedition to Chaura Police Station and Mundera bazaar. The learned Sessions Judge had before him no fewer than 31 accused persons from this village. He found the evidence against six of them insufficient to warrant a conviction--a fact which in itself suggests to our minds that the prosecution net had been spread a little too widely, so far as this village is concerned. One feature common to practically all the accused from this village is that they are implicated in the evidence given by the approver Shikari. The circumstances under which this man made his appearance in the witness-box are sufficiently set forth in the judgment under appeal. He proved himself an intelligent and even plausible witness. His statement, as we have been taken through it, reads convincingly. We have no hesitation in agreeing with the learned Sessions Judge that Shikari did take that part in the events referred to in his evidence which he ascribed to himself, possibly even a somewhat more prominent part. In the main, as we have already stated, we are satisfied that the witness had made up his mind to earn his pardon honestly, by making a clean breast of the facts so far as known to him. At the same time we are entirely in agreement with the principle which the learned Sessions Judge has himself laid down, that this is not a case in which the Court would think of 'departing from the general' rule of practice which requires some reliable corroboration of the evidence of an accomplice, before it will accept that evidence as sufficient proof of the guilt of a particular accused. In certain instances

the learned Sessions Judge has himself found reason to suspect that Shikari may have stretched a point against particular neighbours of his, for the sake of gratifying an antecedent grudge. Apart from this, the man was obviously under a considerable temptation to introduce into his story the names of any of his own fellow villagers against whom, he believed that the Investigating Police Officers were entertaining serious suspicions. His failure to do so might, according to the mentality of a person of his class, endanger his own pardon by creating a suspicion in the minds of the Police that he was endeavouring to shield neighbours of his own about whose doings he could not well profess ignorance. We have made these general remarks because, upon a review of the entire evidence against the Dumri men and a further sifting of that evidence, we have come to the conclusion that the doubts entertained by the learned Sessions Judge regarding the adequacy of the corroboration forthcoming against six of these men should have been extended to a considerably larger number.

44. We have now to consider the appropriate sentence to pass on each of those appellants in respect of whom we have affirmed the conviction on the capital charge, namely, that under Section 302/149 of the Indian Penal Code. The law allows us a certain discretion. We are empowered to confirm the sentence of death in each case which has been passed by the Trial Court; or we can set aside that sentence and substitute for it one of transportation for life. The exercise of this discretion is subject to the same condition by which the learned Sessions Judge felt himself to be bound. In every case of a conviction on a charge of murder the law regards sentence of death as the normal and appropriate punishment. Where the Court sees fit to pass the lesser sentence of transportation for life it must record its reasons for so doing.

45. We do not, however, agree with the learned Sessions Judge that it is impossible to formulate such reasons in respect of any of the appellants in this case whose conviction on the capital charge we have affirmed. We do not think it expedient to say too much on this point, for we, in no way, desire to extenuate the savage nature of the crime or to come forward as apologists for the lawlessness of the crowd. We take account nevertheless of the fact that this crime grew out of a political agitation. The appellants are in the main ignorant peasants; the great

majority of them were drawn into the business by misrepresentations of fact and preposterous promises concerning the millennium of 'Swaraj' the arrival of which was to be forwarded by courage and resolution on their part. Some indeed were apparently influenced by the belief that Mr. Gandhi was a worker of miracles. We cannot take leave of the case without an uneasy feeling that there are individuals at large at this moment, men who have not even been put on their trial in connection with this affair, whose moral responsibility for what took place at Chaura Police Station on the afternoon of February 4th, 1925, is at least equal to that which rests upon such men as Nazar Ali and Lal Muhammad, who acted as leaders openly, in, the light of day, and at least placed their own lives on the hazard along with the rest.

46. These are sufficient reasons, in our opinion, to warrant the course we propose to take. We reserve the supreme penalty of the law for the ringleaders and for those against whom we find specific acts proved by the evidence such as would have bound us to convict them on a charge of murder, apart from the special provisions of Section 149 of the Indian Penal Code. As to these we find nothing which can in our view warrant any other sentence than that of death. Against the remainder we pass the only other sentence permissible to us by law, that of transportation for life.

47. We propose to go a step further than this. In respect of a considerable number of the men whom we are sentencing to transportation for life we have formed the opinion that their cases are fit to be considered with a view to the exercise of the clemency of the Crown.

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