

**(1957) 09 AHC CK 0003**

**Allahabad High Court**

**Case No:** Criminal Appeal No. 1389 of 1956 connected with Government Appeal No. 1918 of 1956

Tahsildar Singh

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Sept. 11, 1957

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 154, 162, 236, 237, 367
- Evidence Act, 1872 - Section 32, 45, 5
- Penal Code, 1860 (IPC) - Section 149, 34

**Citation:** AIR 1958 All 255 : (1958) CriLJ 424

**Hon'ble Judges:** B.R. James, J; B. Mukerji, J

**Bench:** Division Bench

**Advocate:** P.C. Chaturvedi, S.S. Tewari and A.K. Misra, for the Appellant; A.G., Ram Asrey Misra and K.N. Srivastava, Assist. Govt. Advocate, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

B.R. James, J.

I--INTRODUCTION.

1. Certain incidents allegedly took place on the 2nd and 3rd September, 1954 at Panderi Khar and Bhua Khar, police circle Sahson in the district of Etawah, in which fire-arms including hand-grenades were used, and in the course of which police informer Karan Singh and constable Dudh Nath Singh were mortally wounded and constables Sri Kishan and Dukhi Rai seriously injured with fire-arras also unlicensed D.B.B.L. .500 bore rifle Ex. I and a large number of cartridges were allegedly recovered at Bhua Khar and Tahsildar Singh arrested. After investigation and commitment proceedings Tahsildar was sent up for trial before the Additional Sessions Judge of Etawah, who framed the following eight charges against them:

- (a) u/s 148, I. P. C., for committing a riot armed with a deadly weapon, to wit, a rifle at Panderi Khar on the 2nd September;
- (b) u/s 302 read with Section 149, I. P. C. for causing the death of Karan Singh with fire-arms;
- (c) u/s 307 read with Section 149, I. P. C. for attempting the murder of constables Sri Kishan and Dukhi Rai with fire-arms;
- (d) u/s 3 of the Explosive Substances Act read with Section 149, I. P. C. for unlawfully and maliciously endangering life by exploding hand-grenades;
- (e) u/s 4(a) of the Explosive Substances Act read with Section 149, I. P. C. for unlawfully and maliciously causing the explosion of hand-grenades likely to endanger the life and property of the police;
- (f) u/s 4(b) of the Explosive Substances Act read with Section 149, I. P. C., for unlawfully and maliciously being in possession of an explosive substance, to wit, hand-grenades;
- (g) u/s 302, I. P. C. for shouting constable Dudh Nath Singh at Bhua Khar some time before sunset on the 2nd September as a result of which he died on the night between the 3rd and 4th September; and
- (h) u/s 19(f) of the Arms Act for being in unlawful possession of a breach-loading .500 bore double-barrelled rifle, Ex. I and a large number of cartridges at Bhua Khar at about 7 a.m. on the 3rd September.

Charges (a) to (f) related to Panderi Khar on the 2nd September and were alleged to be part of one and the same transaction. After a long drawn-out trial, in which he examined fifty six prosecution witnesses and seven court witnesses and considered 276 documents filed on behalf of the prosecution and 23 filed on behalf of the defence, the learned Judge held that the offences embraced by charges (a) to (f) were committed by Man Singh's gang in Panderi Khar, that the accused Tahsildar was present there and that he shared the common objects and intentions of the gang, though the Judge conceded that Tahsildar's physical participation in any of those offences was neither alleged nor established.

With regard to the offences under the Explosive Substances Act he was of opinion that Section 149, I. P. C. could not be applied but Section 34, I. P. C. could. Accordingly for charge (a) he awarded Tahsildar Singh rigorous imprisonment for three years; for charge (b) he sentenced him to death and referred the case u/s 374, Cr. P. C. for confirmation of the death sentence; for charge (c) he sentenced him to imprisonment for life; and for charges (d), (e) and (f) he awarded him seven years' rigorous imprisonment each, except that Section 149 was substituted by Section 34, I. P. C. With regard to charge (h) he held that Tahsildar Singh had been arrested at Bhua Khar at about 7 a.m. on the 3rd September holding the rifle Ex. I and a large

number of cartridges for which he possesses no licence; for this offence he passed a sentence of three years" rigorous imprisonment.

On charge (g), i.e., for shooting constable Dudh Nath Singh, he gave him the benefit of doubt and acquitted him. It might be mentioned that with regard to Dudh Nath's murder the prosecution had at the outset urged the framing of an alternative charge u/s 302 read with Section 149, I. P. C., but after examining the Committing Magistrate's record and hearing the parties the learned Judge came to the conclusion that the charge must be for murder simpliciter only.

2. Tahsildar Singh has filed Appeal No. 1389 of 1956 against his conviction and sentences, while the State Government have preferred Appeal No. 1918 of 1956 against the order of acquittal in respect of the murder of constable Dudh Nath. We shall deal with both the appeals and the reference u/s 374, Cr. P. C., together.

## II--BACKGROUND OF CASE AND TOPOGRAPHY.

3. The history of Tahsildar's family unfolds a woeful tale of an ordinary village feud leading to banditry and large-scale crime. For a proper understanding of this case a brief account of it is necessary. Khera Rathore in police circle Bah, district Agra, is a small village inhabited mostly by Rajputs of the martial Rathore clan. One of them, Man Singh, figures prominently in this case as the leader of the dangerous gang of dacoits and murderers. Two of his sons are Subedar Singh and the appellant Tahsildar Singh. This family was closely connected with a Brahmin family of the village, one of whose members, Rupa by name, subsequently became an active member of Man Singh's gang. Man Singh had formed a faction of his own in Khera Rathore.

The leader of the rival party was one Talfi Ram Brahmin. A clash between the two parties occurred in 1928 in the course of which Talfi Ram's party suffered losses in dead and wounded. Man Singh's party was prosecuted for the crime, and Man Singh and several others were found guilty u/s 302/149 I. P. C. and sentenced to transportation for life. But two of the party Man Singh's eldest son Jaswant Singh and nephew Darshan Singh, absconded and could not be apprehended.

A Rathore of the village, Khem Singh by name, who was distantly related to Man Singh, was pressed by the police to disclose the whereabouts of the absconders, and some time in 1937 when he did so an encounter with the police took place in which Jaswant and Darshan were shot dead while Man Singh's brother Nawab Singh and two other relatives were arrested, duly tried and convicted. After serving out his life sentence for the murders of 1928 Man Singh was released in 1939. He immediately started harassing the families of Talfi Ram and Khem Singh, and the relations between the two got so exacerbated that proceedings u/s 107 Cr. P. C. had to be drawn up against them both. Man Singh and his party were bound over, but Khem Singh was discharged.

Man Singh's period of security expired at the end of May 1940, whereupon on the night between the 4th and 5th July, 1940, members of his faction launched a murderous attack to Khem Singh's party, killing two of them. Khem Singh lodged the first information report at police station Bah in which among others he named Subedar and Tahsildar as the assailants. These two men immediately made themselves scarce, and proceedings under Sections 87 and 88 Cr. P. C. against them remained fruitless. Several of those named in Khem Singh's report were tried and sentenced by the Sessions Judge of Agra to transportation for life.

The High Court dismissed their appeal, and in its judgment expressed disapproval of the lesser sentence for murder passed by the trial court. It is quite possible that it was because of this observation of the High Court that Subedar and Tahsildar resolved not to surrender, and it is a matter of interest that Tahsildar was arrested as late as the 3rd September, 1954 (as we shall presently see) while Subedar was shot dead in 1955 during an encounter with the police.

4. The fugitives Subedar and Tahsildar were soon joined by other members of the family and their adherents. Economic necessity drove them to a life of crime. Man Singh became the acknowledged leader of the gang, which came to be known as "Man Singh's gang". During the initial stages their principal targets of attack were the families of Talfi Ram and Khem Singh, several of whom were murdered. But gradually they extended their field of operation, and established a virtual reign of tenor, indulging in crimes of murder, dacoity, kidnapping for ransom and extortion.

They illegally procured fire-arms, including modern weapons like .303 rifles, Stenguns, Tommy-guns and handgrenades, all apparently of Indian Army origin. These they used freely. Man Singh, his sons Subedar and Tahsildar, his grandson Bharat Singh, his brother Nawab Singh, and accomplice Rupa Brahmin, all were proclaimed offenders, being wanted for more than three dozen heinous crimes. It became inevitable for the forces of law and order to take action against the bandits, and when the problem became too obtuse for the local civil police, detachments of the Provincial Armed Constabulary (P. A. C. for short) were posted at various places to hunt out the criminals, arrest them and use all reasonable force in achieving this object.

Since the fugitives were themselves well-armed and skilfully led by their leader Man Singh this proved no easy task. A considerable number of armed encounters took place resulting in loss of life to both the sides. Moreover, the gang was bent on liquidating all those persons whom they suspected of acting as informer against them, and indeed several of such persons were killed in cold blood.

5. The difficulties of the police were aggravated by the nature of the country in which the gang operated. This comprised about 5000 square miles of ravinous land lying in the V. P., Madhya Bharat, Vindhya Pradesh and Rajasthan and watered by the Jamuna, Chambal and Kuari rivers and their tributaries, Agra, Mainpuri and

Etawah being the districts of the V. P. involved. Merciless erosion extending over centuries has cut up the area into deep ravines, these ravines following rough and tortuous courses towards the rivers where they discharge their rain water.

Various branches stem from each ravine, making the entire locality a veritable maze. Except for thorny bushes and grass no vegetation grows in the area, which in consequence is populated extremely sparsely. Thus the area known in local parlance as "Behar" affords a natural hide-out for bandits and other criminals, who owing to the peculiar topography of the place can remain in hiding for long periods or move about without fear of detection. Indeed it is perfectly feasible for a person to remain in one ravine without another person in the adjoining ravine being aware of it. As is obvious without a guide possessing intimate knowledge of the locality a search for a person or thing in the Behar is not practicable.

6. The scene of the offences which are the subject-matter of the instant case is laid in a locality in police circle Sahson, district Etawah, about three miles by three miles in extent, bounded on the north by the Chambal, on the south by the Kuari, on the east by the village Bhua and on the west by village Bindua Kalan. Forces of erosion have cut up the whole area into deep and tortuous ravines separated from each other by cliffs. South of the Kuari lies the district of Bhind in Madhya Bharat (as it then was). At one place one of the ravines opens out into a large bowl or hollow locally known as Panderi Khar, the place where the majority of the present offences are said to have been committed.

South of Panderi Khar is another, though much smaller, bowl called Bhua Khar. This is the place where the appellant Tahsildar is said to have shot constable Dudh Nath and to have been subsequently arrested with unlicensed arms. The distance between the two Khars is 150 yards as the crow flies, but owing to the zigzagging nature of the ravine the actual walking distance between the two comes to about 500 yards. Panderi Khar lies roughly mid-way between the villages of Bhua and Bindua. To its northwest and just across the Chambal is village Baraichha, which has a permanent ferry for crossing the river, and which in those days had an outpost of the P. A. C. under the command of Subedar Bhagwat Misra. About one and a half mile south-east of Panderi Khar is V. Birona Bagh on the left bank of the Kuari, while about a mile to the north-east is V. Titawali.

Another village, Garhaiya by name, lies about a mile south-east of Bhua, in those days a section of P. A. C. was posted in it. The police station of Sahson is about eight miles east of V. Bhua and is connected with it by a rough footpath. Apart from the civil police Sahson was also the headquarters of three sections of the P. A. C. under the command of Subedar Shamsuddin. From Sahson the district headquarters of Etawah is thirty miles and is reached after crossing both the Chambal and the Jamuna. At the time of the present offences all the rivers in the locality were in flood owing to the monsoon rains.

7. The police organisation in this area, comprising both the civil police and the P. A. C., was under the over-all charge of Circle Inspector Mushtaq Ahmad, His second-in-command was Sub Inspector Abdul Hameed Khan, the station officer of Sahson. (This police officer died natural death in August, 1955, subsequent to his statement before the Committing Court but prior to the commencement of the sessions trial). The police were charged with the triple duties of giving protection to the local villages against the depredations of Man Singh's gang, of obtaining information about the latter's movements and whereabouts and of arresting the proclaimed offenders amongst them, using whatever force was necessary.

Eliciting information presented considerable difficulty, both because of the peculiar nature of the terrain and of the terrorisation of the village people by the gang. What C. I. Ahmad did was to depute for this purpose a number of constables in plain clothes who were intimately acquainted with the locality. One of such constables was the deceased Dudh Nath, who was a native of V. Garhaiya and who knew Man Singh and his family personally. Another was Prag Singh, a prosecution witness. To the same end the Circle Inspector sought the help of some courageous private persons. One of these was the deceased, Karan Singh alias Karna, who was an ex-soldier and a resident of V. Garhaiya.

8. It should be borne in mind that the gang of Man Singh included several proclaimed offenders and also persons regarding whose participation in cognizable offences there was reasonable cause to believe. Accordingly by virtue of Section 54 Cr. P. C. the police had a right to arrest such persons without a warrant. And since the gang had been responsible for murders, attempted murders and dacoities, i.e. offences punishable with death or imprisonment for life, the police in the event of forcible resistance to arrest had a right to use all means necessary to effect the arrest, even to the extent of causing death. This being so, members of the gang were precluded from claiming any right of private defence.

### III -- PROSECUTION CASE.

9. The prosecution story is a long and rather involved one. It may be outlined as follows. In the same area there was operating another gang of criminals known as "Lakhan Singh's gang" which on occasions used to combine with Man Singh's gang for resisting the police. In October, 1953 Lakhan Singh's gang was given shelter by one Roshan Singh of Chandrahanspura, a village about two miles from Garhaiya. For this Roshan Singh and others were prosecuted and Ram Bharosey and the deceased Karna, both residents of V. Garbaiya, gave evidence for the prosecution despite threats by the two gangs against doing so. Even the trial Magistrate was threatened with murder. He delivered judgment on the 31st August, 1954 convicting Roshan Singh and his accomplices. The conviction resulted in further threats to the lives of Ram Bharosey and Karna, and indeed this is claimed by the prosecution as the main motive for Karna's murder in Panderi Khar on the 2nd September.

10. On the night between the 27th and 28th August, 1954 an encounter took place between Man Singh's gang and the police in district Bhind in which some of the bandits were wounded. Information of this was immediately conveyed to the Etawah police by wireless. On the 1st September, a second wireless message was despatched stating that the injured dacoits were to be taken across the Chambal for medical treatment from Etawah, and asking for a strict vigil against their crossing over. Later on the same day there was yet another message declaring that the injured criminal was Tahsildar Singh. We might here state that it is a fact that in the aforesaid encounter he received a bullet in his right leg, six inches above the ankle-joint causing a compound fracture of the tibia and exposing the bone. As a result of this injury it was physically impossible for him to move about unassisted.

11. In consequence of the wireless messages police intelligence were set afoot, and on the evening of the 1st September, constable Dudh Nath and Prag Singh brought information that Man Singh's gang was present somewhere in the ravines between villages Bindua and Bhua and was bent upon taking revenge on Ram Bharosey and Karna. C. I. Mushtaq Ahmad divided the available civil police and P. A. C. forces into three groups one under his own command, the second under S. I. Abdul Hameed and the third under Subedar Shamsuddin and posted them at Bhua, Birona Bagh and Titawali respectively, that is to say, at the possible points of approach of the miscreants.

It was further decided that if no contact could be established with the dacoits by 8 O'clock next morning the three groups would make a thorough comb-out of the entire area. Since the available forces were inadequate a message was sent to Subedar Bhagwat Misra at Baraichha to take up position near V. Bindua Kalan, since the approach in that direction was still open. However he could not reach there until 8 a.m. next day.

12. No contact with the miscreants was made during the night. Accordingly next morning, the 2nd September, a brief conference was held between C. I. Mushtaq Ahmad and S. I. Abdul Hameed in which it was decided to start the combing operations; the Sub-Inspector was to comb the area in the vicinity of Bindua Kalan while Subedar Bhagwat Misra was to go towards Bhua Khar. Subedar Shamsuddin was already in the neighbourhood of V. Titawali, and had the informer Karna in his party.

The Circle Inspector deployed his own forces on the cliff of Bhua Nala, a ravine one or one and a quarter furlong south-east of Panderi Khar. At about 10.30 a. m. Karna left Subedar Shamsuddin's party and sallied forth alone with the avowed object of ascertaining the whereabouts of the gang more precisely. Shortly afterwards he disappeared in the direction of Panderi Khar and was not seen alive again.

13. The search of S. I. Abdul Hameed yielded no result. From Bindua he described a wide semi-circle and eventually reached the raised ground east of Panderi Khar

shortly before mid-day. At that time he had with him Havildar Arjun Singh, constables Sri Krishna and Dukhi Rai, private persons Tulsi Ram, Suraj Pal Singh, Shiv Narain and Ram Bharosey, and other constables including a Bren-gunner. Subedar Bhagwat Misra's party consisted of Havildar Mohammad Mohsin, about ten constables including Dudh Nath Singh, and a private person, Akbar Singh by name. The Circle Inspector had constable Prag Singh and a dozen others with him.

14. Shortly before Sub-Inspector Abdul Hameed took up his final position east of Panderi Khar he was told by Daya Ram chowkidar (who for some unaccountable reason has not been examined by the prosecution) that a little while previously he (the chowkidar) had seen an armed dacoit descending into Panderi Khar. The Sub-Inspector, presuming that the man had been stationed as a sentinel and had gone down to warn his confederates about the presence of the police, despatched Ram Bharosey post-haste to Subedar Bhagwat Misra asking him to station his forces to the south of Bhua Khar so as to seal off a likely escape route southwards in the direction of the Kuari and Madhya Bharat.

Out of his own party he posted Havildar Arjun Singh, constables Sri Kishan and Dukhi Rai and some others on raised ground just south of Panderi Khar, while the Bren-gunner and his covering force were stationed a little south of his own position. The time then was about 12 noon. The police had hardly taken up their new positions when from inside Panderi Khar they heard a young man's voice shout: "Baba; the police have surrounded us." To this an old man's voice at once replied: "Beta Subedar: Karna ko mar aur sub taiyar hojao" (That is: My son Subedar; kill Karna and the rest of you get ready). This injunction was immediately followed by the solitary report of a gun which reverberated in the hollow and soon died down.

Within a few moments this was followed by heavy gun-fire at the police party with Tommy-guns, sten-guns and .303 rifles from inside the Khar. The police party at once took cover and returned the fire. The miscreants also lobbed three hand-grenades at the police, two of which exploded and caused injuries to constables Sri Kishan and Dukhi Rai and also damaged the former's rifle. By way of reply Subedar Arjun Singh threw four hand-grenades inside the hollow. It should be noted that during this exchange the adversaries were completely hidden from each others view. The steady, sustained and heavy fire of the police forced the bandits to start scrambling for safety, and while they were doing so a number of them were actually seen and recognized.

Two of them were Man Singh & his lieutenant Rupa Brahman, both firing Tommy-guns. The exchange of gun-fire at Panderi Khar lasted until 2 or 2-30 p.m. Shortly afterwards the Sub-Inspector's party from a distance of forty or forty five yards saw a small band of four or five dacoits escaping down the ravine towards Bhua Khar. One of these four was riding a red mare. Shiv Narain recognised him as the appellant Tahsildar and informed the Sub-Inspector and his other companions of this. Soon after reports of fire-arms were heard from the directions of Bhua Khar,



Bhua Nala and Titawali, indicating that parties of outlaws were trying to escape towards those places and were exchanging shots with the forces of Subedar Bhagwat Misra, Circle Inspector Mushtaq Ahmad and Subedar Shamsuddin respectively.

15. Complete silence reigned in Panderi Khar for about an hour and a half, thereby leading Sub-Inspector Abdul Hameed to believe that the gangsters had evacuated that bowl. Accordingly at 4 or 4-30 p.m. he descended into it and found three dead bodies lying there, two being the unidentified bandits and the third of the informer Karna, all of whom had been killed with fire-arms. Karna's body was found in a sitting position in a cleft which was of such a shape that it was physically impossible for any of the bullets fired by the police to hit him.

The Sub-Inspector got the bodies taken out of the Khar and sent direct to police station Sahson in charge of constable Jagdamba Prasad. He himself escorted the injured constables Sri Kishan and Dukhi Rai to V. Bhua, accompanied by the Circle Inspector. They reached Bhua at 6 or 6-30 p.m. In Panderi Khar the Sub-Inspector also saw a .303 bore rifle, a large number of live and empty cartridges and many other articles evidently left behind by the escaping dacoits, but for fear of the latter's return he did not take possession of any of these at that time.

16. The scene now shifts to Bhua Khar, on the southern edge of which Subedar Bhagwat Misra and his party had taken up position. It will be re-called that shortly after the firing at Panderi Khar had terminated a party of four or five dacoits, one of whom was astride a red mare, had been seen escaping down the ravine in the direction of Bhua Knar. At about 4 p.m. Bhagwat Misra & his companions saw this party approaching them from a distance of seventy or eighty yards. The party immediately opened fire on the Subedar's force, who promptly returned the fire, apparently without causing visible damage. Constable Dudh Nath, Akbar Singh and Ram Bharosey immediately recognised the rider as Man Singh's son Tahsildar Singh, whom they knew from before and acquainted their companions with this piece of news. Soon the twisting and turning ravine concealed the four or five bandits from view.

A little later the mare, duly saddled, was seen galloping away northwards. There was however no sign of its rider or his accomplice. Subedar Bhagwat Misra decided to go down into Bhua Khar and reconnoitre it in order to ascertain if the small band had concealed itself somewhere in it. Accompanied, by Havildar Mohammad Mohsin, constable Dudh Nath Akbar Singh, Ram Bharosev and a couple of other constables he descended the slope of the ravine, Dudh Nath led the way armed with a double-barrelled gun. The time then was about 4-30 p.m. The party had scarcely covered a distance of fifty or sixty yards when the appellant Tahsildar suddenly came into view sitting on a six-foot high mound inside Bhua Khar. He held a D.B.B.L. rifle to his shoulder, and was only five or six yards away. The police party, taken aback, wanted to hurriedly re-trace their steps, but before they could do so

Tahsildar fired a shot at Dudh Nath, the bullet entering his abdomen and passing right through. He fired a second shot, luckily without hitting any one.

Dudh Nath fell down, but was lifted up by his companions and helped to a place of safety. He stanchd the flow of blood from his wound by plugging it with his hands so that no drops of blood stained the ground. Bhagwat Misra and the police under him took up fresh positions at a convenient point, & under cover of their fire the two private persons Akbar Singh and Ram Bharosey escorted Dudh Nath to a certain mango tree. There he was laid on the ground while constable Prag Singh went out in search of a cot. On obtaining one he placed the wounded constable on it, took him to V. Bhua and handed him over to the care of the Circle Inspector and Sub-Inspector who had already reached there. The time then was between 7-30 and 8 p.m. Dudh Nath was in his senses and was able to tell his various interrogators the circumstances in which he had been shot and that the man who had shot him was Tahsildar Singh.

17. Leaving Dudh Nath in the care of the Circle Inspector and Sub-Inspector Akbar Singh and Ram Bharosey re-joined Subedar Bhagwat Misra and spent the whole of the night with him in the vicinity of Bhua Khar. A few shots were fired until about 11 p.m., but otherwise no attempt was made to descend into the ravine or otherwise attempt to capture Tahsildar. Nor did the Circle Inspector or Sub-Inspector take any steps to get Bhua Khar surrounded or to arrest or shoot Tahsildar--Bhagwat Misra and his dozen men posted to the south of Bhua Khar were the only persons on guard at that Khar during the whole night.

18. Next morning, the 3rd September, Bhagwat Misra divided his men into two groups. Our group descended into the Khar from the front raising loud noises so as to distract Tahsildar's attention while the other led by the Subedar himself went up to the other side of the Khar and stealthily approached Tahsildar from behind. He was still sitting on the mound holding his rifle, and although he was making desperate efforts to fire it there was no sound of explosion. Realising that he had either run short of ammunition or his weapon was out of action Bhagwat Misra pounced upon him from behind and seized him. The .500-bore D.B.B.L. rifle Ex. I was taken from his hands.

Two misfired cartridges were inside the breach, while two fired .500-bore cartridges were lying nearby along with a large number of .303 cartridges and other articles. Then and there the Subedar prepared the recovery memo Ex. P-1 and got it attested by Ram Bharosey and Akbar Singh. It was then seen that Tahsildar's right leg was broken and that he was unable to move. The time of his capture was about 7 a.m. Subedar Bhagwat Misra escorted him to V. Bhua and delivered him, the recovered articles and the memo Ex. P-1 to the Circle Inspector and Sub-Inspector. The latter took charge of the four .500-bore cartridges and sealed them up; nevertheless he did not seal up the rifle Ex. I.

19. Dudh Nath succumbed to his bullet injury at about 11 p.m. on the night between the 3rd and 4th September as he was being rushed to Agra for expert medical attention. Luckily constables Sri Kishan and Dukhi Rai have survived. Sri Kishan has appeared as a witness for the prosecution, but not Dukhi Bai --the, evidence shows that even at the time of the sessions trial he was an indoor patient in the Lucknow Medical College Hospital with half his body in plaster and the doctors having forbidden him to even talk.

20. We might here mention that the prosecution evidence has been sometimes ambiguous and sometimes conflicting with regard to the exact location of the various persons figuring in the above story and the times at which the various incidents took place. The places and times we have given the above narrative are according to what we have been able to glean from the evidence taken as a whole.

21. We may now summarize the prosecution case as set out in Court. It embraces two well-defined but connected incidents which may for the sake of convenience be referred to as the "Panderi Khar incident" and the "Bhua Khar incident". On the prosecution story the character of the criminal liability for the two incidents would be different. In the former incident, which took place on the 2nd September 1954, there was concealed inside Banderi Khar a group of armed bandits, several of them proclaimed offenders, whose common object and intention was to kill with fire-arms the police spy Karna and members of the police force and to maliciously possess and use hand-grenades.

They opened fire at noon and maintained it until about 2-30 p.m. Constables Sri Kishan and Dukhi Rai were wounded by hand-grenades thrown by one or the other of these criminals. Karna too was shot dead, and although his killer or killers could not be seen they must have been from among the outlaws since owing to his position he could not be hit by any of the police bullets. Most likely he was killed outright by the very first shot fired by a bandit--probably Man Singh's son Subedar--on the orders of an old man who was either Man Singh or his brother Nawab Singh.

No one charges the appellant Tahsildar, nor indeed any other individual, with personally inflicting any of the injuries on Karna, Sri Kishan or Dukhi Rai, but the prosecution claim that this appellant was present in Panderi Khar and was a member of the unlawful assembly which was responsible for the injuries of the three men, and that since he shared the common objects and intentions of the assembly he is vicariously liable for the act or acts committed by any member of it. In contrast to this the prosecution declare that for the Bhua Khar incident, which resulted in the death of constable Dudh Nath, Tahsildar was the actual perpetrator of the crime, having been seen and recognised in broad daylight at about 4-30 p. m. from a distance of only five or six yards firing at him, and having been arrested at that very spot next morning holding the unlicensed .509-bore rifle Ex. I.

The connecting link between the two incidents--so the prosecution affirms--was Tahsildar moving from Panderi Khar to Bhua Khar on horse-back and being seen and recognised by certain witnesses of the Panderi Khar incident at about 4 p.m. and by witnesses of the Bhua Khar incident at about 4-30 p.m., and indeed this factor, along with the recovery of some .500-bore cartridges and some diaries etc. (to which reference will be made later on), is sought to be taken as proof of his physical presence at Panderi Khar during the incident of that place.

#### IV--INVESTIGATION OF CASE

22. The prosecution account of the various steps taken towards the investigation of the case requires to be stated now.

23. We have already mentioned that on the 2nd September at 4 or 4-30 p.m., after a considerable lull, Sub-Inspector Abdul Hameed had descended into Panderi Khar and recovered three dead bodies of Karna and two unidentified bandits; also that he had seen a large quantity of arms and other articles lying there which had been left behind by the criminals but which for fear of their return he had not taken into possession at that time. On taking the three corpses out of the bowl he did not make any inquest on them; instead he straightway sent them to Sahson in charge of constable Jagdamba Prasad, and in fact they reached the police station next day between 8 and 9 a.m. when after the usual inquests by the thana head-mobarrir they were despatched to Etawah for post-mortem examination.

The Sub-Inspector himself brought the two injured constables Sri Kishan and Dukhi Rai to V. Bhua, where he and Circle Inspector Mushtaq Ahmad arrived at 6 or 6-30 p.m. They were present there when between 7-30 and 8 p.m. Akbar Singh, Ram Bharosey and constable Prag Singh brought the wounded constable Dudh Nath to them. We do not know how the two police officers occupied themselves between the time they reached V. Bhua and 8 p.m. but what we are told is that at 8 p.m. S. I. Abdul Hameed sat down and wrote out a long report of the events of the day mentioning specifically the shooting of Dudh Nath by Tahsildar. He based its contents partly on his personal knowledge and partly on what he had learnt from Dudh Nath and others. This report is marked Ex. P-11 and has been treated as the first information report of the present offences. It is an important document and will be reproduced presently.

24. A significant fact worth noting here is that although by 8 p.m. on the 2nd September, the Circle Inspector and Sub-Inspector were fully aware that Tahsildar in an injured condition was present in Bhua Khar, they took no steps whatsoever either to arrest him or to deploy their available forces around that Khar so as to eliminate all chances of his escape or rescue. No action was taken by them in this behalf even when day-light broke next morning.

25. After completing the report Ex. P-11 the Sub-Inspector started his formal investigation under the general supervision of the Circle Inspector. He is stated to

have been carrying with him blank diary-sheets, sheets of paper, seal, sealing wax etc. Commencing the case-diary at 8 p.m. he first of all copied out the report Ex. P-11 in it. Next he took down statements of the three injured constables Dudh Nath, Dukhi Rai and Sri Kishan, recording Dudh Nath's statement--marked Ex. P-230--in the presence of witnesses so as to be available, as a dying declaration in the event of his death.

After this he sent the three wounded constables to Sahson in charge of constables Prag Singh and Ahmad Bux Khan, also handing over to Prag Singh the report Ex. P-11 for registration of a case at the police-station. Prag Singh and Ahmad Bux along with their charges left Bhua at about 8-30 p.m. and reached Sahson at 11-30 the same night. On the basis of Ex. P-11 the head-moharrir prepared a check report and registered a case under Sections 148 307 and 302, I. P. C., against Man Singh, Subedar, Tahsildar, Rupa Brahmin and "other dacoit of the gang of Man Singh."

26. After sending off the wounded constables the Sub-Inspector returned to Panderi Khar at about 9 p.m. and decided to take possession of the arms and other articles he had seen there earlier. Taking some attesting witnesses with him he descended into the Khar and seized the various things which had been left behind by the bandits. These included a .303 rifle, a hand-grenade, two .500-bore empty cartridges, a large number of .303 cartridges, two diaries and a statement of accounts. The two .500-bore cartridges were sealed up then and there. A recovery memo., Ex. P-2 was duly prepared and attested by Shiv Narain and Suraj Pal Singh.

27. After making these recoveries the Sub-Inspector and his party remained at Panderi Khar for the rest of the night, but nothing untoward happened. In the morning he re-joined the Circle Inspector at V. Bhua. These two officers were there when at about 8 a.m. Pubedar Bhagwsat Misra brought the appellant Tahsildar under arrest, along with the rifle Ex. O, four .500-bore fired or misfired cartridges, some other articles and the recovery memo Ex. P-1 which he had allegedly prepared on the spot. The four .500-bore cartridges were sealed up by the Sub-Inspector, but be it noted, not the rifle Ex. I, The Sub-Inspector first took down the statement of Bhagwat Misra in the case diary, then he copied out in it the recovery memo Ex. P-1, and then he interrogated Tah-sildar.

After Tahsildar's statement he recorded the statements of the remaining eye-witnesses of both the Panderi Khar and Bhua Khar incidents. Thereafter he returned to Panderi Khar and from the ground scraped off and sealed up some of the blood which had oozed out of the wounds of Karna and the two dead dacoits. Further, he prepared the siteplan Ex. P-136 together with its index. He then returned to V. Bhua, and placing Tahsildar on a cot and taking all the seized articles with him proceeded to police station Sahson, where he arrived at 1 p.m. On arrival he got all the seized articles deposited in the malknana.

28. The Superintendent of Police of Etawah visited the police station that evening, the 3rd September, and inspected the scene of the present occurrences on the 5th September. It is stated on behalf of the prosecution that that day Sub-Inspector Abdul Hameed in the presence of the Superintendent of Police, Ram Bharosey and Akbar Singh found a misfired cartridge and an empty cartridge, both of .500-bore, lying on the way from Panderi Khar to Bhua Khar. Both were taken into possession and sealed up, and the recovery memo Ex. P-137 prepared. It was signed by the Sub-Inspector, Ram Bharosey and Akbar Singh. But, strangely enough, not by the Superintendent.

29. It is further alleged that on the 22nd September the commandant of the P. A. C. visited the locality in company with Subedar Shamsuddin and that on the way from Panderi Khar to Bbua Khar they found a dozen fired cartridges, including a .500-bore cartridge, lying on the ground; they were taken into possession, but without the preparation of any recovery memo. They were later deposited at the police station, where the head-moharrir sealed them up. (Here we feel bound to remark that we are surprised why these cartridges were not seen by the Superintendent of Police or Sub-Inspector Abdul Hameed when they had supposedly inspected the same place on the 5th September.)

30. The rifle Ex. I--which was never sealed up--was kept at Sahson until the 13th September and then despatched to headquarters. Along with the various .500-bore cartridges which had allegedly been recovered from the various places it was submitted for examination to the ballistic expert of the U. P. Police, a Deputy Superintendent of Police by rank. He reported that, with the possible exception of one, these cartridges had been fired from one or the other barrel of Ex. I. The two diaries and the statement of account recovered from Panderi Khar on the night of the 2nd September were reported by a Police handwriting expert to be in the handwriting of the appellant Tahsildar.

31. We now revert to the movements of the three injured constables, who, as previously mentioned, together with constables Prag Singh and Ahmad Bux reached policestation Sahson at 11-30 p. m. on the 2nd September. After receiving whatever medical aid was available locally they were sent off to the district hospital at Etawah, which they reached on the evening of the 3rd September. They were admitted to the hospital and their wounds examined and treated. The condition of Dudh Nath and Dukhi Rai was considered serious, hence Mr. B. L. Agarwala, Sub-Registrar-Magistrate, was deputed to record their dying declarations. Ex. P-59 was the statement he recorded of Dudh Nath at 6-15 p. m. and Ex. D-19 the statement of Dukhi Rai at 6-30 p. m.

Both these wounded men were then sent to Agra for expert medical attention in charge of Sub-Inspector Ali Mohammad of Etawan, constable Prag Singh and others. Dudh Nath told Sub-Inspector Ali Mohammad that he had been shot by Tahsildar. Shortly before reaching Agra he succumbed to his bullet injury at 11 p.m.

Sub-Inspector Dcva Ram of Agra made an inquest on him at 1 a.m. on the 4th September in the presence of panches who included Sub-Inspector Ah Mohammad and constable Prag Singh. Exhibit P-6 is the relevant inquest report duly attested by both these persons.

32. After collecting the necessary evidence Sub-Inspector Abdul Hameed filed a charge-sheet against Tahsildar Singh. Subsequently one Shyama Mallah, another alleged member of Man Singh's gang, was arrested, and after investigation prosecuted for both the Panderi Khar and Bhua Khar incidents. Tahsildar and Shyama were jointly committed for trial for those offences. At the outset the defence objected to the joint trial of the two accused persons. After hearing the parties the learned Sessions Judge upheld the objection, separated the cases of the two accused and tried Tahsildar alone. Shyama's trial is said to be still pending and his case does not concern us in these appeals.

33. Tahsildar, we might add, is acknowledged to be a crack shot, skilled to the extent of taking aim even at a sound.

34. The prosecution urge that his implication in both the Panderi Khar and Bhua Khar incidents is established from the oral evidence of eye-witnesses who are impartial police officials or private persons, and that their testimony is corroborated by the documents and by the recoveries referred to in the foregoing. They lay special stress on the Sub-Inspector's first information report Ex. P-11 and Dudh Nath's dying declaration Ex. P-230 made before the Sub-Inspector and other witnesses, and argue that these were taken down in black and white at about 8 p.m. on the 2nd September at a time when no one had any idea as to when and in what circumstances this appellant would be arrested and many hours before his actual arrest, and accordingly it is contended that these two documents are the strongest proof of the charge of murder simpliciter in respect of constable Dudh Nath.

It is further pointed out that the various .500-bore cartridges which had been recovered from various places had all been fired from the rifle Ex. I which was seized from him at his capture. Two of these cartridges, the ones recovered from Panderi Khar, had been found and sealed up many hours prior to his arrest, those discovered on the way from one Khar to the other, together with his diaries recovered at Panderi Khar and his ride on the red mare, establish his actual presence at the incidents of the latter place. Emphasis is laid in particular on the early start of the investigation, a start made long before Tahsildar's arrest. The fact, is also stressed that the first report was registered at the police-station as early as 11-30 p.m. on the 2nd September. Taking their stand on all these factors the prosecution contend that the learned Sessions Judge has rightly convicted Tahsildar Singh of the Panderi Khar incident but has acted perversely and contrary to the record in acquitting him of Dudh Nath's murder; they ask that for that crime too he be convicted and sentenced.

## V--DEFENCE CASE

35. At the trial the accused emphatically denied that he was Man Singh's son of this name; he insisted he was Bhanwar Singh son of Zahar Singh, a Rajput of Uddotpura, Police Circle Bhind, district Bhind in Madhya Bharat. He disclaimed all connection with the Panderi Khar or Bhua Khar incidents or with the arms or explosives found there, and professed to be nowhere near the scene when the injuries of. Karan Singh and constables Dudh Nath, Sri Kishan and Dukhi Rai were sustained. He totally denied possession of the rifle Ex. I or firing from it the .500-bore cartridges referred" to previously. He also disavowed riding a mare anywhere in the locality. He admitted that his right leg had been broken by a gunshot but gave the following explanation of it, as well as of his arrest.

36. He was in his native village of Uddotpura when on the 30th August he was struck on the leg by a stray shot fired by some unknown shikari. He neglected his injury for three days, but on the 3rd September decided to proceed to a village called Bilahti with the twin objects of attending the terhwin ceremony of the wife of a friend and getting his leg treated. For reaching Bilahti the Chambal had to be crossed at Baraichha.

He was being carried in a palanquine when near the Baraichha ferry a party of police under the command of Subedar Bhagwat Misra was seen approaching. The palanquin-bearers got frightened and bolted, leaving him behind helpless and alone. The police questioned him about his leg injury, and disbelieving his version arrested him on suspicion of being a bandit. Thereafter he was taken to Police Station Sahson and delivered to Sub-Inspector Abdul Hameed who proceeded to fabricate a case against him under the name of Man Singh's son Tahsildar Singh.

37. No oral evidence was produced in support of any of these allegations.

38. Before us the plea with regard to the identity of the appellant has been given up, and it is now conceded that he is none other than Tahsildar Singh s/o Man Singh of V. Khera Rathore, police circle Bah in the district of Agra. The evidence on the point is so cogent and convincing that we do not see what other course was open to the defence. In the first place, seven witnesses appeared before the trial Court who knew him personally and who declared that he was "Tahsildar Singh s/o Man Singh of V. Khera Rathore, P. S. Bah."

These included two of his neighbours of V. Khera Rathore itself and Sub-Inspector Masroor Ahmad, who served as Second Officer at Bah in 1939-40 (shortly before the accused absconded) and was well-acquainted with Man Singh's family. Second, when arrested and questioned by Subedar Bhagwat Misra (to whom he was a complete stranger) he acknowledged that he was Tahsildar. Third, on admission into the District Jail at Etawah he signed--he is literate in Hindi--the jail register as "Tahsildar Singh s/o Man Singh".



Fourth, two lawyers of Etawah applied for interviewing him in jail, and in giving his written consent to the interview he again signed himself as "Tahsildar Singh s/o Man Singh". The same happened when his relative and pairokar Thakur Hukum Singh sought to see him in jail. Fifth, he wrote the letter Ex. P-44 dated the 10th December 1954 to his counsel under the signature of "Tahsildar Singh". Sixth, he was put up for several test identifications and in each case signed the Magistrate's identification memo as "Tahsildar Singh". Finally, the real Bhanwar Singh son of Zahar Singh, who indeed is distantly related to Man Singh through his wife, actually appeared before the Court and was examined as Court witness No. 1.

He declared that he was the true Bhanwar Singh, and proved his claim from oral and documentary evidence, positively establishing at the same time that the accused could not be that man--a clinching item of evidence was an old thumb-impression which expert evidence proved as that of the Court witness Bhanwar Singh and certainly not of the accused. Indeed, right from the time of his arrest the latter was admitting himself to be Tahsildar Singh, and it was not until the 13th December 1954--more than three months after his arrest--that for the first time he professed to be Bhanwar Singh of Uddotpora. We have no doubt whatsoever as regards his identity.

39. The rest of the contentions advanced before the Sessions Judge have been repeated before us. It is claimed that Tahsildar was in fact arrested at Baraichha ghat as alleged by him and was nowhere near the scene of the infliction of the injuries on Karan Singh or constables Dudh Nath, Sri Kishan and Dukhi Rai. The occurrence at Panderi Khar is not denied but that of Bhua Khar is characterised as a complete fabrication, and it is suggested that the three constables sustained their injuries at the hands of unknown criminals in the course of the encounter at Panderi Khar.

With regard to Karna it is urged that Man Singh's gang had no motive for wishing him harm and that he was killed by the fire of the police party. It is further argued that even if Tahsildar's presence at the Panderi Khar incident be accepted he cannot be held guilty of any offence since under the circumstances of the case Section 149 or 34, I. P. C., cannot apply.

40. In particular the accused-appellant's learned counsel contends (a) that on the 2nd September no one knew that Tahsildar was among the bandits assembled in Panderi Khar; (b) that the original case of the police was that Karna and the three constables had received their injuries at the hands of those outlaws, but on Tahsildar's arrest next day they changed their stand and accused him of being among the miscreants and of specifically firing the fatal shot at Dudh Nath; (c) that later on with the object of clinching the case against him yet another change was made, and the scene of Dudh Nath's shooting shifted to Bhua Khar and a fictitious incident set up there; (d) that the prosecution witnesses are prejudiced men and are testifying under the influence of the police who were after the blood of Man Singh's

family; (e) that the material recoveries were either not made at all or were made at different times and places than those now alleged; (f) that the rifle Ex. I was not seized from Tahsildar but belonged to one of the two unidentified dacoits who had been shot dead in Panderi Khar, so that the appellant cannot be held responsible for firing the .500-bore cartridges; (g) that the police investigation did not start at 8 p.m. on the 2nd September, but on the 3rd September Subsequent to his arrest; (h) that in particular the first report Ex. P-11 and Budh Nath's dying declaration Ex. P-230 were prepared after the arrest; (i) that the ride on the red mare and the recovery of .500-bore cartridges on the way from one Khar to the other were subsequently invented with the sole aim of connecting the appellant with the two incidents, and (j) that the police papers are unreliable inasmuch as they were prepared subsequently but ante-dated and that they contain forgeries. The appellant's learned counsel claims to establish all these points from the prosecution evidence itself. We might add that running throughout his arguments is a thread of severe criticism of the investigation by S. I. Abdul Hameed and C. I. Mushtaq Ahmad as dishonest and untrustworthy.

#### VI--UNRELIABILITY OF POLICE PAPERS.

41. We start with an examination of the contention that the police papers of this case are unreliable, and shall first take up the first information report Ex. P-11 and the case-diary, on both of which the prosecution strongly, rely. Incidentally, this case is peculiar inasmuch as the investigating officer, S. D. Abdul Hameed, was the very person who prepared the first information report. Unfortunately he died before the commencement of the sessions trial, so that the fittest witness for throwing light on controversial matters stemming from the investigator's papers has not been available to the Court. But luckily Ex. P-11 bears the signature of C. I. Mushtaz Ahmad also, and he admits to have exercised general supervision Over the Sub-Inspector's investigation and to be acquainted with the circumstances in which he collected the material contained in the case-diary.

Consequently the Court has been enabled to obtain relevant information from him. Here we might point out that while discussing the first report Ex. P-11 and Dudh Nath's dying declaration Ex. P-230 embodied in the case-diary we shall in this Chapter confine ourselves to the time of recording and the authenticity of these documents; the discussion of their contents we reserve for a later Chapter.

42. It will be re-called that, according to the prosecution the Sub-Inspector was at V. Bhua when at 8 p.m. he wrote out the report Ex. P-11; then he copied it out in the case-diary; next he recorded the statements of the three wounded constables and noted their injuries; after that he sent them to Sahson incharge of constables Prag Singh and Ahmad Bux, handing over to the former the report Ex. P-11 for registration of a case; further that these persons reached the police-station at 11-30 that night where on the basis of Ex. P-11 a case was registered against Tahsildar and others. If these allegations be true the prosecution case undoubtedly receives

strong support, more so when Ex. P-11 and Ex. P-230 had been taken down many hours prior to Tahsildar's arrest.

43. But the very first hurdle which the prosecution find themselves unable to cross is the authorship of Ex. P-11. In his statement before the committing Magistrate S. I. Abdul Hameed swore that it was in his handwriting, and the truth of this was assumed by the parties and the Sessions Judge at the trial. But in the course of the hearing before us it was discovered that the handwriting not only of Ex. P-11 but of its copy in the case-diary was that of some other person, and accordingly we ourselves questioned C. I. Mushtaq Ahmad about the matter. He admitted that Ex. P-11 was "definitely not in the handwriting of Section 1. Abdul Hameed" and that it was "possibly" in the handwriting of constable Jagdamba Prasad, a witness for the prosecution.

It is regrettable that he has not been more definite. Jagdamba Prasad was not questioned on the point in the Committing or trial Courts, but on a comparison of handwritings--a comparison we are entitled to make u/s 73 of the Evidence Act--we find good grounds for the belief that both Ex. P-11 and its copy in the case-diary were written by him. Here we must express strong disapproval of the conduct of the prosecution authorities in attempting to play a fraud upon the Court on the vital subject of the authorship of the first information report; we fail to understand what justification there was for S. I.

Abdul Hameed to claim its authorship or for the Public Prosecutor to wink at this--unless it be, as suggested by the appellant's learned counsel, that if the name of the real author had been revealed the consequences to the prosecution case would have been serious. The fact is that the conclusion that Jagdamba Prasad was the scribe of Ex. P-11 immediately places the prosecution in an unenviable position, for it means that this constable was present at V. Bhua at 8 p.m. on the 2nd September. But his own statement proves that this was out of the question.

He was the constable to whom the Sub-Inspector had entrusted the three dead bodies at Panderi Khar, and he had left that place at about 5 p.m. and gone direct to Sahson. He has unequivocally stated that he never went to V. Bhua. When and where, then, did he scribe Ex. P-11 or its copy in the case-diary? Obviously, subsequent to the Sub-Inspector's arrival at the police-station, which was at 1 p.m. next day, for before that there was no chance of the Sub-Inspector and Jagdamba Prasad meeting together. It follows that Ex. P-11 did not exist on the 2nd September, nor could there be any question of the case-diary being commenced at any time that day.

44. Then there is the matter of constable Prag Singh who along with constable Ahmad Bux allegedly left V. Bhua with the three injured constables and the report Ex. P-11 at about 8-30 p.m. on the 2nd; he reached Sahson at 11-30 p.m. at which hour a case is stated to have been registered on the basis of Ex. P-11. But the

case-diary shows the statements of Prag Singh and his colleague Ahmad Bux was recorded after the list of articles recovered from Panderi Khar.

Since the recoveries at the latter place were allegedly made between 9 and 10 p.m. it follows that these two constables were interrogated by the Sub-Inspector after 10 p.m. and further that they could not have been examined at V. Bhua since the Sub-Inspector after accomplishing his search of Panderi Khar professes to have remained there for the rest of the night. It was physically impossible for anyone to leave Panderi Khar at 10 p.m. and to reach Sahson at 11-30 p.m. It clearly follows that Ex. P-11 could not possibly reach the police-station at 11-30 p.m., so that no case against Tahsildar could have been registered at that time.

45. Two different sets of circumstances are thus found to establish that the first report Ex. P-11 came into existence sometime on the 3rd September, most likely subsequent to S. I. Abdul Hameed and C. I. Mushtaq Ahmad's reaching the police-station. These circumstances also establish that the case-diary could not have been commenced at the time alleged by the prosecution, but much later on.

46. Indeed, we find it hard to believe that the Sub-Inspector had any diary-sheets with him. The Circle Inspector declares that he (the Sub-Inspector) was carrying with him blank diary-sheets, sheets of paper, seal, sealing-wax etc. Yet he did not carry with him inquest-forms, for otherwise it would not have been necessary to send the dead bodies to Sahson for the inquests; like the injured constables the corpses too could have been brought to V. Bhua (where the Sub-Inspector was free from work until 8 p.m.) and their inquest reports prepared.

It stands to reason that if inquest-forms were not with the Sub-Inspector diary-sheets were not with him either. Besides, he had sallied forth to search for the outlaws and to engage them if found; he had not left the police-station for investigating any case, nor could he anticipate that the investigation of a cognizable case would become necessary. Moreover, there is no entry in the general-diary of the police-station showing that at departure he took blank diary-sheets, seal, sealing-wax etc. with him. It is evident that in the absence of blank diary-sheets no preparation of the case-diary at V. Bhua was possible.

47. The absence of diary-sheets immediately makes it impossible to accept the assertion that Dudh Nath's dying declaration Ex. P-230 was recorded in the case-diary on the 2nd September shortly after 8 p.m. It must have been prepared subsequent to the Sub-Inspector reaching the police-station next day. But it is an established fact that after Dudh Nath left V. Bhua on the night of the 2nd September he never had a chance of meeting the Sub-Inspector again, far from the police-station, he was sent post-haste to Etawah that very night and then on to Agra, expiring on the way.

It follows that Ex. P-230 is not the statement of Dudh Nath but has been manufactured by the Sub-Inspector out of his own brain, and indeed he could write

anything he chose, for the statement does not bear any signature or thumb-impression of its supposed maker. It further follows that those prosecution witnesses who have come forward to attest the correctness of this document are not speaking the truth.

48. The learned trial Judge, as his judgment discloses, felt considerably impressed by the dates on which the diary-sheets were received in the office of the Superintendent of Police of Etawah and signed by the Superintendent himself, and in consequence came to the conclusion that the dates borne by the diary-sheets were correct and therefore their contents reliable. The fact is that the first diary-sheet of the case-diary of the 2nd September bears the seal of the Superintendent of Police's office with the date the 3rd September, and its last sheet the Superintendent's own signature dated the 4th. Similarly the case-diary of the 3rd bears the date the 4th on the seal and the Superintendent's signature on the 5th.

This ought to mean that the diary of the 2nd September was received at Etawah on the 3rd and perused by the Superintendent on the 4th, while the diary of the 3rd was received at Etawah on the 4th and seen by that officer on the 5th. We have no reason to doubt the correctness of the dates noted under the signatures of the Superintendent of Police; but the other dates we deeply distrust. The fact is that the dak used to be despatched from police-station Sahson at 4 p.m. every day. But there is an entry in the general-diary of the 3rd at 4 p.m. which shows unambiguously that the dak was not despatched that day; nor is there any entry about the despatch of the dak of that day at some other time.

The date of actual despatch has not been indicated, but that in any case could not have been before the 4th. But what happened was that the Superintendent of Police had himself reached Sahson on the evening of the 3rd September and had remained there for several days continuously. It was physically impossible for the dak of the 3rd to be sent from Sahson to Etawah and re-directed from there to the Superintendent so as to be delivered to him on the 4th. But since the case-diary of the 2nd September does bear the Superintendent's signature of the 4th, it clearly follows that it was never sent to his office at Etawah.

The date affixed to his office seal is patently false, and was no doubt subsequently put in with intent to throw dust in the eye of the Court. This analysis leads to the conclusion that S. I. Abdul Hameed had available to him the whole of the 3rd September and even part of the 4th, to prepare the case-diary bearing the date of the 2nd; similarly he had available the whole of the 4th, and even part of the 5th, to prepare the diary of the date the 3rd. The police records (which we have examined for ourselves as we have a right to do) themselves make all this clear beyond possibility of doubt. If the learned Sessions Judge had noticed these circumstances we have little doubt that he would have viewed the case-diary of this case with the same distrust that we do.

49. Another line of reasoning leads very much to the same result. This arises out of the amount of material in the case-diaries of the 2nd and 3rd September. The writing of the first diary started allegedly at 8 p.m. on the 2nd, and C. I. Mushtaq Ahmad told the trial Court:

"Dudh Nath, Sri Kishan and Dukhi Rai were present when their statements were recorded in the case-diary. They left Bhua for the thana at about 8. They might have left by 8-30 latest."

Constables Prag Singh and Ahmad Bux accompanied these wounded men. The number of pages of the diary upto the last sentence, in the latters' statements is 13. The statements of Prag Singh and Ahmad Bux cover more than one page, while in between are noted the injuries of the injured constables and the recovery list in respect of Panderi Khar. It was impossible for all this matter to have been recorded in the short space of half an hour, i.e., from 8 to 8-30 p.m.

Incidentally, Dudh Nath's supposed dying declaration Ex. P-230 (which we propose to reproduce later on) covers no less than three pages; it is rich in detail and embraces many matters of little consequence. We are most reluctant to believe that in the circumstances, when it was evident to all that Dudh Nath's injury was mortal and that speedy medical aid was essential, the Sub-Inspector would stop to take such a detailed statement from him. Coming now to the diary of the 3rd, 31 pages are found covered between the hours of 6-30 and 10-30 or 11 a.m. the latter being the time when the police party along with the arrested Tahsildar finally left for the police-station. In the interval the Sub-Inspector recorded the statements of all the remaining eye-witnesses, interrogated Tahsildar, sealed up certain articles seized from him, visited Panderi Khar for taking blood-stained earth into possession and prepared the site-plan. The time at his disposal prior to his departure for Sahson was too short for accomplishing all this.

50. We deeply deplore that despite the presence of the Superintendent of Police at Sahson no check was placed on the aforesaid extensive deviations of the Sub-Inspector from the path of rectitude; it seems to be a case of darkness under the lamp, as the Indian proverb goes.

51. We turn now to consider the genuineness of the recovery memos Ex. P-2 and Ex. P-137 prepared by the Sub-Inspector the former relating to the alleged search in Bhua Khar at about 9 p.m. on the 2nd September and the latter to the recoveries on the way from Panderi Khar to Bhua Khar on the 5th September. There is also the alleged recovery by Subedar Shamsuddin and the Commandant of the P.A.C. of cartridges from the same route. We shall also examine the recovery memo Ex. P-1 stated to have been prepared by Subedar Bhagwat Misra on the spot when he arrested Tahsildar on the morning of the 3rd September.

The three memos and Shamsuddin's recovery are inter alia in respect of .500-bore cartridges which expert evidence has proved to have been fired from the rifle Ex. I,

the memo Ex. P-2 covering in addition some note-books in Tahsildar's handwriting. The importance of these recoveries lies in the fact that they are sought to connect Tahsildar directly with Bhua Khar and Panderi Khar and with the route connecting the two.

52. We have grave doubt about the genuineness of these recoveries, at least so far as the times and places of the recoveries go. Ex. P-2 has been proved by the Sub-Inspector and by Shiv Narain and Surajpal who attested it. They further allege that the .500-bore cartridges were sealed up then and there. We have already given reasons for doubting the fact that the Sub-Inspector carried with him seals, sealing-wax etc. Nor are we inclined to believe that he would have been rash enough to descend into Panderi Khar (where vigorous firing with grave results had taken place earlier) in the pitch darkness of 9 p.m.

Fear of returning bandits must have compelled him and his associates to remain at a safe place instead of advancing into the danger zone. Speaking of his descent into Panderi Khar at 5 p.m. in order to recover the dead bodies, he stated before the Committing Court that without making a proper search he had to scramble out of the ravine because of gun reports from the side of Bhua Khar. Reports of firing had continued for a long time after that. Witness what C.L Mushtaq Ahmad has deposed before us:

"Owing to the stray firing during the night we suspected that apart from the Tahsildar other members of the gang may be lying in ambush for us at various points."

He has also said:

"Our previous experience of this gang had taught us that often they left an injured person behind, and when the police advanced towards them they ambushed the police party and caused them damage and then escaped by secret routes."

We are therefore not disposed to believing that the Sub-Inspector made any search in Panderi Khar during the night. Nor do we find it easy to accept that earlier that day at 5 p.m. he had gone down into that Khar for retrieving the dead bodies and yet refused to touch all the incriminating articles lying there. The dead bodies are stated to have been immediately sent off to Sahson, a journey which would take roughly three hours, since that was the time taken" over it by the three wounded constables.

Yet we find that the dead bodies reached the police-station the following morning between 8 and 9 a.m. The explanation attempted is that there was paucity of labour, an explanation we are unable to accept, since the coolies who had started off with the corpses at Panderi Khar would in the normal course be available for the entire journey. The late arrival of the dead bodies is strongly indicative of their recovery at a much later hour, a conclusion fortified by the fact that, as shown by the

postmortem papers, they did not reach Etawah until 4-30 p.m. on the 4th September.

A clear idea of the time required for the journey is given by the fact that the injured constables were sent off from Sahson on the 2nd at 11-30 p.m. and reached Etawah on the 3rd at 5 p.m., i.e., roughly eighteen hours. Injured men must naturally make the journey slowly and carefully, whereas corpses are just like so many sacks of coal and therefore do not need delicate handling. Hence, calculating backwards from the time of the arrival of the corpses at Etawah, we are led inevitably to the conclusion, that they reached Sahson much later than the time noted in the general diary of that police-station.

Moreover, there is the patently odd matter of three separate searches in Panderi Khar; first, on the 2nd at 5 p.m. for the recovery of the dead bodies; second, on the 2nd at 9 p.m. for the recovery of articles; and third, on the 3rd subsequent to Tahsildar's arrest for recovery of blood-stained earth. Three distinct searches, when one would have been equally effective and less time-consuming, seems to us quite unnatural. The probabilities taken along with the circumstances just discussed leave little room for doubt in our mind that the search in Panderi Khar was conducted subsequent to Tahsildar's arrest. It scarcely needs any argument to demonstrate that any discovery of material items of evidence made subsequent to Tahsildar's arrest loses the major part of its value.

53. Reverting now to the recovery memo Ex. P. 137, we find that the only witness who spoke of its correctness was S. I. Abdul Hameed before the Committing Magistrate. Significantly, its attesting witnesses Akbar Singh and Ham Bharosey have not spoken a word about it. Nor could they have been present at the supposed recovery, for both declare that on the afternoon of the 3rd September, they left for their village and thereafter did not come into contact with the Sub-Inspector or the Superintendent of Police.

They might conceivably be credited with error with regard to meeting the Sub-Inspector, but surely they could not be mistaken when they deny meeting a high dignitary like the Superintendent. The Superintendent, be it noted, neither signed the memo nor was examined by the prosecution in proof of it. Before the Sessions Court C. I. Mushtaq Ahmad affirmed the genuineness of Ex. P. 137 and claimed to have been present at the search of the route from Panderi Khar to Bhua Khar on the 5th, but we are most hesitant in believing him on this point, both because his name does not find place in the memo and because the Sub-Inspector in his evidence never suggested that he had been present.

In this state of the evidence we are not prepared to accept the authenticity of Ex. P. 137. Incidentally one point worth noting in it is that it nowhere speaks of the recovery of the cartridges on the way from Panderi Khar to Bhua Khar; on the contrary it describes the place of the recovery as "the Behar between Bhua and



Bindwa Kalan", a very extensive and ill-defined area which it is impossible to equate with the route from Panderi Knar to Bhua Khar. We are, we think, on safe ground in assuming that if the cartridges had actually been found on that route this fact would have been unequivocally noted down in the memo. For these reasons the recovery evidenced by Ex. P. 137 cannot be deemed to give any help to the prosecution case.

54. Subedar Shamsuddin's supposed recovery of the 22nd September too suffers from various infirmities. Admittedly neither he nor the P. A. C. Commandant prepared any recovery memo so that we have been kept in ignorance of what was originally claimed as the place of the recovery. It is said that the Subedar took the recovered articles to Sahson and deposited them at the police-station; there the thana-clerk made an entry in the general-diary which he signed. But no attempt has been made to file or prove that particular entry. Shamsuddin, who is the solitary witness on the point, has deposed that his recovery was on the route between Panderi Khar and Bhua Khar.

In the absence of the relevant general-diary entry we are not prepared to accept this description of the spot of the recovery. Besides, -- and we desire to lay stress on this point -- we are at a loss to understand why the same cartridges had not been seen and taken into possession by the Sub-Inspector and the Superintendent of Police when they inspected the route on the 5th September. Obviously, their recovery must have been from some place other than the route, connecting Panderi Khar with Bhua Khar.

55. Coming now to Subedar Bhagwat Misra's recovery memo Ex. P. 1, we find him and the attesting witnesses asserting that it was prepared on the spot where Tahsildar was arrested, viz., Bhua Khar. But the document itself does not make any such claim; the name Bhua Khar is conspicuous by its absence from it; it speaks merely of "the place where Tahsildar Singh was arrested", which might have been anywhere. Nor are we inclined to believe that Bhagwat Misra could have written it on the spot, for we have grave doubt about his capacity to prepare such a document unassisted. Nor can we believe that, in view of the nature of his duties, he was carrying -- as he alleges -- a pen and ink-pot with him.

He is an ex-Army-man and has never served in the Civil Police. Never before had he arrested any criminal or prepared any recovery list or appeared before a Court. Ex. P. 1 on the other hand is in a form and terminology which proclaim an experienced police-officer used to arresting accused persons and preparing memos. The learned trial Judge took a test of Bhagwat Misra by asking him to write out a document like Ex. P. 1 unassisted and without seeing it. He prepared Ex. D. 10, taking sixteen minutes over it. A comparison of Ex. D. 10 with Ex. P. 1 shows that the two could not have been fathered by the same brain, Ex. D. 10 being the work of an obvious amateur whereas Ex. P-1 is that of a professional. Nor is it credible that with a valuable prize like Tahsiidar in his hand Bhagwat Misra would tarry on the spot occupying at least sixteen minutes with preparing a recovery memo which to a

person with his background and training conveyed nothing.

The conclusion is therefore inescapable that he wrote Ex. P. 1 to the dictation of the Sub-Inspector after he had produced Tahsildar before him at V. Bhua. But the question which immediately arises is; if the Sub-Inspector was the true author of Ex. P. 1 why was the name Bhua Khar omitted from it? Keeping in mind that the Sub-Inspector's own recovery memo Ex. P. 137 of the 5th September too omitted the name Bhua Khar, the answer which unequivocally suggests itself is that at that stage of the investigation no occurrence at Bhua Khar was in contemplation.

56. We may now set out the conclusions that can logically be drawn from the foregoing discussion. We do not doubt the factum of the recovery of .500-bore cartridges. But what we are unable to accept is that they were recovered from Panderi Khar or Bhua Khar or the route in between, and we are of the view that their recovery was, as described by the Sub-Inspector's own memo Ex. P. 137, from spots in the Behar between villages Bhua Khar and Bindwa Kalan. Nor should this occasion any surprise for the evidence discloses that firing had taken place at various points and had extended over a period of several hours. But if the .500-bore cartridges had been fired from widely separated points the rifle Ex. I which fired them must have been travelling between those points, a conclusion which is totally inconsistent with that weapon being in Tahsildar's hand, for his leg-injury had made him immobile, whereas a mare, if any, could have taken him over recognised pathways only and never up and down ravines and cliffs. We are further of opinion that it was only later when the prosecution story had finally crystallized in the mind of Sub-Inspector Abdul Hameed that the witnesses were made to state that the recoveries had been in Panderi Khar or Bhua Khar or on the way from one Khar to the other, the intention being to make the murder charge against Tahsildar as water-tight as possible. We shall presently show from other evidence also that the Bhua Khar incident was a later invention.

#### VII -- FORGERY IN POLICE PAPERS.

57. In this Chapter we shall deal with forgeries deliberately committed by S. I. Abdul Hameed in the statements of certain important eye-witnesses recorded by him u/s 161 Cr. P. C. Some allied matters will also be dealt with.

58. The subject of forgery in the diary statements requires a rather elaborate introduction. At the trial copies of these statements of prosecution witnesses had in the normal course been supplied to the defence. In these Subedar Arjun Singh, constable Sri Kishan and Shiv Narain spoke of the Panderi Khar incident, Subedar Bhagwat Misra, Akbar Singh, Ram Bharosey and Havildar Mohammad Mohsin supposedly of the Bhua Khar incident, and Subedar Shamsuddin of what he had seen from his post near V. Titawali. The statements of Sri Kishan and Shiv Narain were silent on the question of any Mare or of Tahsildar riding one, but the very last sentence of the other witnesses (barring Shamsuddin) read as follows:--

Arjun Singh :-- The dacoits who fled were twelve out of whom one was on a mare; he is the man arrested".

Bhagwat Misra; "Tahsildar was previously on a mare; he had four others with him."

Akbar Singh :-- "Tahsildar was on a mare; he is a good marksman".

Ram Bharosey :-- "Tahsildar came to the place of arrest on a mare holding a gun; the mare bolted".

Mohammad Mohsin :-- "Tahsildar armed with a gun; came on on a red mare to the place of his arrest."

59. One of the middle paragraphs of Shamsuddin's statement had this as its last sentence;--

"About 7 p.m. there was a saddled mare which bolted from the Khar".

60. A reading of the entire Section 161 statements of these witnesses discloses these particular sentences as being totally out of context and bearing no relation to what had been said in the entire passage preceding.

61. In his deposition in the trial Court Sri Kishan stated that he had seen a party of four dacoits one of whom was riding a mare, while Shiv Narain declared that Tahsildar was on mare-back and had four or five persons with him, assertions that found no place in their statements to the investigating officer. Now, it appears from an order of the Sessions Judge passed at an early stage of the trial that in his view an omission in the diary statement did not amount to a contradiction within the terms of Section 162 Cr. P. C. and therefore could not be put to a prosecution witness.

This view was based apparently on the decision in [Ram Bali and Others Vs. State](#), The result was that the learned defence counsel was prevented from putting the aforesaid omissions to Sri Kishan and Shiv Narain and to adequately cross-examine them in respect of those omissions,

62. Further, on examining the copies of the Section 161 statements of Arjun Singh, Bhagwat Misra, Akbar Singh, Ram Bharosey, Mohammad Mohsin and Shamsuddin which had been supplied to him the learned defence counsel suspected that the sentences quoted above had been added subsequently. Since he had been, furnished only with copies, he naturally had no means of basing his suspicion on such factors as differences in the spacing of letters, hind-writing or ink. But his suspicion was aroused by the fact that in each case the last sentence was totally out of the context of the rest of the statement.

He therefore applied to the Sessions Judge for inspection of those portions of the case-diary which contained the statements of these witnesses. The learned Judge, quite rightly, disallowed inspection of the case-diary by the defence, but at that

stage took no apparent step to examine the question of the alleged forgery. The defence counsel, assuming that his suspicion was unfounded, took no step to establish the interpolations, for instance, by putting necessary questions in cross-examination to the witnesses. Needless to say, an interpolation in the diary is tantamount to an omission by the witness to state the interpolated portion before the investigating officer.

63. Although during the actual hearing of the trial the learned Sessions Judge did not examine the case-diary, he did so while preparing his judgment. As a result he came to the conclusion that the above-quoted sentences had been added by the Sub-Inspector subsequent to the recording of the original statements of the witnesses concerned. The learned Judge went on to evolve a theory of his own in order to explain the interpolations and to accept the mare-riding episode. This theory was that the Sub-Inspector examined the witnesses on the night of the 2nd September when no one attached any significance to the mare; but when Tahsildar was arrested on the morning of the 3rd and his leg found broken it occurred to the Sub-Inspector to enquire what his means of locomotion had been; accordingly he re-called the witnesses, put an appropriate question to each and noted down in the diary what he stated.

64. The Sessions Judge's theory is easily demolished. It is founded on the basic assumption that the witnesses were examined and their statements recorded on the 2nd September. This assumption is baseless, for they were examined on the 3rd subsequent to Tahsildar's arrest; the only one of them examined on the 2nd was constable Sri Kishan who did not speak of any mare at all. Since the Sub-Inspector examined the witnesses subsequent to Tahsildar's arrest, at the time of their examination he was fully aware of Tahsildar's physical incapacity and would therefore have questioned them then and there with regard to his means of locomotion; there could be no question of his recalling them in order to elicit from them how he had moved about. The Sessions Judge's theory is thus demonstrated to be untenable.

65. In the course of the hearing before us the appellant's learned counsel narrated all these facts and made an application for summoning the aforementioned witnesses before us so that they could be adequately cross-examined with regard to the omissions or interpolations. He relied on the recent case, of [Rudder and Others Vs. The State](#), which lays down that in certain circumstances material omissions are contradictions and can be put to the prosecution witnesses.

We are firmly of opinion that the decision in *Rudder v. State*, (B) lays down the correct law, and indeed we are of the view that although every omission is not necessarily a contradiction for purposes of Section 162, Cr. P. C., an omission may amount to a contradiction if the matter covered by it was one which a prosecution witness would be expected to mention and the investigating officer to make a note of, in the ordinary course. Holding therefore that by the Sessions Judge's

application of the wrong law the defence had been deprived of a valuable means of testing the evidence of the witnesses, we allowed the appellant's counsel's application and directed the aforementioned witnesses, except Sham-suddin, to be summoned here; we made an exception in Shamsuddin's case as we considered that the interpolation in his statement was not of such material importance as to justify his examination again. We also summoned C. I. Mu-shtaq Ahmad in order to prove the diary entries, since he is well-acquainted with the hind-writing of its writer, S. I. Abdul Hameed deceased. Besides, a fresh examination of the witnesses was rendered necessary in view of the obvious flaws in the trial Judge's theory regarding the interpolations. The witnesses appeared and were duly questioned by us and by the learned counsel for the State and the appellant.

66. Arjun Singh has stated before us:

"The investigating officer had first questioned me on the night of the encounter, and then I had told him that I had seen several of the dacoits one of whom had been riding a mare. I cannot say whether at that time the investigating officer wrote down my statement or not. Next day he again questioned me subsequent to the arrest of the present accused, and then I told him that this was the man whom I had seen riding a mare."

Bhagwat Misra deposes:

"I did not make any statement before the S. I. on the 2nd September. But after arresting the accused Tahsildar I took him to the S. I. and it was then that I gave my statement and told the S. I. about seeing the man on the mare I wish to add that after recording my statement on the 3rd the S. I. half an hour later sent for me and asked me how the arrested man had come, and it was then that I told him that he had been riding a mare."

Akbar Singh explains:

"The S. I. questioned me twice, first on the night of the 2nd September and next on the 3rd. On both occasions I had told him that I had seen Tahsildar riding a mare coming from Panderi Khar to Bhua Knar. On the third the S. I. wrote down whatever I said. Then half an hour later he sent for me again and asked me if I had mentioned the mare matter, to which I replied that I had already mentioned it before him."

Ram Bharosey has told us:

"I went to village Bhua on the night of the 2nd September and was beginning to tell the S. I. my story when he stopped me and said that he would question me later on. Next day after the arrest of Tahsildar he questioned me and I told him everything, including my having seen Tahsildar riding a mare. Half an hour later he re-called me and asked me if I had made mention of Tahsildar riding the mare. to this I at once replied that I had already stated that particular fact before him."

Mohanmadad Mohsin's statement is:--

"I remained at Bhua Khar throughout the evening and night of the 2nd September, hence had no chance of telling the S. I. anything that evening or night. On the 3rd after arresting the accused Tahsildar we took him to village Bhua, and there I related the story to the S. I., telling; him at the same time that I had seen this man the previous afternoon riding a mare. About an hour after my statement the S. I. called me back and again asked me whether this accused had been seen by me the previous afternoon riding a mare. Thereupon I told the S. I. that that was so and that I had already mentioned the matter to him."

67. Thus all these five witnesses tell us that subsequent to Tahsildar's arrest on the morning of the 3rd September they told the Sub-Inspector everything including the episode of Tahsildar riding a mare, and that half an hour to an hour later they (except Arjun Singh) told him a second time about the mare. Further; Arjun Singh and Akbar Singh would have us believe that they had mentioned the mare matter to the Sub-Inspector on the night of the 2nd September, while that night Ram Bharosey had partially told him of it. The explanations, it is plain, are artificial in the extreme, and we have little doubt that before appearing in our Court the witnesses had been well-coached into the Sessions Judge's theory.

It stands to reason that if in their main statements they had mentioned the mare story --as they profess to have done--there was no point in the Sub-Inspector questioning them on that point a second time. We have examined -the original diary statements for ourselves and have not the slightest doubt that the, above-quoted last sentences were introduced by S. I. Abdul Hameed later on. In the body of the statements there is nothing even remotely connected with the mare, or with any other means of conveyance. In the prevailing circumstances the very sight of a mare would have been so unusual as to attract attention, so that no eyewitness could have failed to mention it in his main statement. Besides, from the wireless messages it was already known that Tahsildur was injured, and injured seriously enough to necessitate his being taken across the Chambal for medical aid from Etawah.

67a. Forgery in the Section 161, Cr. P. C. statements of the five witnesses aforesaid therefore stands established. We have little doubt that the red mare was introduced at a later stage of the investigation in an attempt to more strongly establish Tahsildar's presence at Pan- deri Knar and to explain his shift to Bhua Khar.

68. The material omissions found in the Section 161, Cr. P. C., statements of Sri Kishan and Shiv Narain do not strictly come within the subject of this Chapter; they will be discussed at an appropriate place later on--we have referred to them simply because they are inextricably mixed with the circumstances in which we felt obliged to summon some important witnesses before us.

69. It is extraordinary that constable Dudh Nath's diary statement Ex. P-230, which has been received in evidence as a dying declaration, contains an interpolation

similar to the statements of the five witnesses discussed above. The last sentence of his statement runs : "Tahsildar was on a mare; he takes aim at a sound". A perusal of the original case-diary leaves no room for doubt that this sentence was added by S. I. Abdul Hameed later on. It is of the utmost significance that at least in his case the prosecution cannot take shelter behind the plea of fresh questioning after Tahsildar's arrest in order to ascertain the means of conveyance, for this constable had been sent off from the scene long before the arrest, and the Sub-Inspector never saw him alive again. Besides, if he had really made the statement about the mare the Sub-Inspector was bound to have questioned subsequent witnesses about it, in which case the mare story would have occurred at an appropriate place in the body of their statements and not as the very last sentence. That the introduction of the mare episode was part of a design is clear.

70. Some other forgeries and suppression of evidence have been discovered. Exhibit P-24 is the inquest report of the police spy Karna prepared by the head-moharrir of Sahson. It originally contained a sentence which ran: "Man Singh ne pakrane ke bad goli se mar diya." This sentence was subsequently altered to "Man Singh ne pakarne ke bad goli se marwa diya", (the "wa" in "Marwa" being written in a different ink altogether. Incidentally the misspelt word "Marwa" should be made note of.

The forgery in the sentence leaps to the eye. A similar alteration is to be found in Ex. P-28, the note sent from the police-station to the medical officer at Etawah regarding the cause of Karna's death. Apparently the object was to alter the original case that Man Singh had killed Karna into one that he had got him killed by some one else. The usual letters which are sent from the police-station to the medical officer for examination of injuries have been withheld in the case of constables Dudh Nath, Sri Kishan and Dukhi Rai, and no one on behalf of the prosecution has been able to explain as to what has happened to them.

The injury-register of the Etawah hospital where the injuries of these constables were noted has been produced in Court in a half-burnt condition, the actual record of injuries being completely obliterated. The applicant's learned counsel contends that the injury-letters have been deliberately suppressed and the hospital injury-register purposely burnt so as to prevent the Court from knowing what had originally been stated by the injured constables regarding the circumstances in which they became casualties. We should like to state that the material before us is too meagre to entitle us to pass judgment on this plea, hence we content ourselves with merely mentioning the facts. Dukhi Rai's dying declaration Ex. D-19, recorded at Etawah by the Sub-Registrar-Magistrate, was withheld by the prosecution, who went to the length of pretending ignorance of its very existence; on the insistence of the defence it was eventually produced; the explanation furnished by C. I. Mushtaq Ahmad was that after a thorough search it had been procured from the brother of S. I. Abdul Hameed after the latter's death.

The dying declaration should have been sent to the Court immediately after it was recorded; it was reprehensible of the Sub-Inspector to have taken it home and kept it among his private papers. There is some force in the contention that he deliberately suppressed it because it went contrary to the case which he was setting up.

71. The discussion attempted in this and the preceding Chapter, obliges us to view the police papers of this case with distrust. In particular, the discussion compels the conclusion that the first report Ex. P-11 and Dudh Nath's dying declaration Ex. P-230 were prepared, and the preparation of the case-diary started, subsequent to Tahsildar's arrest. Further, tampering with material documentary evidence has been indulged in with an ulterior object.

#### VIII--FIRST INFORMATION REPORT EX. P-11.

72. We have given reasons for holding that the first information report Ex. P-11 came into existence sometime on the 3rd September, most likely subsequent to the arrival of the Sub-Inspector and Circle Inspector at police-station Sahson that day. This Chapter will be devoted to a discussion of its content and the conclusions drawable therefrom.

73. Since this report is the foundation of the case against the appellant Tahsildar, and since according to the prosecution its author was none other than the investigating officer himself it is a document of supreme importance and deserves to be quoted in full:

"On receipt of information from a special informer about the presence of Man Singh's gang in the Behar between Bhua and Bindwa Kalan, I, the Sub-Inspector, along with the Circle Inspector assisted by the local Police and the P. A. C., reached village Garhaiya on the night between the 1st and the 2nd September 1954. Having obtained further confirmation of the report, we prepared a scheme and that very night all the police employees proceeded according to plan. Also the P. A. C, guard posted at village Barechha was called up through Babban Chow-kidar of Birauna Bagh in the circle of this police-station and duty was allotted. Till 10 A.M. this day the entire force which had been divided into four parties, each under the charge of me the Sub-Inspector, the Circle Inspector, Shamsuddin and Bhagwat Misra separately re- mained at secret positions at several points.

For the guidance of each party the informers and Civil Police constables in plain clothes moved about to find out clues about the dacoits and track them down. After 10 a.m. it was decided that the entire force should spread out and then close in round the ravine aforesaid from all sides. The operation began at about 11-30. While the operation was under way, I the Sub-Inspector received information about the presence of the dacoits in the Behar of Panderi Khar. While the hunt was going on, the dacoits cleverly seized special informer Karan, son of Vishambhar Singh alias Sambhu Singh Ahir, a resident of Garhaiya in the circle of this police-station, and



detained him inside the Khar. When the party headed by me reached just near the Khar aforesaid to spot out and strike and threw a cordon, a voice was heard saying from inside the Khar, "Baba; the Police has surrounded us".

A voice which was like the voice of an old man said in reply "Beta Subedar, kill Karna and all of you get ready". At that time besides members of the P. A. C. and the Civil Police there were with me retired Havildar Tulsi Ram, resident of Bindwa Kalan, Shiv Narain Ahir of Bindwa Kalan and Ram Bharosey Ahir of Garhaiya. After this was said, we heard a shot inside the Khar. After an interval of about 4 seconds the dacoits attacked us with rifle and T.M.C. fire from all sides. All of a sudden they showered bullets on me and the entire striking force accompanying me. In order to defend myself and the force I ordered the constables to fire.

I myself opened fire. Thereupon, one of the dacoits hurled three hand-grenades, one after the other, at us. Two of them exploded. One did not explode. From our side also Havildar Arjun Singh threw four hand-grenades which hit the dacoits. Rupa and Man Singh were firing from T. M. C. Continuously firing from a T.M.C., Rupa advanced close to us up to the mound. Jagdamba Prasad, Jagram Singh, Ahmad Bux and other constable accompanying me and I fired at him. He (Rupa) was wounded and dropped rolling into the Khar. Other members of the gang came out of the Khar and fled towards the north-west.

In the encounter constable Sri Kishan was injured by the hand-grenades thrown by the dacoits and constable Dukhi Rai was wounded by the shots fired from a T.M.C. by Man Singh. When this gang was advancing towards the north-west the Police force on that side which was under the command of Bhagwat Misra fired at the dacoits in reply. Then the dacoits turned back and advanced towards the south. They attacked the Police force posted on that side under the charge of the Circle Inspector. The Circle Inspector, at the risk of his life, counterattacked the dacoits with the force under him under covering fire. Two of the dacoits were wounded. The gang scattered and went towards the east singly or in twos.

The Police force posted on that side under Sri Shamsuddin encountered them. Now it was getting dark in the ravines. The tempo of the firing of the dacoits lessened and shortly after it appeared to have ended. Now and then firing of a shot or two was heard. The constables in plain clothes accompanying the four Police parties went down in search of the dead and injured dacoits. Dudh Nath Singh, at the peril of his life, was courageously advancing accompanied by Akbar Singh Ahir, resident of Bindwa Kalan and Bharosey. Ahir, resident of Garhaiya, in this police-station, under the command of Sri Bhagwat Prasad Misra in search of the dacoits when from about 100 yards beyond Panderi Khar Tahsildar Singh dacoit, who lay wounded in a drain, fired from his double-barrelled rifle at Dudh Nath as the latter came near.

Dudh Nath was hit in the abdomen and was wounded. The dead-bodies of two dacoits and the dead-body of Karan Singh have been taken out from Panderi Khar

and already removed from the place of occurrence. After having engaged the labourers, three wounded constables are being sent. Tahsildar is lying injured surrounded by the Police and is exchanging fire. The entire Police force is posted at its positions. Dudh Nath Singh the injured constable told in my presence and in presence of the Circle Inspector, Shiv Narain and Prag Singh, constables and other people of the village that Tahsildar dacoit in the portion mentioned above wounded him by shooting from his rifle".

The very, length and elaborateness of this report and the wealth of detail contained in it is proof that it was prepared by its author with care and deliberation. Consequently, any deviation in it from the prosecution case as set up in Court, or any omission from it of material facts, must arrest attention. It is therefore of importance to note what it says and what it leaves unsaid. The following are among its remarkable features:--

(a) It speaks unambiguously of Panderi Khar but maintains a studied silence about Bhua Khar, a name which is conspicuous by its absence from it.

(b) It says that the dacoits cleverly seized the police spy Karna and detained him inside the Khar, whereas the prosecution allege that he went into the Khar on his own initiative.

(c) It speaks of only one incident, viz., that at Panderi Khar; it does not even remotely suggest any incident at Bhua Khar.

(d) It discloses that Panderi Khar was surrounded by police parties from all sides, whereas both according to the site-plan Ex. P. 136 and the case in Court no forces were deployed on its north, north-western and western sides.

(e) It suggests that Subedar Bhagwat Misra's party was posted in the neighbourhood of the Sub-Inspector's party and further that he was to the north-west of Panderi Khar. But the prosecution now declare that he was stationed on the southern edge of Bhua Khar 500 yards to the south. The site-plan indicates a ravine running north or north-west of Panderi Khar, which is an additional reason for believing that the police could not have failed to lie in ambush in that direction also.

(f) It makes no mention of any party of four or five bandits going south, or of anyone, still less Tahsildar, riding a mare. This omission is highly significant inasmuch as Shiv Narain, the only witness of the Panderi Khar incident who knew Tahsildar from before, has affirmed before us that he saw the rider and immediately recognised him as Tahsildar and that he told the Sub-Inspector and his other companions who he was and pointed him out to them.

(g) It gives the time of the termination of the Panderi Khar incident as shortly before sunset, i.e., when "it was getting dark in the ravines", which is in marked contrast to the time of 2-30 P.M., now given. The question of light is of vital importance in

deciding whether or not it was possible to recognise the man who fired at Dudh Nath.

(h) It shows that Dudh Nath was shot while going down to search for the dead and injured Sacoits, who, according to Ex. P. 11 itself, could not have been anywhere but inside Panderi Khar.

(i) It asserts that Tahsildar was about 100 yards beyond Panderi Khar when he shot Dudh Nath, that is to say, he was about 100 yards to the north or north-west of Panderi Khar.

(j) It declares that at that time Tahsildar was lying wounded in a drain, and not, as is now stated, sitting on a six-foot high mound.

74. In short, the case made out by the first information report Ex. P. 11 is that there was only one incident, that at Panderi Khar; that the incident terminated when it was getting dark; that shortly after the termination Dudh Nath and others were going down into Panderi Khar to look for the dead and wounded miscreants when Tahsildar shot Dudh Nath; that he did so from a distance of about 100 yards north or north-west of Panderi Khar; and that there was no incident at Bhua Khar nor was any mare-rider seen going that way. This story is manifestly in direct conflict with the one which the prosecution are now asking us to believe. We should like to emphasise that Ex. P. 11 was not the product of the brain of an illiterate and inexperienced yokel, in whose case there may be a legitimate excuse of confusion or forgetfulness or incapacity to distinguish between material and immaterial facts; it was prepared by an experienced police officer who had personal knowledge of all the facts and who immediately after drafting the report was to take up the investigation of the crime. In such a case the prosecution cannot take shelter behind the plea of confusion or forgetfulness or lack of intelligence. The contents of Ex. P. 11 shake the prosecution case to its very foundations.

75. Incidentally, the report contains assertions which too go to confirm the view that it came into existence later on. The assertions in question are that Dudh Nath was hit in the abdomen that Dukhi Rai was wounded by bullets-fired from a tommy-gun and that Sri Kishan was injured with grenades. Now, when these constables reached the police-station at 11-30 p.m. on the 2nd September, they were questioned by the head-moharrir and their injuries examined and noted in the general-diary. Ex. P. 13 is the duly proved relevant entry of the general diary. But this entry shows Dudh Nath as stating that the bullet had entered his back; Dukhi Rai's injuries indicate as having been caused by grenade splinters or pellets; out of nine injuries of Sri Kishan eight are noted as due to gun-pel-pets.

The importance of these diary-entries lies in this fact; had the report Ex. P. 11 been actually before the eyes of the head-moharrir, as the prosecution declare was the case, it does not appeal to reason that that official would make entries in the diary at variance with the facts mentioned in the report of which the author was his own

boss. If therefore he made the entries as a result of his own examination of the injured constables it clearly follows that Ex. P. 11 was not before him. Further, Ex. P. 11 makes out that Man Singh did not kill Karan himself but got this accomplished by some other person, probably his son Subedar.

But we have shown earlier that Karna's inquest-report Ex. P. 24 and the note sent to the medical officer Ex. P. 28 both stated originally that Man Singh had killed Karna but subsequently were altered into indicating that he had got him killed by someone else. Both these documents were prepared at the police-station between 9 and 10 a.m. on the 3rd September. Had Ex. P. 11 been in the head-moharrir's hands he would never have noted in them that Man Singh had killed Karna. It follows that Ex. P. 11 could not have reached the police-station at 11-30 p.m. on the 2nd and that it did not come into existence earlier than 10 a.m. on the 3rd.

76. There is one other aspect of the report to which attention must be drawn. In the pre- vailing circumstances was it possible for S, I. Abdul Hameed to prepare it at 8 p.m. on the 2nd September as alleged by the prosecution? To answer this question we should bear in mind its elaborate details coupled with this sentence occurring in it: "Tahsildar is lying injured surrounded by the police and is exchanging fire". That is to say the Sub-Inspector at V. Bhua was preparing this detailed report at a time when less than a mile away a notorious criminal, for whom an abortive search had been going on for fourteen years and who had already caused mortal injuries to a constable, was firing at a small posse of police.

One should have thought that immediately on the arrival of the wounded Dudh Nath and his companions and hearing their story the Sub-Inspector and Circle Inspector would marshall all their forces, rush to Bhua Khar, surround Tahsildar's drain or mound and riddle it with bullets and hand-grenades. Instead what we are asked to believe is that no reinforcements were sent to Subedar Bhagwat Misra and that the Sub-Inspector under the supervision of the Circle Inspector proceeded quietly and peacefully to prepare the case-diary, to make a search of Pan-deri Khar until 9 or 10 p.m. to spend the rest of the night at that place and to take no steps with regard to Tahsildar's capture or shooting. The only reasonable inference is that on the night of the 2nd September neither was he aware of Tahsildar's presence nor did he prepare Ex. P. 11 or any other police paper.

77. To sum up, the report Ex. P. 11 is devoid of value as evidence corroborating the prosecution case; on the contrary it exposes falsities in it,

## IX -- DUDH NATH'S DYING DECLARATIONS

(a) EX. P. 230.

78. The prosecution strongly urge that the charge that the appellant Tahsildar shot constable Dudh Nath is established from the various statements made by the latter prior to his death. We agree that this claim if true would give immense support to

the prosecution case, at least with regard to Dudh Nath's murder. We note however that the learned trial Judge has disbelieved the story of these dying statements, principally on the ground that it was too dark for Dudh Nath to have seen his assailant. The prosecution have proved or attempted to prove five dying declarations, which taken in chronological order would be as follows :--

(a) That made at the scene of the shooting;

(b) That made under the mango tree;

(c) that made to the Sub-Inspector and other witnesses at Bhua village and recorded as Ex. P. 230.

(d) that made at the Etawah hospital to a Magistrate and recorded as Ex. P. 59; and

(e) That made to Sub-Inspector Ali Moham-mad at Etawah.

79. The statements (c) and (d) are in writing; the other three are based on oral evidence. Ex. P. 230 logically follows the consideration of the report-Ex. P. 11, since the pro-secution would have us believe that it was taken down immediately after the latter, i.e., shortly. after 8 p.m. on the 2nd September. The Sub-Inspector, the Circle Inspector, constable Sri Kishan, Akbar Singh, Ram Bharosey, Tulsi Ram, Shiv Narain and Surajpal have all stated that it was in fact made by Dudh Nath. From an examination of other circumstances we have earlier held that it could not be the statement of Dudh Nath but must have been manufactured by the Sub-Inspector out of his own brain. In this Chapter we propose to examine the story it relates; we shall deal with other alleged dying declarations in the next Chapter. (80) We quote Ex. P. 230 in full : "I am a resident of Garhaiya Piproli, police station Sahson, district Etawah. I myself and the members of my family recognise Man Singh and the members of his gang very well. This gang came to my village many times before and after my employment in the Police department. Subedar Mulu Singh helps them. Prag Singh, Laturi Singh and I are deputed on special duty. As per orders of the Officers, I reached village Bhua yesterday in the noon along with Prag Singh.

It was learnt from a reliable source that the gang of Man Singh was hiding at some place in the Behar between the villages Bhua and Bindwa Kalan, that it was intending to commit the murder of Karan Singh, Bharosey etc. the witnesses in a case u/s 216 I. P. C. against Roshan Singh and others and that, in order to be successful in it, this gang had been moving in the Sahson area for many days. I sent information to the police-station through a reliable person with the request that they should reach there at once.

We remained busy in gathering new information and we waited for the station officer. A scheme was chalked out in village Garhaiya on the arrival of the police of the police-station and the P. A. C. On the basis of it, I, along with the Circle Inspector had been lying in ambush near village Bhua since 12 O'clock in the night. On 2nd September, 1954, at 10 a.m., the station officer along with Sri Bhagwat Misra, P. A.

C., took up positions near the place of occurrence.

In the after-noon, volleys of fire -- bullets and bombs -- were made towards Panderi Khar. All of us became cautious. A little before sunset a group of dacoits was seen coming on the way before us. As soon as they saw us, they opened fire at us. We, too made gun fires in return, A little after the firing there was silence. I think I must not have missed my aim. At that time it seemed that the dacoits had run away in some direction.

Sri Akbar Singh, Bharosey Singh, Sri Bhagwat Misra P. A. C., and I went down in the Khar to make a search for the injured and dead dacoits. Akbar Singh and I were ahead of all. Bharosey Singh was 2 paces behind and Sri Bhagwat Misra was behind him. We had proceeded about 60 yards from our place when we saw at a distance of six yards on the left side Tahsildar Singh, son of Man Singh Thakur resident of Nagla Rathore, police-station Bah, district Agra, with a gun on his shoulder, behind a bush in a narrow Khar.

Being perplexed we were about to move away at once when he fired while in a sitting position. The bullet passed through my stomach. As soon as I received the injury I fell down. Akbar Singh gave me support and brought me to the mango tree. Thereafter arrangement for a cot was made and I reached this place along with constable Prag Singh. I know Tahsildar Singh son of Man Singh Thakur, who fired the shot at me, from before. My companions Akbar Singh and Bharosey Singh, who were with me, also know the accused very well. "Tahsildar was on the back of a mare: he takes aim at a sound".

(We draw special attention to the last sentence by underlining (here into " ") it). This story follows the same lines as the first report Ex. P. 11, and, like it, makes not even the remotest mention of Bhua Khar -- a place which must have been well known to Dudh Nath --as the place of the firing, or of anyone riding a mare. In particular, Ex. P. 230 indicates the following :--

(a) The actual place of posting of Subedar Bhagwat Misra's party is not mentioned, but the statement makes it clear that that could not have been far from the position of the Sub-Inspector's party.

(b) The place of occurrence was confined to Panderi Khar.

(c) The encounter at Panderi Khar came to an end a little before sunset. This has an important bearing on the question of the recognition of the person who fired at Dudh Nath.

(d) The descent into Panderi Khar was made with the object of searching for the injured and dead dacoits. It is worth noting that there was no question of searching for "injured and dead dacoits" at Bhua Khar, for Panderi Khar was the only place where they could have been found.

(e) Tahsildar fired his shot at Dudh Nath from a narrow ditch, not from the top of a mound.

These features run counter to the case as put forward before the Court.

81. We have earlier expressed grave doubt at such a detailed statement as Ex. P. 230 being taken from Dudh Nath under the conditions then prevailing. We have also shown in Chapter VII that the last sentence of this statement is a later interpolation. The story related in it does not give any assistance to the prosecution case. Indeed, we shall show presently that the only genuine dying declaration which Dudh Nath made, viz., Ex. P. 59, makes out yet another case, a case in which Tahsildar does not figure at all.

82. This will be a convenient place to take up an argument put forward on behalf of the State with regard to the objection that the name Bhua Khar is found totally omitted from the police papers prepared by the Sub-Inspector during the first few days of his investigation. The learned counsel for the State argues that Bhua Khar was merely an opening in a ravine and was therefore not known to the prosecution witnesses under a definite name. The argument may be tenable so far as the police personnel were concerned, since they had out casual acquaintance with the locality. But it cannot for a moment apply to a man like Dudh Nath, who was a native of V. Garhaiya and who on the prosecution's own showing had intimate knowledge of the ravinous area.

In his case there could be no question of ignorance of the name Bhua Khar, so that the omission of this name from his own supposed statement Ex. P. 230 strikes a hard blow at the prosecution case. Besides, it would not be true to say that the local police were not aware of the name Bhua Khar. This name is found definitely noted in the index to the site-plan Ex. P. 136 which the Sub-Inspector is alleged to have prepared as early as the 3rd September.

X -- DYING DECLARATIONS OF DUDH NATH :

(b) EX. P. 59 AND OTHERS.

83. The most significant of Dudh Nath's other dying declarations is Ex. P. 59. It was recorded at the hospital at Etawah at 6-15 p.m. on the 3rd September by Mr. B. L. Agarwala, a Sub-Registrar of Etawah who enjoys II class Magisterial powers, and has been proved by him. It takes the form of question and answer. We re-produce it in full :

"Q. -- What is your name?

A. -- Dudh Nath, Constable, Civil Police.

Q. -- What is your father's name?

A. -- Machal Singh.

Q. -- Where is your residence?

A. -- Piproli ki Garhaiya, police station Sahson, District Etawah.

Q. -- When and how did you receive injuries?

A. -- It so happened that on 1st September, 1954 it was learnt that some dacoits of Man Singh's gang were present in the jungle. I sent information to the Police and demanded help. The dacoits were about 14 in number. They hid themselves in the Nullah. Yesterday we made a raid on that gang. We were about 20 constables in number. The dacoits fired their guns at us. I too opened fire at them. All of a sudden, a bullet fired by the dacoits hit me in my stomach. I think I too did not miss my aim. On receiving the bullet I fell down at that place. "This bullet was fired by Tahsildar".

Q. -- Have you anything more to say? A. \_ No.

Q. -- Where did this occurrence take place?

A. -- In the Behar near the village Bindwa in the circle of Sahson.

Heard and admitted.

L.T.I. of patient.

B. L. Agarwala,  
S. R. Mgte.  
Etawah,  
3-9-54."

Special note should be made of the sentence This bullet was fired by Tahsildar", which we have underlined (here into " "). Barring this sentence there is nothing, whatsoever in the entire statement which could even remotely connect Tahsildar with the shooting.

84. A glance at Ex. P. 59 discloses this sentence to be in a different ink and pen from the rest of the document. It has been the subject of acute controversy. The defence characterise it as a rank forgery and declare that Mr. Agarwala made it at the instance of the police after Dudh Nath's death and when it had been decided to foist the guilt on Tahsildar, and they urge that this was part and parcel of the same design which led to the interpolation of Tahsil-dar's mare in the Section 161 Cr. P. C. statements previously considered by us.

85. It was inevitable for Mr. Agarwala to be closely catechised on this point. He has repudiated the imputations levelled against him by the defence. The explanation he offers, an explanation endorsed before us by the learned counsel for the State, is to the following effect. He was carrying two fountainpens when he recorded the statement. After completing it, but before taking Dudh Nath's thumbimpression on it--he is not sure whether he had appended his own signature and designation-- he



read it over, whereupon Dudh Nath reminded him that he had not mentioned Tahsildar firing the shot at him, and requested that this too be noted down. Thereupon he wrote the sentence which we have underlined above. He wrote it at an appropriate place in the middle, and was unable to write it at the end because there was no space left in the sheet. For writing it he might, have used his other fountainpen.

86. Mr. Agarwala has cut a sorry figure in the witness-box, and we particularly note his tendency to be as ambiguous as possible. We are unable to accept his explanation, and we have no hesitation in holding that despite his position as a responsible officer he has been guilty of both forgery and perjury. This conclusion is based on a variety of reasons. Tahsildar was such an important "catch" that any assertion relating to him was bound to be carefully and accurately recorded.

Consequently, if Dudh Nath in his main statement had really said that Tahsildar had fired the bullet, it was not possible for this to have been omitted from the record. If on the other hand he had mentioned Tahsildar on the statement being read over to him, the appropriate place for it to be written down would have been the end of the statement and not a middle part of it. It would be ridiculous for any Magistrate to append his signature, designation and date, and also write down the words "Heard and admitted" and "L. T. I. of patient" before reading out the statement to the deponent, for he can never know what fresh assertions might be made.

A glance reveals that in Ex. P. 59 after the last answer, Mr. Agarwala's signature etc. and the aforementioned phrases there was no sufficient space in the paper for the recording of fresh assertions. If on the other hand Mr. Agarwala had not affixed his signature etc. and the requisite phrases--as would be the most natural course--there was plenty of blank space available at the bottom of the sheet. Then, the impugned sentence is totally out of the context of the rest of the statement and bears no relation to it whatever; the statement, on the contrary, clearly declares the constable's injury as caused by a stray bullet in an encounter.

Again, if Dudh Nath had added something fresh, Mr. Agarwala, reinforced by his five years' magisterial training, was bound to have prefaced its record by some such note as : "On the statement being read over the deponent stated". Then there is the question of the different ink and pen. The suggestion is that for writing the disputed sentence Mr. Agarwala used his second fountain-pen. But if he did so, his own signature and the phrase "Heard and admitted" and "L.T.I. of patient" too would have been written with the second pen.

But actually they are found written with the first pen. Moreover, immediately after completing Ex. P. 59 he recorded Dukhi Rai's dying declaration Ex. D. 19. This statement is entirely in the same ink and pen as Ex. P. 59 minus the impugned sentence. It is incredible that for taking down the most significant sentence in the statement a second fountain-pen should have been used, but the first should have

been adhered to for writing the rest of Ex. P. 59 and the whole of Ex. D. 19. Incidentally, Mr. Agarwala when he appeared for his evidence before the trial Court was found to possess only one fountain-pen.

87. Nor was there lack of opportunity for the impugned sentence to be introduced afterwards. Mr. Agarwala admits that he is on friendly and visiting terms with the Public Prosecutor of Etawah. We have previously referred to Dukhi Rai's statement Ex. D. 19 being taken home by S. I. Abdul Hameed and being discovered among his private papers subsequent to his death. It is clear therefore that after completing it Mr. Agarwala did not send it to the appropriate Magistrate, as he was bound to do, but delivered it to the police. It stands to reason that Dudh Nath's statement Ex. P. 59 met the same fate.

88. We do not know when it was actually produced in Court, but without doubt it remained in the hands of the police for some time. It was not copied out in the case-diary until the 9th September. After Dudh Nath's death and after it had been finally decided to charge Tahsildar with his murder simpliciter there was sufficient opportunity for an interested police officer to persuade Mr. Agarwala into interpolating the disputed sentence. At the risk of repeating ourselves we wish to emphasise that this sentence is so wholly out of the context of the main statement that even in the absence of the other circumstances pointed out by us we would have viewed its authenticity with the utmost suspicion.

89. As a result of the above discussion we are satisfied that Dudh Nath never stated in Ex. P. 59: "This bullet" was fired by Tahsildar". Hence this particular allegation has to be completely ignored by us. Now, what does the rest of the statement, i. e., the genuine part of it, show? It shows (a) that Dudh Nath saw 14 dacoits; (b) that his party consisted of about 20 constables; (c) that there was an exchange of vigorous firing between the dacoits and the police; (d) that Dudh Nath was hit by a stray bullet fired by some unknown dacoit, and (e) that this encounter was in the ravinous area near V. Bindwa.

But if the story of the Bhua Khar incident be true, Dudh Nath could not have seen more than 4 dacoits, or 5 on the outside. His party could not have contained more than eight or nine constables. There could not be a vigorous exchange of gunfire. He could not be hit by a stray bullet from an unknown person but would know that Tahsildar had fired at him. He would specifically mention Bhua Khar as the scene of the occurrence, since he was so intimately acquainted with the area.

90. These considerations result in Dudh Nath's dying declaration Ex. P. 59 completely knocking the bottom out of the prosecution case with regard to the Bhua Khar incident; on the contrary it shows that there was only one incident, viz., the encounter at Panderi Khar, and that it was only in that that he accidentally received a bullet from an unknown bandit. Incidentally, it will be noted that, according to Ex. P. 59, Dudh Nath's party was composed entirely of policemen and

did not contain any private persons.

91. The learned State Counsel has argued that at the time he made the statement Ex. P. 59 before Mr. Agarwala Dudh Nath's condition was getting serious, hence he could not be expected to mention all necessary details and was liable to omit some relevant facts. Whatever his mental or physical condition, or however brief the statement he was capable of making, we refuse to believe that he would have failed to mention to Mr. Agarwala the outstanding fact of his being shot by Tahsildar. As a matter of fact, he was in full possession of his senses, for not only did the medical officer certify him so, but we find him mentioning such trifling matters as the date, the number of dacoits, the number of constables, his falling down etc. etc. A person capable of giving out such trifles could not conceivably omit to mention Tahsildar by name.

92. Ex. P. 59, of course minus the sentence we have found to be a forgery, was without doubt Dudh Nath's own statement and was made before there was opportunity for interested persons to influence his mind. Since he had left the scene as early as 8-30 p.m. on the 2nd, its supreme value lies in the fact that it gives to the Court the earliest authentic version of the incident given by an eye-witness. It sets out a case of just an encounter with Man Singh's gang in which Dudh Nath was fatally shot by some unknown outlaw. Far from assisting the prosecution case it goes a long way towards establishing that Tahsildar was not the person responsible for the fatal shot.

93. Here we feel bound to make a few observations with regard to constable Dukhi Rai's dying declaration Ex. D. 19. Its correctness has been proved by Mr. Agarwala. A comparison between it and Dudh Nath's dying declaration Ex. P. 59 shows that the two have spoken of one and the same incident, and since on the showing of the prosecution themselves Dukhi Rai's place of posting was exclusively at Panderi Khar, both the statements must inevitably refer to the incident of that place. Nevertheless, we are prevented by law from taking notice of Ex. D. 19, for Dukhi Rai has survived and has not been examined in the case.

In fact, the defence have made a grievance of the omission to examine him, and they contend that he has been withheld because the prosecution authorities knew that his dying declaration would go contrary to their case. From the evidence we are satisfied that at the time of the trial he was detained in a hospital and that his condition was such that he could not be allowed to move. Nevertheless, we have been unable to see what there was to prevent him from being examined on commission, so that there is force in the defence arguments with regard to him. But, as already stated, we are bound by the law of evidence not to receive Ex. D. 19 in evidence.

94. There remain to consider Dudh Nath's alleged dying declarations categorized as (a), (b) and (e) in the preceding Chapter. Ram Bharosey is the solitary witness on (a),

and Akbar Singh and constable Prag Singh on (b). They make out that Dudh Nath told them that Tahsildar fired the shot at him. We shall consider Prag Singh's veracity on this point when we deal with (e). Ram Bharosey and Akbar Singh are among the witnesses who affirm the correctness of Ex. P-230, and we have already shown that they cannot be believed with regard to it. For the same reasons they cannot be deemed truthful when they speak about (a) and (b).

95. We now examine the evidence on (e). Constable Prag Singh escorted Dudh Nath and the other injured constables from V. Bhua to Etawah. From Etawah Dudh Nath was escorted to Agra by Sub-Inspector Ali Mohammad, Prag Singh accompanying the party in the same police vehicle. Sub-Inspector Ali Mohammad says that Dudh Nath had himself told him that Tahsildar had shot him, and further that he knew this fact before he left Etawah that evening. Now, when Dudh Nath expired on the way at about 11 p.m. S. I. Dewa Ram of Agra made the inquest on him two hours later. His inquest report is Ex. P. 6 and has been duly proved. It shows that among the panches of the inquest were S. I. Ali Mohammad and Prag Singh. But the result of the inquest is described in Ex. P. 6 in these words:

"Enquiries revealed that the deceased received this gunshot injury on 2/9/54 at about 4 p.m. in an encounter with Man Singh's gang near Bindwa, P. S. Sahson, district Etawah, and while being carried to Agra for treatment succumbed to this injury."

There is not even the vaguest suggestion of Tahsildar being responsible for the gunshot injury. But if it be true that S. I. Ali Mohammad and Prag Singh, both of whom were panches, knew this to be a fact, it was impossible for