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Hostile Witnesses, Judicial Interactions and Out of Court Narratives in a North Indian District Court

Daniela Berti

In a short article recently published on the Indian legal system by Foster, an American Attorney at Law, it is mentioned that with a million lawyers and 70,000 new lawyers each year, India boasts the world's second largest number of legal professionals after the United States (Foster 2007). The author also notes that in India, contrary to the United States, relatively few cases are settled outside the courtroom (*ib.*) The same remark was made, forty years back by Galanter (1969), in a special issue of *Law & Society* dedicated mostly to South Asia. In the introduction to this volume, the author observes that a specificity of Indian lawyers, in contrast to their American counterparts, is their strong orientation towards courts (compared to other legal settings) and their orientation towards litigation rather than advising, negotiating or planning. This orientation towards courts, the author observes, "is vividly displayed in spatial terms –lawyers are to be found literally at the court" (*op.cit.*: 27). Indeed, "Judicial Court Complexes" in India are often the most animated parts of the towns, with an incessant coming and goings of people, from towns or distant villages. They are also places where, through the lawyers' intermediary, rural people come into contact with urban culture and officialdom (*ibidem*).

However, in spite of the success encountered in India by the court system –inherited from British common law– the flow of cases arriving at court sometimes simply corresponds to a choice which the parties make in the first place, and which will eventually be abandoned in favour of other non official forms of compromise or adjustment. Even in serious criminal cases where the state acts as plaintiff, it often happens that prosecutor witnesses, who initially testify against the accused when the case is registered by the police, deny or strongly tone down their accusations once questioned by the judge.

The problem of what in common law terminology is called "hostile witnesses" is indeed quite recurring in India and has provoked many reactions and discussions from judges, politicians, and press editorials, in an attempt to find out what the best measures to take would be. Although the problem takes on much relevance at times of high-profile and publicized trials, where a witness has been suspected of being politically pressurized or bribed, it is in fact a recurring everyday situation that judges or prosecutors of any small district town are faced with. In many such cases the fact that prosecutor witnesses turn hostile is not necessarily due to political pressure or to corruption but to various village or familiar dynamics which may, in one way or in another, interfere with the trial. These dynamics, though well known in Indian legal literature, have not yet been studied in the form they take at the very moment of the trial, in the courtroom.

This contribution aims at analysing how the witnesses' denial of any previous statement takes form inside an Indian court, the kind of interaction this corresponds to during the trial and the kind of narrative it is associated with. This will lead me to spell out the roles that each participant –the judge, the prosecutor, the lawyers and witnesses- plays during the trial, to follow their verbal exchanges, and to see how these exchanges are transformed when they are recorded in written form, into what will become the official version of the trial. I will also compare the way in which the case is tried inside the court with the way it is understood by the protagonists outside the courtroom.

In doing this I am partly adopting Conley and O'Barr's (1990:35) conceptual tools, developed in their work on North Carolina trial courts and defined as an "ethnography of discourse", which "provides evidence of the goals, strategies, and thought process of the speakers" – a perspective which has not yet been applied to the context of Courts in South Asia. My approach, however, differs from the one adopted by these authors who, in their study on informal courts, choose to select "segments of speech" instead of cases as units of analysis. As the authors explain, their approach is partly due to the informal legal context they studied - where procedures are simplified and where there is no need to be represented by a lawyer: here cases are not very time-consuming and "provide very little evidence of the interactive aspects of the legal process".

By contrast, in the legal context considered in this paper, civil and criminal cases prove to be quite serious affairs, each case involving a wide-ranging repertory of verbal interactions between the judges, witnesses, lawyers and (for criminal cases) the public prosecutor. Hence, far from being "misleading" in the study of the relationships between the people and the court (Conley and O'Barr op.cit.: p29), a general understanding of the case here provides an important clue to grasping the meaning and relevance of specific sequence interactions. In other words, selecting a case as a unit of analysis may prove appropriate not merely "if one's focus is on the outcome of dispute", as Conley and O'Barr (op.cit.: 29) suggest. The contextualisation of interactions may show, on the contrary, how the way the trial proceeds during a particular sequence may depend both on previous sequences (by the same or different interlocutors) as well as on the cultural setting to which the protagonists of the trial belong. Moreover, one must not overlook the fact that even the specific personality and social position of those involved in a trial may sometimes be pertinent in helping to understand a specific interaction. It is thus theoretically essential to evaluate how the context of court interactions may affect the way the trial proceeds.

From a methodological point of view, choosing the court as the starting place for fieldwork has the disadvantage of familiarising the observer with a case only many months, and even years, after it started (or after the events took place). Consequently, all the negotiations or compromises that have occurred at family or village level are no longer accessible to the observer – except in the form of a narration given by the protagonists of the conflict. Due to the delay needed for a case to be tried since its registration (FIR) it would be hard to follow a case from its beginning to its court hearing. Thus, my focus here is not so much to understand what really happened within the village or family prior to the court hearing, but to analyse how village or family dynamics are played out inside the courtroom and how they actually interfere with the trial proceedings. This is an important point to be underlined. Indeed, while dispute settlements at village level have frequently been studied in South Asian anthropological studies (Cohn 2001, Moore 1993), what has so far been overlooked is that court itself may be considered as a place worth studying in order to observe people's interactions and emotions before they are reduced to a few pages of a court report.

In this contribution I will base my analysis of interactions on a criminal case I followed during my fieldwork in a Session Court in Mandi district, in Himachal Pradesh (Northern India). The case was tried in the court of Judge A.D., gave me permission to sit right next to the witness bar and the transcriber. My privileged position allowed me to follow interactions in a way that would have been impossible had I been seated among the public present. I will start to give details of the case and analyse some passages of the trial interactions before considering the way in which the case was presented by the protagonists outside the courtroom.

Facts into sections

The case was opened by the State of Himachal Pradesh against Gudu¹, a forty-year-old man from a village in Mandi district who, after the death of his first wife, had remarried with a girl, Kaushlya, about twenty years old, with whom he had two sons. In December 2004, Kaushlya was found dead hanging from a tree in a forest surrounding her village. The police was called in and a FIR (First Information Report) was recorded against Gudu, on the request of the girl's mother, Saro Devi and the girl's paternal uncle, Buddhu Ram, a retired policeman whose daughter was married to the brother of the accused.

The FIR was registered under two sections of the Indian Criminal Code: section 498A "punishment for subjecting a married woman to cruelty" which is punishable by "three years' imprisonment and a fine" and under section 306, "abetting the commission of suicide" whose punishment is "10 years' imprisonment and a fine. These two sections are part of the measures taken in India to prevent so-called "dowry deaths", i.e. deaths of married women who have been harassed by their husbands or in-laws by incessant dowry demands. What is called "dowry" generally indicates the entire assets transferred from the bride's family to the groom's family at the time of the marriage. (Cf. Menski 1998). One problem linked to this practice and which directly concerns the two sections under which Gudu had been accused, is what Srinivas calls the "new dowry", the money or property demands made to the bride's family by the husband or by his family after marriage. These demands, which may be protracted even years after the marriage, may end in the murder of the girl (presented as an accident) or her suicide. In order to prevent such abuse and under pressure from a large number of legislators, women's associations and intellectuals who denounced them, the dowry was (officially) forbidden according to the Dowry Prohibition Act of 1961. Following on from this act (which did nothing to alter former usages) a series of amendments have been enacted² where "the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband" (section 113 A Indian Evidence Act).³ As a consequences of the measures taken by the law to prevent these cases (still a major problem in India), whenever a young married woman commits suicide, her husband and her in-laws are immediately suspected and, upon the slightest accusation, arrested⁴.

When Kaushlya died in September 2004, Gudu, who was accused by the girl's mother of being responsible for what had happened, was immediately arrested by the police. After a period of three weeks' imprisonment he was bailed out until the beginning of the trial, which started in October 2006 and ended in June 2007 with an acquittal.

¹ The names of the participants in the trial have been slightly modified to protect their anonymity.

² These include section 498-A, which have been added to the Criminal Law (Second Amendment) Act, 1983; section 198-A of the Code of Criminal Procedure 1973, and section 113-A of the Indian Evidence Act,

³ Cf. on the topic Menski, 1998 and Palkar, 2003.

⁴ Among the huge number of articles found in newspapers announcing, denouncing and analysing dowry-deaths, what is also frequently found more and more on Internet sites, in newspapers articles and even sometimes in judges' reports, is the denunciation of what it is called the misuse of the dowry provisions. A report appeared on the Internet in April 2006 "(by a "large group of several thousand families unwilling to succumb to Legal Terrorism)" entitled *Indian Dowry Law (209a): Myth Vs. Reality. An Investigative Report*: it underlines the transformation of a section (IPC 498a) that was originally meant to act "as a shield" for the protection of harassed women and has now been turned by some families into what is presented as an "assassin's weapon" or "legal terrorism". It is written that "We are not talking about the dowry deaths or physical injury cases but about dowry harassment cases that require no evidence and can be filed just based on a single sentence complaint by the wife. ...This poorly formulated law is inviting unscrupulous people to file false cases, and causing people to undergo stigmatization and hardship even before a trial in the court of law which leads to emotional, physical and financial strain. Some of the falsely accused have committed suicide after being jailed, unable to bear the social consequences" (*ibidem*: p.3).

In order to be able to follow the interactions that took place at the trial it is important to start with the allegation made by the girl's mother, Saro Devi, against her son-in-law Gudu the day of the girl's death. The allegation, dated 10-12-2004, was written in Hindi by the police on behalf of the woman and it was signed by the woman at the police station. Here is one passage from the document:

I [Saro Devi] married my daughter Kaushlya Devi with Gudu on 9-10-2000 according to the Hindu ritual. We gave the dowry to our daughter according to our position. My daughter had a daughter and a son. My son-in-law Gudu used to beat her when he drank wine and his brothers also beat her. One year before she died, all four brothers had beaten her and my husband and I told them that they should not beat her again, but my son (i.e. her son-in-law) still kept beating her. I met her (my daughter) yesterday and she was alright and today 10-12-04 at almost 1 o'clock Darshan Ram told me that my daughter Kaushlya Devi committed suicide by putting a rope around her neck and hanging herself from a tree. I have doubts about my son-in-law, Gudu, concerning the death of my daughter Kaushlya Devi. She got tired of his beatings and put the rope around her neck and finished her life.

We will see how this allegation will be denied during the trial not only by the girl's mother but by all the other prosecutor witnesses who had given a similar version to the police, at the time of the events.

In the following pages my aim is not to address the subject of *dowry deaths*, or to discuss the pertinence of the measures taken by the law to prevent and punish this kind of crime (see Menski, *op.cit.*). We will see that, given the direction the trial took, the hypothesis of a *dowry death* was immediately abandoned, the question being rather whether the girl was maltreated by her husband. What I am aiming at in this article is, on the one hand, to analyse the interactions taking place between the protagonists of a trial in an Indian judiciary context. This will also give me the opportunity to stress some elements of the Indian system in a comparative way. I will show how the plaintiff parties, after being dragged into the state judiciary machinery, manage to grasp the trial protocol in order to free themselves of court restraints and to opt for a logic of negotiation within the family or the village concerned.

Testing witnesses

In consonance with Indian proceedings, the State (in this case the regional state of Himachal Pradesh) was the plaintiff party of the trial in which eleven other people were prosecutor witnesses. The defence chose to present no one.

On the first day of the trial, with the file lying before him, the Judge waited for the witnesses to appear before the bar. They had to notify their presence, then go out again and wait their turn outside. The first witness on the list was Saro Devi, the mother of the girl who committed suicide. However, before ushering her in, the judge called the *pradhan* (the president of the village council where the girl had got married) to the bar for some preliminary questions. The *pradhan*, a woman in her forties, was also scheduled as prosecutor witness on the same day. This interaction was considered to be "confidential" and was not recorded by the transcriber who, sitting to the judge's right, is always called upon in criminal cases when evidence is given.⁵ The fact that the *pradhan's* first appearance at the bar was not recorded shows that it was considered merely as an unofficial interview.

⁵ In district courts evidence is always recorded on typewritten pages, and each page signed by the judge and the witness.

During this informal interaction, the judge reminded the *pradhan* that she had signed a statement at the time of the investigation whereby she declared that the reason for Kaushlya to put an end to her life was that her husband had been harassing her for a long time. This preliminary questioning shows the judge's intention "to test" the witness's attitude in order to understand whether such an important witness from the prosecutor's side maintained her accusation regarding the accused, and thus to what extent the prosecutor would be able to prove the accusations. In fact, given the *pradhan's* role of mediator in the village, the attitude the latter would adopt before the court might enable the judge to evaluate what other villagers would do. The fact that the judge wanted to carry out this test before opening the first official hearing also demonstrates how familiar he was with the unpredictability of witnesses' behaviour and with the way village dynamics may interfere in the court proceedings. In this case, the *pradhan*, though presented by the prosecutor as an important witness, will deny the main points of the statement she had given at the time of the events.

Here are some passages from these interactions, most of which are translated from Hindi. In some cases, when the judge or the prosecutor used the English (thus without being understood by the *pradhan*) I will indicate it in the text.

Judge to the *pradhan*: It is written here [in the police report] that she [Kaushlya, the girl who committed suicide] was extremely troubled!

Prosecutor, cutting in and quite harshly to the *pradhan*: Speak now!

Judge, more kindly: Speak clearly, ok?

Pradhan, in a firm tone of voice: Nobody troubled her! (*Koi dang nahin karte the*)

Judge, ironically, and without looking at the woman: Ha! There you go...

The judge's comment on the witness's reply caused the lawyers, who had moved nearer to the bench to follow the interactions more closely, to laugh out loud⁶. The judge (as well as the lawyers) had indeed already grasped the situation: the village president had become "hostile", which would question the possibility of maintaining the accusation on the part of the other witnesses. This was then explicitly expressed by the prosecutor who commented: "If the village president does that (she tells a lie), the others will do the same!"⁷.

Pradhan: I am telling the truth.

Prosecutor: Then tell us, why you didn't say [as you said in your statement] that he [the accused] was doing something wrong).

Judge, cutting in and addressing the prosecutor: Why has the case been made then? (Then addressing the *pradhan*) Prior to this, did anyone also [in the village] hang themselves?

Pradhan, calmly: She did not hang herself!

Judge: What? How did she die then?

⁶ During the trial the judge sits at his desk while the prosecutor and the defense lawyer (along with his/her assistants) stand behind him. On the right side of the judge sits the reader and on his left the transcriber. The accused has to remain standing in the courtroom. Seats are available for lawyers and for those who want to attend the trial. .

⁷ The fact that the village president's attitude may be indicative of what the other witnesses will say at the trial is frequently noted, described by authors writing about the relationship between the *panchayat* (village council) and the court (see for example Moore 1993: 85) This shows how, though the *pradhan* is now deprived of a judiciary role, he/she is a crucial protagonist as regards the relations villagers have with the court and he/she is a regular witness in the court. His/her attitude plays a crucial role in the version that the other witnesses will adopt before the court.

Pradhan: When we arrived there [at the place where the dead body was found] she had fallen down and the shawl and the sickle were on the ground.

Prosecutor, cutting in and ironically: Of course, the forest is always a very dangerous place! (lawyers laugh)

Though the judge had so far thought that the woman's suicide would not be questioned, he soon realized that this was in fact not the case: the village president not only denied what she had previously declared (about the woman being harassed) but she also firmly denied that the case had anything to do with a suicide. Another version of the events then emerged, that of an accident.

Prosecutor, rudely in English to the judge: She is not telling the truth!

Pradhan: Nobody there [at the place where the dead body was found] said that she had hanged herself.

Judge, quietly: We are not talking about hanging (*fanda*) we are just asking how she died?

While the prosecutor assumed an aggressive and sarcastic tone vis-à-vis the witness, the judge preferred to leave the woman the chance to present her own version of the facts. This happened quite frequently in Judge A.D.'s court and may be explained, at least partly, by the different roles they play during the trial. The prosecutor, who is directly responsible for proving the case, appears to be particularly concerned with a "search for proof/evidence", whereas the judge appears more concerned with a "search for the true" (Gibbons *et al.*, 2004.: 46). Yet the different attitudes the judge and the prosecutor adopted towards the witness may also be partly explained by their different personalities. A.D., scrupulous, attentive, extremely self-confident and always keen to be entertained in legal discussions, contrasted with the personality of the prosecutor, a simpler man rather brusque with witnesses, especially those not responding as he would have liked.

The judge pursued the interaction by asking the woman to tell him about the place where Kaushlya's dead body had been found. He wanted to know whether the forest where the woman had been found came within the area of her panchayat.

Judge: Is the place (where Kaushilya went) close to your place?

Pradhan: it is very far from our house.

Prosecutor, very harshly: No, their house (of Kaushlya) is in her *panchayat* and *panchayat* people know this.

Pradhan, insisting and cutting in: *Panchayat* people do not go to other houses...

Prosecutor, cutting in: As a *panchayat* president it is your duty to know what happens in other houses!

Pradhan: *Panchayat* people do not know what anyone is doing at home.

Prosecutor: you had to gather information about this.

The Prosecutor was trying to make the *pradhan* feeling responsible for what had happened by saying implicitly that, since the *pradhan*'s house was very near to the place where the girl lived she should have known whether she was maltreated by her husband. But the *pradhan*, who showed great self-control, readily defended herself and denied what the Prosecutor was defining as a "*panchayat* duty". The judge then cut in by asking a question which implicitly accused the woman of lying .

Judge: Perhaps they [Gudu and his family] backed you in the elections?

Pradhan: What, sir?

Judge: Perhaps they backed you in the elections?

Pradhan: We did not pay any attention to this. We do not know of this, and who will say 'I supported you in the election'?

Judge: Today everyone says that they supported [the *pradhan*, in order to obtain something from him]. Today they are very clever!

Pradhan: They didn't do that.

By evoking in court what the reason might be for a *pradhan* to testify in favour of one villager, the judge was trying to give a political explanation to a criminal case which had, in principle, nothing to do with politics. Besides, the reasons why the *pradhan* had been called to testify in the court were not because she was an eyewitness (in fact she reached the victim much later than other villagers) but because she was the *pradhan* of the place.

Judge: I know you didn't see anything. You went there [to the place where the events took place] very late. What was the situation there? Whose fault was it? Those nearby said something and their family members also said something.⁸

Pradhan: Her family members are very simple. They do not know anything.

Prosecutor, ironically: Well, did she die or not? (other lawyers laugh)

Pradhan: Yes, she died.

Prosecutor: Then how did she die?

The *pradhan* began to tell what people were saying after the dead body had been found. She said to have heard that the girl had gone to a marriage the day before and then the day of her death she went to collect grass to the forest and while she was cutting grass on a tree she fell down and died.

Prosecutor, addressing the judge: No, no sir, it's a case of hanging! By falling from the tree she cannot end up hanging there!

Judge, referring to me: You see this foreigner there. She's going to see how much Indian women lie.

This was his implicit way of accusing her of telling a lie but the lady remained unperturbed.

The defence lawyer, who had followed the interactions without saying a word, intervened here for the first time to support the woman's version: "She fell from the tree. She'd hanged that bag for grass in the tree and it got stuck in the branches. The rope of the bag came up round her neck and suffocated her".

The judge, without seeming to react to the lawyer's intervention added a comment addressed to the *pradhan*: "In this kind of case they [villagers] should ostracise [the accused]", inferring that the *pradhan* was expressing, for one reason or another, her support for the accused.

Prosecutor, cutting in: If somebody does something wrong in a village, it is up to the *panchayat* to know who did the wrong.

Then, speaking all at the same time:

⁸ Here the judge himself was asking the witness to report "hearsay", which is rejected in a courtroom. Cfr. Conley and O'Barr, 1990:15

Pradhan: But we don't know

Judge: Yes, but try to find out. As for the rest, living and dying it is in hands of god.

Defence lawyer: But now she is no longer the village president!

Prosecutor: Yes, now there is another lady president.

Judge to the *pradhan*: Really? Then I would like to see that lady [the new *pradhan*] and I want to tell her that this should never happen again [case of hanging]. Ladies can't do this! They have no right to do this!

Here the judge, by referring to the frequency of women suicides, expresses his feeling that the problem could not be solved by simply enacting the law, but by solving the case at local level.

This interaction also shows the kind of "turn-taking" (Drew and Atkinson 1979) that operates in the courtroom whereby, especially when the witness starts to turn hostile, the prosecutor, the judge, and the lawyer may all ask questions at the same time.

After this informal and preliminary interview the judge asked the *pradhan* to wait outside the courtroom for the official hearing. Then, he proceeded to collect the evidence of what would be the court's report from the first prosecutor witness (PW-1) – Saro Devi, that is Kaushlya Devi's mother.

Oral versus written

We have seen how the judge, before officially starting to collect the evidence, questioned the village *pradhan* as a sort of barometer indicating the direction the trial was to take. This questioning, though held in public, was not recorded in writing. Furthermore, it was not heard by the other witnesses, who were sitting outside the courtroom, waiting to be called.

By contrast, with the arrival at the bar of the girl's mother, Saro Devi (who the record gave as the first Prosecutor Witness, PW 1) the interactions began to be recorded. Some passages of Saro Devi's evidence will be used here to show how the witnesses' oral statements during the evidence are reformulated to be recorded in a written report.

There are various reasons for this. Firstly, while most of the witnesses speak Hindi or *Pahari* (local language), their statements are immediately translated into English and reworded in a judicial language. Most of the time it is the judge who translates the witness's words, yet the prosecutor and the defence can also do this. During the cross-examination there may even be some tension as to who should first dictate the translation to the transcriber, so that it is worded in the most appropriate manner. Secondly, the reason why the witness's oral reply is transformed when drafted in its written version is that what is orally a reply to a question is dictated by the judge to the transcriber in the form of a statement made by the witness in the first person – as a sort of personal narration. >>> During the cross-examination in particular, almost every written record of the witness's replies starts with the standardized formula "*it is correct*" or "*it is incorrect*" followed by what had been asked. Even when the witness replies to the question by merely "yes" or "no", or by a simple movement of the head, the written version of the interrogatory presents him/her as the one who confirms a particular point ("it is correct that I..") or who denies ("it is incorrect that I..") followed by a succession of statements or situations that he never actually spoke about. Thus, though the witness appears to be the author of the written version he gives of the facts, in actual fact the sequence of the narration is entirely dictated by the questions asked to him by the judge, the prosecutor or by the defence.

This point can be demonstrated by the evidence given by the victim's mother.

Saro Devi, a village woman in her forties, was sitting in the courtroom with another young lady⁹ After some preliminary questions, the judge started to broach what he believed to be the possible reason why her daughter committed a suicide – that is the dowry issue. It is this issue that is the most frequently evoked in association with sections 498A and 306 of the Criminal Code. The word “dowry” was not said in the questions asked in Hindi by the judge, the question being literally "At the marriage of your daughter did you give things like as everyone does according to custom (*riti ravaz*)? The lady said "yes sir" and the judge dictated to the transcriber by speaking on behalf of the witness "I stated that the deceased, Kaushilya, was my daughter, who was married to the accused in accordance with Hindu rites and ceremonies and that I also gave sufficient dowry as per my status at the time of my daughter's marriage". The witness, however, did not understand anything that the judge dictated since she did not speak English at all.

Judge, in Hindi: After marriage, where did your daughter live? Does she have children?

Saro Devi: Yes, there are children.

Prosecutor: One daughter and one son.

Judge: dictating in English: After marriage my daughter gave birth to a son and daughter.

Judge, in Hindi: Where are they now?

Saro Devi: At home.

Judge: At your house or his [father's] house?

Saro Devi: They are at their [father's] house

Judge, dictating in English: ...who are in custody of the accused.

This is an important point in favour of the accused. Indeed, if there were no sons, there could have been more reason for harassment. The Prosecutor then intervened by asking, "after marriage did she use to come to your house?". Yes sir!" the lady replied. The judge then dictated, "After marriage, my daughter often visited my house". This is also one of the first questions asked in this kind of case. In fact, if a married woman does not visit the paternal home, always in village other than her husband's, it is a sign that her in-laws and her husband blackmail her regarding a dowry problem.

After some other questioning, where the woman did not reveal any problems her daughter was having with Gudu and his family, she eventually said in vague terms that, yes, a year ago her daughter had started complaining that her husband was beating her.

Judge: She did not say why he (Gudu) beat her?

Prosecutor, cutting in: Did he used to give her the necessary things for everyday purposes? Did he used to give cloths, food, water and so on?

Saro Devi: Yes, he used to give her soap, oil and so forth. He used to give everything.

Judge, cutting in and dictating: The accused was supplying the necessary items to my daughter.

Judge, to Prosecutor: You must ask her why he beat her?

While the judge insisted that the most important question was to ask Kaushilya's mother the reasons why Gudu beat her daughter, the prosecutor, referring to the reply that the woman

⁹ Saro Devi's husband was not at the court since he is mentally retarded as the consequence of a disease he had some years before.

had given, started to complain that the main witness for the accusation was now turning hostile. "Now she replies like that!" – he said – "Now what shall I do?"

The judge and the prosecutor insisted on getting the woman to repeat the accusation she had made when the case had been recorded by the police. However, two years had passed since her initial statement and the woman now seemed now to hesitate in repeating her accusations.

Another point on which the prosecutor insisted during questioning was to find out since when Kaushlya had started complaining of being maltreated. This prosecutor's concern must be interpreted in relation to the section under which the case was tried. In fact, under Section 113A, if a woman commits suicide "within a period of seven years from the date of her marriage" the court may presume that the suicide has been abetted by her husband. To demonstrate his case, the prosecutor needed the woman to go back much further in the past. This would have shown that any maltreatment of Kaushlya was not due to a sporadic misunderstanding between husband and wife, but was the outcome of a more long-term attitude on the part of the husband. This would have given more substance to the hypothesis of a dowry issue.

However, every time that the prosecutor asked Saro Devi to go back to the very beginning of her daughter's problem, the woman kept starting her narration from a very recent period – which she perceived, independent of any legal considerations, as the most relevant period if the cause of her daughter's death was to be understood¹⁰.

Every time the question was asked, the woman started recounting how the very day before her death, her daughter had gone to a wedding with her mother-in-law; she had looked happy. Yet every time, the prosecutor interrupted her to ask her to talk about a more distant past.

He continued to question her and tried to make her say something against the accused; that he maltreated his wife or harassed her often over the years. Eventually the judge interrupted him, saying in English "There is nothing in particular! She said that she (her daughter) did not complain about anything!". The woman then said that, when the body was found, someone from the village called her and told her that her daughter had fallen from the tree. When she got there, she saw her daughter on the ground, who did not have any signs of strangulation on her neck. The prosecutor, looking astonished, said, "But how did she die then?" And the mother "Sometimes she was sick. I do not know.... Only god knows!".

The judge would not dictate this reply. Instead he dictated to the typewriter in English (thus without being understood by the witness) a sentence referring to the version that the woman had given in the police report: "I have reasons to believe that my daughter was killed by the accused due to maltreatment. My statement Ext. PA was recorded by the police and bears my signature". He then addressed the woman with an astonished smile "Your statement was written down at the time! It is a strange case!" The woman reacted by murmuring, "There are two children. The children are young. They have to be looked after".

Although this last comment might have helped to understand the reason why the woman did not confirm her previous written statement, it was not dictated by the judge to the dactylographer either.¹¹ The judge also decided not to take into account what the woman had said just prior to this comment; that her daughter showed no sign of strangulation round her

¹⁰ This shows how, as Conley and O'Barr notes in reference to the Anglo-American system, "the law of evidence is in one sense epistemological: it imposes on witnesses' accounts the law's view on what constitutes a fact and what sources of information are reliable". (Conley and O'Barr 1990:18)

¹¹ Unfortunately, during my fieldwork I did not ask the judge why he did not take into account this sentence, since the implication of all the interactions do not immediately come across.

neck at the time of her death and that she could not give the exact reason for her death. These statements were very different from what she had said two years before in her deposition. The contradiction between these two versions might have led the judge to declare the lady a "hostile" witness. Instead, he decided to take into account the written report she had given the police two years before, rather than her current oral version.

As far as the trial proceedings are concerned, this decision shows a certain attenuation of the principle of orality followed in other adversarial systems where the judge, as well as the jury, "do not bear any procedural memory exceeding the trial hearing" (Scheffer 2007:14).¹² By contrast, in Indian criminal trials, depositions previously signed by the witnesses in the presence of the police –though having no value as evidence as in other adversarial system– are frequently used during the trial by the judge himself, and sometimes shown to the witness at the moment of the trial. However, as it will emerge from the rest of the hearings, the judge's decision to record the woman's previous statements instead of what she said in the court is not the usual procedure. We will see how, with other witnesses, priority will be given to their oral statements which will be recorded as evidence.

Saro Devi was then cross-examined by the defence lawyer¹³. In the cross-examination she confirmed that her daughter never complained about being maltreated except on one occasion, but she did not remember either the month or the year when this happened. The lawyer insisted on one point that was essential for him to build his defence: he wanted the lady to say that her daughter frequently used to climb the tree to cut leaves and that she carried a basket around the neck and the breast. He insisted on that point for quite a long time:

Defence lawyer: When you have to cut grass in narrow and sloping places, you have to carry grass bag here (around your neck and on the back). Don't you?

The lady, somewhat bewildered, made a sign with the head. The lawyer then started to dictate to the transcriber "It is correct that..." when the lady said "There is no need to put this basket on the branch of a tree". The judge seemed puzzled and asked the lawyer: What is this? The lawyer insisted, certain of the customs in the region: "When we have to take cuttings from a tree, we take a basket and we wind one part here [around the neck] and the other here [around the stomach]. We do this in villages".

Lady: In the rainy season there is little grass...

Defence lawyer: Yes, but to take these leaves from a tree where there is little room to move, you use this basket (*joli*), don't you?

Lady: I don't know...

Defence lawyer: Now, her (Kaushilya's) feet slipped on the tree and she found herself hanged from the branch because of the grass basket. She suffocated and died. This is all because of the basket.

¹²Adekunle (1995) also notices how "the previous statement of a witness cannot be relied upon by the court because it is not part of the evidence before the court". (Adekunle 1995:131). However, as Glasser (1993) showed for the English proceedings, since 1968 the principle of orality has further been eroded by provisions which give the court discretion to admit written notes by way of secondary evidence and to assess the value of such evidence (Glasser 1993:315).

¹³ The cross-examination is done by the party opposed to the witness and since the woman was officially a prosecutor witness (even though she was denying her previous accusation) the defence lawyer had the right to cross-examine her..

Following all these iterations, the judge tried to put an end to the discussion and dictated to the transcriber “ It is correct that the basket was fixed around the neck and the waist to pick grass and to collect leaves from the tree. I cannot say whether my daughter had fixed this basket in such a way on that particular day.” (Court record).

Other points that the defense lawyer managed to get out of the witness were that she had never lodged any complaint to the village *panchayat* about the maltreatment her daughter suffered at the hands of her husband; and that she had registered the case against her son-in-law under pressure from Beli Ram, her husband’s brother. When informed of Kaushilya’s death, Beli Ram had immediately gone to where the body was found and, being a retired policeman himself, he had given villagers instructions on the procedure to follow.

The judge then dictated: “I did not lodge any report regarding maltreatment by the accused to the panchayat. However I advised the accused to mend his behaviour. Beli Ram is my brother-in-law who has retired from the Police Department. It is correct that I lodged the report with the police on the said Beli Ram's insistence.” (Court Record)

After reproaching the defense lawyer for his excessive and useless questions, the judge asked the woman to sign the written record of the evidence and told her to leave.

Non bounding statements

The *pradhan* (village president) was again called to the bar, this time to officially record the evidence. By taking into account what had happened in the previous informal interaction, the judge went straight to the point:

Judge: When you got there, what did you see near the dead body?

Pradhan: Nothing! Only a shawl and a sickle (to cut the grass)!

Judge: And the rope?

Pradhan: There was no rope there!

The prosecutor then murmured some words and the judge dictated:

Judge: At this stage learned PP states that the witness is partly suppressing the truth and that he will be allowed to cross-examine the witness. Request considered and allowed.

Here the judge, by speaking on behalf of the prosecutor, was asking and granting in a routine formula permission to cross-examine a witness whom he considered to have turned “hostile”¹⁴. In fact, by denying the existence of the rope near the dead body the *pradhan* was again denying what she was supposed to have stated to the police at the moment of the investigation. After inquiring from the *pradhan* her level of study (a way of asking if she was literate), the judge showed her the deposition which she had signed: "Look here, and then read that over there, at the beginning of the paper. When you signed here, it was all already written there! It is written in Hindi. Read! You are able to read Hindi, aren't you?"

¹⁴ Normally the prosecutor does not make a cross-examination to his own witnesses but since here the witness was no more supporting his case, he could get the right to make the cross-examination by declaring him hostile

But the *pradhan* replied calmly "It was not written there when I signed". With this reply she was accusing the police of having added information (the presence of the rope) which was not in the original document. The judge dictated in English:

I have not stated to the police that rope shawl and sickle were sealed by the police in separate parcel in my presence (confronted with portion A to A of mark A where it is so recorded).

The Judge, showing signs of impatience continued his enquiry by reading the report that the lady was supposed to have signed:

Judge, reading the file: She [Kaushilya Devi] had some marks here near her arms, and some signs of hanging!

Pradhan: No, it was not like that!

The judge, after dictating her reply addressed the lady:

Judge: Look, Mrs *pradhan*, they [Gudu and his family] voted for you [in the election of village president] and in order to save him [Gudu] you are telling a lie.

Pradhan: No Sir, they did not back me and I am not telling a lie.

The judge formulated this last reply as follows: "It is incorrect that I am suppressing the truth because the accused backed me at the election of *pradhan*". Then he commented "Time is flying and witnesses are wasting time". The prosecutor too made some last comments addressed to the woman "This is your *panchayat* and you are telling a lie and hiding things".

Compared with Saro Devi's interrogation, we may note how differently the judge reacted faced with the witness's denial of her previous accusations. In this case the witness's oral statement was dictated by the judge to the transcriber, but a reference to the written report was also added (such as "confront with portion A to A of mark A where it is so recorded"). This mention is a way commonly followed during the evidence record in order to indicate a contradiction between what the witness says in the courtroom and what is reported in the police report. Moreover, the *pradhan* was even more explicitly presented as a "hostile witness". This was done by the judge by using a specific cross-examination technique which consists in evoking the reason which would have led the witness to support the accused and by dictating, on the witness's behalf, a standardized formula whose effect is to affirm the very contrary of what is being denied! - "It is incorrect that I am suppressing the truth because the accused backed me in the elections of *pradhan*".

Of course, neither the judge nor the prosecutor possessed any element to lead them to think that the accused could have put some pressure on the *pradhan* concerning this specific case. They merely evoked the most logical reason for a *pradhan* to obstruct the prosecutor during the case.

The *pradhan's* attitude before the judge made the defence lawyer's task of cross-examining her easy. What emerged in the cross-examination appeared to give even more basis to the defence's effort to show that the police had fabricated the whole case against the accused. For example, the defence provided the *pradhan* of the possibility of pointing out that the sickle she saw near the body was not the same as the one in the police's possession and exhibited before the judge. He asked the lady to confirm that the sickle there in the courtroom was the kind for cutting grass, whereas the one near Kaushilya Devi's body was the kind for cutting

leaves from trees. The pradhan's confirmation that it was the latter type, was a step forward in supporting the version that the girl slipped from the tree while she was cutting leaves.

Mild accusations

Other witnesses came to the bar. Although they were all called as "Prosecutor Witnesses", none of them gave much support to the Prosecutor case.

However, confirmation that the case was really about a suicide came from the medical witnesses. The doctor who carried out the autopsy of the girl's body gave a lot of quite detailed description and confirmed orally what he had written in his post-mortem report, that the cause of death was "spinal cord compression due to hanging".

The defence lawyer tried to find various ways of making the doctor admit the possibility that the marks found on the body could well be the consequence of the girl falling from the tree. Much discussion ensued about the size of the mark found around the neck – was it a large mark as in the case of a cloth, or was it small, as in case of a rope? The defence lawyer insisted on defending the hypothesis of an accident and even tried to actually demonstrate it by winding a cloth around to the doctor's neck to show how "mechanically" one could be hanged by the kind of basket used for grass.

The doctor did not appear to support the lawyer's hypothesis, and the judge eventually insisted that the lawyer stop his cross-examination on this particular point: "there is no way [to show this] it doesn't work!" (Esa nahin hua!) Then he dictated to the transcriber.

The ligature marks in present case are not possible in case when the woman slips from tree while cutting grass/feddar from with the knot of the *jholi* (vedi esatt). The shape and width of the ligature mark in that situation would be different.

Although there was no doubt now that Kaushlya had committed suicide, the prosecutor still had to prove that she had been abetted to this act due to her husband's behaviour. Most of the witnesses who supposedly supported the prosecutor's case had abandoned or moderated their accusations. Even in cases where, before the judge, the witness confirmed their previous statements –that the girl had been maltreated by her husband– as soon as more details were required, no argument strong enough to support the prosecutor's case could be provided. Every time that the judge asked the witnesses about the cause of Kaushlya's death they said that they did not know.

The possibility that some dynamics of village or family solidarity had interfered with the attitude of the eleven prosecutor witnesses was constantly evoked during the trial by the judge, not only in terms of political links –as in the case of the village president – but also in terms of parental or neighbourhood influence. At one point during the evidence report, the judge even lost his patience and, faced with yet another witness contradicting his previous statement he manifested his disappointment in Hindi: 'He said this! He supported him [the accused]! I don't want to write down his statement! It is the same [as previous witnesses]!

The only witness who somehow confirmed the accusation was the girl's uncle, Beli Ram, the retired policeman who had suggested that the girl's mother open an FIR against her son-in-law. However, even the replies he gave at the moment of the hearing were not considered detailed enough to support the accusation. Let us examine, for example, some passages of his hearing, which will also show the judge's predominant role in recording the evidence.

After replying affirmatively to the judge's question whether his brother (Kaushlya's father) had given sufficient "clothes, stuff" (i.e. dowry) at the time of the wedding, Beli Ram told the judge that his niece "after about two years of marriage started complaining of maltreatment and beatings on one pretext or another" and that the accused "was not providing her with necessities" (Court Report). He also said that a year before Kaushlya's death, after she had once again complained of his maltreating and beatings, he advised her husband to mend his ways. The accused then – Beli Ram added – "apologised and assured to treat Kaushlya Devi properly".

Reference to this request for forgiveness was not mentioned in the statement Beli Ram had given to the police upon Kaushlya's death and gave the judge to understand that even this important witness had eventually "turned hostile". Without even waiting for the prosecutor's reaction, the judge dictated to the transcriber the standardised formula commonly used in such a case: "At this stated Ld Public Prosecutor stated that the witness is trying to suppress the truth as such permission he granted to cross examine the witness. Prayer considered and allowed".

The witness could then be cross-examined by the prosecutor himself as well as by the judge.

Prosecutor: You said that the accused used to drink wine and to come home late at night and beat his wife.

Beli Ram: yes.

But the judge promptly intervened and started to cross-examine the witness himself. Indeed, it was clear that he did not consider the prosecutor's question to be the most relevant one, at least not after the witness had tried to moderate his previous accusations by evoking the accused's request for forgiveness. He then looked straight into Beli Ram's eyes and said "Are you telling the truth or are you lying?" (*tum sach bol rahi he ya juth?*)

Beli Ram: I am telling the truth.

Judge: How did you give him advice [to tone down/modulate his behaviour]?

Beli Ram: I made suggestions to both of them [husband and wife]. Whenever they fought, I would go there and make suggestions. And then Gudu would ask for forgiveness.

Judge: What apologies did he make?

Beli Ram: He said "Please forgive me this time, I will not do it again".

The judge appeared disappointed but somehow also resigned. Meanwhile the prosecutor continued to formulate some questions but Beli Ram's replies, although confirming some of his previous statements, were not convincing enough to support the accusations. What the judge later wrote in his report may clarify the point:

"This witness [Beli Ram] has also not given any date, month or year of beating or maltreatment and his statement qua maltreatment is vague and general in nature. In fact this witness was got declared hostile by the prosecution There is nothing in the statement of this witness as to when Kaushlya Devi met him lastly and told about her suffering to him. In such circumstance, much reliance cannot be placed on the testimony of this witness. (*Judge's Order*, Court record)

During Beli Ram's cross-examination, an important fact was highlighted by the prosecutor – that the very morning of the hearing, when Beli Ram was waiting outside the

courtroom to be called for the hearing, he had been seen to be greeted by the accused while the latter was entering the courtroom. When Beli Ram confirmed this fact during the cross-examination, the judge (without asking any more) started to dictate to the transcriber "It is incorrect that I was trying to suppress the truth because of the request made by the accused". (Court record)

As a consequence of the witness' withdrawal of the accusations, every detail of his behaviour became indeed meaningful to the court in order to show that he was now in favour of the accused.

It was now the defence lawyer's turn to cross-examine the witness. Though the judge and the prosecutor were now considering Beli Ram as a "hostile witness", the lawyer Chawla still had to cross-examine him.

Defence lawyer: It is like this - you persuaded Saro Devi [the girl's mother] to make a false case and to trap Gudu.

Man: No, it is not like that.

Defence lawyer: You said to the villagers present that, no one should move the body otherwise you get arrested them all.

Man: No, it is not true!

The following appeared in the court record: "It is incorrect that the accused has been framed in this case at my insistence. It is incorrect that I told the co-villagers of the accused not to touch the body of Kaushlya, otherwise they would be arrested. ... It is incorrect that I am testifying falsely."

Although Beli Ram had shown to be not so dangerous for the accusation, the lawyer wanted to use his cross-examination for evoking the idea that the witness would have instigated the girl's mother to create a false case against his client. He also evoked the idea that Beli Ram would have used his authority as ex-policemen for scaring villagers to let the case be open by the police against him. Although he knew that both these ideas would have been refused by the witness he wanted them to be written, even under the negative form "It is incorrect that...", in the court record. The final sentence "It is incorrect that I am testifying falsely" is a standard formula automatically added by the judge at the end of the cross examination as to logically presume that the lawyer was accusing the witness of telling a lie.

Arguments and Judgment

The arguments were made some days after concluding the evidence report, in presence of the accused, with no other villagers present. As often happens, during arguments the language used is a mix of English and Hindi. The prosecutor who had presented the case was on leave. Anyway it was quite certain now that it was impossible to prove his case, since the witnesses had turned hostile. His place was taken by the prosecutor from another nearby court. He did not show much conviction concerning the case. He started calmly to expose his arguments to the judge:

Prosecutor, to the Judge: Sir, there are two pieces of evidence for Kaushlya's case. Saro devi and Beli Ram are clearly saying that Kaushlya was maltreated by her husband, Gudu. I have also the post-mortem report of doctor, and he tells clearly that the signs in the neck were of rope so she had died because of suicide.

Judge, to the Prosecutor: But Saro Devi told (during the hearing) that her daughter was afraid of beating but she was not maltreated (then looking at the evidence record). She said that he was supplying all necessary things to her.

Defence lawyer, to the Judge: Sir, it is not a case of suicide; Saro Devi said here that when she visited her daughter's house everything was fine there and the accused was providing her with everything, it was fine there. ... This sickle was not also the same, it contradicts [the previous statement]. The rope was not found there either while the prosecution said that a rope had been cut down

Judge: But the doctor said she couldn't slip the way you are saying.

Defence lawyer: But she never complained about maltreating.

Judge: Yes, the complaint of the parents is important in this matter, all other are not important.

During the arguments the judge showed quite a different attitude compared to the way he behaved during the evidence, when he frequently accused witnesses to tell a lie. The general atmosphere of the court was also different at that time – compared to the passion and tension which appeared during the witnesses' interrogation. Here the discussion appeared much more like a technical discussion, with the judge's role usually limited to that of a passive listener. As a matter of fact, due to the absence of a jury¹⁵, the arguments here, unlike in an Anglo-American trial, do not assume a theatrical character; they take place during a tête-à-tête with the judge.

The arguments were pursued, with the defence lawyer reading line after line of recorded evidence. The lawyer repeatedly argued that Kaushlya had not committed suicide. He contended that if there had been a fight with her husband the day prior to the events, her body would have some sign of this maltreatment, or her *bindi* (mark on forehead) and *sindhoor* (coloured hair powder in parting) would at least have been removed. And even if there had been no fight and she had wanted to commit suicide why –the lawyer argued– would she have bothered adorning her body? “She would have been angry, why would she have put *sindhoor* on her scalp. She was happy and only God knows why she died”.

Judge: If a woman is unhappy, it does not mean that she won't use bindi and sindoor and she will become widow.

Lawyer: But the abetment has not been proved, Sir!

Judge: Now give the introduction of the canon (law) so that you can explain...

The judge asks here the lawyer to show how he had built up its defence by relying on court precedents. The lawyer highlighted different decisions of the High court to support his argument. One was HP 327/ 2001 HP for the legal definition of “maltreatment” – “if accused is staying with another woman and his wife is maltreated by mother in law and father in law”... and “if the death of the girl occurs within 6 years”... But in the absence of harassment and cruelty, the benefit of the doubt goes to the accused. The lawyer went on quoting previous statements and at the end, the judge closed the arguments by concluding “This is right”.

In his order the judge came back to the problem of “death for dowry” treated by the two sections concerned by the case.

¹⁵ The jury system having been abolished in trial courts since 1960.

No doubt there is an alarming increase in such like cases which are frequently coming before the courts. Such crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbors, whose evidence may be of some assistance, are generally reluctant to depose in court. However, the prosecution is to prove such circumstances on the record which compelled the wife to commit suicide and such circumstances are missing in the case in hand.

While the judge, as it would appear in the report, made reference to the reticence of the girl's mother or of the other family members to testify against the accused, the defense lawyer's version was different. What the lawyer chose to show was that the story of the suicide had been entirely invented by the members of the family, under pressure from Beli Ram. The hypothesis that the lawyer had tried to demonstrate during the trial was that of an accident – an idea which had also been supported by some prosecutor witnesses, who had denied having seen a rope near the body. However, we will see how this hypothesis was just the version that the lawyer had chosen to present for his defense.

The non legal story of the death

Speaking outside the court, the lawyer had no doubt that Kaushlya had committed suicide. However, the version he gave about the reason for the suicide had nothing to do with dowry problems. He went on reconstructing the whole scenario which would have taken place the night before the girl's death when she went to attend a marriage in another village. I will give some details of his version in order to show the kind of narrative these kinds of case correspond to outside the courtroom.

I tried to find out what the truth is because, of course, this is a case of suicide - there is the photograph, the rope and it is a proved and admitted case. So, what inquiries did I make on my part? The truth is that the day before the suicide, Gudu wanted to go to a wedding which was celebrated near his village. He told his wife that she had to bring his clothes to the place where he was working and that he would go straight on from there. She was a stubborn and moody girl and she said, 'You have to stay at home and look after the cattle and children. I will go on my own'. She also said that 'nearby there is another wedding not far from here, and you will attend that wedding'. So what did she do? She did not listen to him, and went with other villagers to that wedding. Her mother-in-law was also with her. So she left the house to attend the wedding and came back late at night. On the way back she was accompanied by other villagers, including some haughty boys from the village who had drunk some local liquor. When she arrived home at 9 or 10 o'clock her husband was disappointed. He did not know that she had gone to the wedding. When he returned home from work, he saw that the cattle were tied up outside and nobody had given them any grass or water. The children were alone and were weeping. They were with their grandfather. Their grandmother had also gone to the wedding. Because of that he got angry.

The lawyer went on adding some personal comments to the story not only about what he thought to be the specific personality of the girl but also by making some general considerations about women's condition in India.

Kaushlya Devi was a rather childish and short-tempered woman who was perhaps also unhappy with her husband. She was very pretty, extroverted and much younger than her husband and she flirted with some of the village boys. Gudu knew of the gossip, which was often the reason why he sometimes abused his wife and hit her. “This – continued the lawyer – does not mean “cruelty” in the sense previewed by article 498a of the Criminal Code (i.e. “Punishment for subjecting a married woman to cruelty”¹⁶). He was just hitting her a little bit. ... That girl was very loose. You saw her photo in the file. ... There were some young boys of village who teased her. It was a very private thing. They sometime told him (Gudu), when having a drink together, that she was playing around with somebody else. At least some boy or other told him that. On that particular day, those boys were also with them (his wife and other people). The mother-in-law was also with her, but nobody seemed to bother, they were walking along in the darkness. Then he came back from work, tied up the cattle, looked after the children, cooked some food and after eating it went to sleep. She arrived home during the night and as soon as she had entered his room, he became angry, slapped her and held her by the arm and told her to get out. Then she came back again, and again he held her by the arm and told her to get out and closed the door on her. So she had to stay on the veranda. He insulted her shouting out that she was like a prostitute. ‘You went with those bad boys. Any more of that and you can get out of here!’ . So at night time she stayed in the kitchen outside ... In morning he woke up, tied up the cattle and fed it grass. She took her sickle and, maybe feeling depressed, she mulled over the fact that he had said that she was like a prostitute. Going over those things in her mind, she left home after him. Feeling perhaps a little guilty and desperate, she committed suicide. To do such a bad thing one has to feel really guilty. Village women can act this way because they are not educated and are mostly simple-minded. They are not very mature. Why? Because they got married at a very young age.... Most marriages are arranged and this unsettles a wife. Her consent is never required. As for their body language, the wife is sometimes beautiful and husband not. Due to this mismatch, there is no mutual affection.

This way of presenting the case is certainly a mixture of what the lawyer had been told by Gudu and his personal feelings on the subject. It is important to stress here that the lawyer’s interpretation of the case emphasizes the psychological and sentimental reasons which might have led the girl to commit suicide. Some of these reasons, such as the fact that the girl might have felt unhappy with her husband due the big age difference, stem from his own understanding of the case. Other commentaries, however, appear to be part of a standardized script-like version which is regularly used by lawyers in preparing their defense in such cases. For example the fact of describing a girl who commits suicide as “short-tempered” is regularly evoked by the lawyer in similar cases – as if this would be a sufficient reason for a woman to commit suicide. Similarly, the scenario in which the husband, while drinking with other villagers, finds out about his wife’s relationship with another man is also quite frequently evoked in village stories. (see Berti 2001)

Nevertheless, it must be stressed here that all the psychological or personal factors taken into consideration by the lawyer in his understanding of the case were not at all mentioned during the arguments where the lawyer repeatedly defended the idea that Kaushlya's death

¹⁶ In this section of the Indian Criminal Code, the term “cruelty” is explained as follows: (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

was accidental. According to him, the idea of the accident was more plausible and easier to prove before the judge than what he considered to be “the true history” (related to the problem between wife and husband). He said having voluntarily decided to give up the point of the lady’s eccentric character. “I thought why to make it doubt? Because suicide is a crime!” – he said.

The accused more simply confirmed the lawyer's version and also told me that, at the time of the events, villagers were reluctant to call the police and were ready to carry the body to the crematory ground. They had said, “Now she is dead and if we call the police, her husband will go to jail and who will take care of her kids? But when the daughter’s uncle, Beli Ram, came to know what had happened he said: “Nobody touches the body or you will all go to prison”. Then Beli Ram called the police who, under his instructions and authority (he was an ex-policeman) made the case against him. Since then, however –continued Gudu– things had changed. The likelihood that he would spend ten years in prison and that his children would have to be left to fend for themselves, had convinced everybody that he should not be condemned.

The lawyer was aware that the villagers, including Beli Ram and the village president, were now ready to help the accused and also mentioned some meetings that had taken place among the family members. The latter were likely to support the version of the accident (as he himself had suggested) and to deny before the judge that any rope had been found by the police at the place of the suicide. This was also further reason to deny Kaushlya’s suicide and try to defend the idea of an accident.

Conclusion

The case may be analyzed from two different perspectives: on the one hand, regarding the internal dynamics of the case and how these dynamics are (or are not) expressed during the trial; and, on the other hand, how this kind of judicial proceeding is followed during the trial.

From a social dynamics point of view, it was clear that, as the judge himself told me, some negotiations had taken place over the two years at village and family level. As we have seen, the defense lawyer referred to discussions held among relatives and village elders and which led to the conclusion that, for the children's sake, it would be better if Gudu was acquitted.

Reference made by the defense lawyer during the trial to the fact that Gudu had been seen touching Beli Ram’s feet the morning of the trial may also be taken as a sign that some negotiations towards reconciliation were underway between the two parties. Similarly, the comments that the girl’s mother muttered to the judge, “Children are young...They also need to be looked after” clearly shows what her priority now was, that Gudu could continue to take care of his children.

The judge in his order did not refer to these family considerations, although he may have taken them into consideration in his final decision. However, as a matter of fact, in his 13 pages of judgement he radically attenuated the sometimes accusative tone with which he addressed the witnesses during the trial. He also made no reference to the fact that all along the trial he had kept denouncing the fact that the prosecutor witnesses had turned hostile.

In his report, after commenting about the seriousness of the so-called “dowry deaths” he insisted on the necessity for such cases to be clearly proved by the prosecutor – which, for him, was not the case here. He finally justified his decision to acquit the accused based on the total lack of evidence on the part of the prosecution.

It should be noted that in the judge's report, court interactions and the arguments there is no attempt to understand why Kaushlya had decided to end her life. The only issue was whether the reason why she died was due to her husband's "cruelty" and if the legal definition of "cruelty" corresponded to the situation at hand. Similarly, all the psychological, sociological and personality-based explanations regarding the case that the defence lawyer had given me outside the courtroom were not evoked at all during the trial, with most witnesses now supporting the idea that Kaushlya's death was accidental following a fall from the tree.

Indeed, the case shows how the written version of the interactions and the text of the judgment, do not reveal the true dynamics of the case, the attitudes, the roles (prescribed or played) of the various participants. The details of a large number of important interactions which may have helped understand the case were not transcribed in the court documents or in the judge's order. The moment the judge started to translate the witness's sentence and to dictate it to the transcriber, he had already discerned the facts of the case (Rosen Q 63). We have seen, for example, how the words of the girl's mother "The children are young. They have to be looked after" were not taken as "recorded evidence" and was never evoked during the arguments or in the final order. The record of the interactions taking place during the trial indeed "selects among [the voice of litigants] silencing some and transforming other to conform to legal categories and conventions" (Conley & O'Barr 1990: 168). Consequently, what witnesses say before the judge is as important as what they say outside the court (*ib.*: 35), where what is presented through the grilles of a penal section, discussed according to a procedural protocol and judged on the basis of evidence or of a precedent, takes the form of a life story that participants in the trial reformulate and redefine according to their own role in the trial and their respective point of view.

From the point of view of judicial proceedings, the case shows how the system, although adversarial, shares some "judicial aptitudes" with the inquisitorial system. One example, as we have seen, concerns the role of the judge. Even though, as in other common law countries, the judge does not participate in the investigation, he may sometimes behave like an inquisitorial judge as far as court interactions are concerned. Contrary, for example, to American judges who are not "at the center of the action" (Garapon 1997), here the judge is the main protagonist of the trial scenario. The active role that the judge may play during the trial may partly be due to his personality and to the way he acts as judge. But it may also be seen as a direct consequence of the absence of a jury, which gives the judge a more prominent role.

The possibility that a judge might assume an active role has been previewed in the Indian Evidence Act, which grants him "the power to put any question, even irrelevant to deal with the truth" (see IEA 165) Judge Dogra also embodied what was recently recalled by the Indian Supreme Court: that the role of a judge should not simply be that of a silent spectator, but he must take an active part in the interactions¹⁷. We have seen how he was far from a silent spectator. His way of reproaching the prosecutor for not asking the right question; of blaming the defense lawyer for putting up an implausible defense; or of refusing to question witnesses, whom he thought had turned hostile, put him at the very crux of the trial scenario. Alone to decide on all the cases tried in his court, Judge Dogra is said to spend his evenings reading about the files scheduled for the following day. The importance attributed to the file is indeed another element which likens the Indian trial to the civil system, where the content of the file is known by all the participants in the trial and to which everyone refers to during the hearings and which forms a basis for the committal decision. (Mckillop 1997: 564)

¹⁷ Cfr Art. 165 Indian Evidence Act.

Nevertheless, the case also shows how Indian court proceedings maintain the important common law principle according to which the previous statement “is not part of the evidence before the court”. Contrary, for example, to the French inquisitorial system where “no transcript is made of the oral evidence of the witnesses at the hearing” (Mckillop *op.cit*: 566), we have seen that in Indian courtrooms the interactions are carefully recorded, although adapted to a specific language and judiciary codification. If this recording of the oral statements guarantees the witnesses the power to confirm or deny what they are supposed to have said at the moment of the investigation, it certainly does not guarantee the prosecutor success in proving his case. In fact, similarly to what Mckillop notes in general for adversarial systems, the Indian trial is “something of a lottery [whose] outcomes are dependent upon many variables”, (Mckillop *op.cit*: 565) which lends the criminal justice system a high degree of unpredictability. The case presented here shows how one of the most important variables determining the outcome of the trial is that of “hostile witnesses”. A case, which at the beginning relied on eleven “prosecutor witnesses”, with no defense witnesses at all, ended up being impossible for the prosecutor to prove.

Bibliography

- Adekunle A. 1995 “Previous Inconsistent Statements of Witness in Nigeria” *Journal of African Law*, Vol. 39, No. 2: pp. 127-137.
- Atkinson J. and Drew P. 1979, *Order in court: the organization of verbal interaction in judicial settings*, London, Macmillan.
- Bert D. ‘Trials, Witnesses and Local Stakes in a District Court of Himachal Pradesh (North India)’, in *J. Pfaff & G. Toffin (dir.) Citizenship, Democracy, and Belonging in the Himalayas*, Sage, New Delhi.
- _____ 2001 *La parole des dieux. Rituels de possession dans l'Himalaya indien*, Paris, CNRS Editions (Collection Monde indien), 340p.
- Cohn, B. 2001 [1959]. “Some Notes on Law and Change in North India”, in B. Cohn, *An Anthropologist among the Historians and Other Essays*, 554-575. Delhi: Oxford University Press [1990].
- _____ 2001 [1965] Anthropological Notes on Disputes and Law in India, in B. Cohn, *An Anthropologist among the Historians and Other Essays*, 554-575. Delhi: Oxford University Press [1990].
- Conley J. and O’Barr 1990, *W. Rules versus Relationships*, Chicago, University Of Chicago Press.
- Foster, S. E. 2007. "Doing business in India. Introduction and update for lawyers" in *The California International Law Journal* 15, 1: 26-29.
- Galanter, M. 1969) "Introduction: The Study of the Indian Legal Profession", in *Law & Society Review*, 3, 2/3 [Special Issue Devoted to Lawyers in Developing Societies with Particular Reference to India], pp. 201-218.
- Galanter, M. 1983 “The Radiating Effects of Courts” in K. Boyum and L. Mather (eds.), *Empirical Theories about Courts*, New York: Longmans: pp. 117-42.
- Garapon, A. 1997 *Bien juger. Essai sur le rituel judiciaire*, Paris, Odile Jacob.
- Gibbons, Prakasam, J. Tirumalesh V. Hemalatha Nagarajan (2004) *KV. Language in the law*. New Delhi. Orient Longmans.
- Glasser C. 1993, Civil Procedure and the Lawyers: The Adversary System and the Decline of the Orality Principle, *The Modern Law Review*, Vol. 56, No 3, Dispute Resolution. Civil Justice and Its Alternatives pp. 307-324.

- Mckillop B. 1997 "Anatomy of a French Murder Case", *American Journal of Comparative Law* 45??:527-583
- Menski, W. 1998 "Legal strategies for curbing the dowry problem", W. Menski (ed) *South Asians and the Dowry Problem, GEMS*, 6.
- Moore, E.P. 1993 'Gender, power, and legal pluralism: Rajasthan, India', *American ethnologist*, 20(3): 522-542.
- Palkar, V. 2003. "Failing Gender Justice in Antri-Dowry Law" *Sout Asia Research*, 23, 2, pp. 181-200.
- Scheffer T., Hannken-Illjes, K, Kozin A. "Bound to One's Own Words? Early Defenses and Their Binding Effects in Different Criminal Cases" *Law & Social Inquiry*, vol. 32, I: 5-39.

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<http://www.498a.org/contents/Publicity/498aBooklet.pdf>