

**In the High Court of Judicature, Madhya Pradesh at Jabalpur.**

*Written Arguments submitted on behalf of the Chattisgarh Mukti Morcha.*

My Lord and My Lady, the Chattisgarh Mukti Morcha here in referred to by the initials CMM has been permitted to assist the Public Prosecutor and if necessary intervene more effectively according to the judgement of My Lord delivered on 17.2.95 in Writ Petition No : 152 of '95. The words used by My Lord are as follows :-

"The Public Prosecutor has already agreed for the assistance which may be provided to him in view of section 301 ( 2) of the Code. If the complainant feels that the public prosecutor is not taking interest or takes an indifferent attitude or is abdicating his functions, in the proceedings, it is well settled that the private counsel can examine or cross-examine the witnesses or even address in the manner laid down in section 301 (2) of the Code and the complainant in such a situation may invite the attention of the court. It would be the duty of the court to see that justice does not suffer, and, it would be open to the court to act under sub section 2 of section 301 or to allow the appointment of a counsel by the complainant for conduction of a case."

The CMM wishes to make it clear that it has no grievance against the Public Prosecutor/s whether in the trial court or before this Honourable court. In fact it wants to place on record its debt of gratitude to all of them

for the labour and dedication put in by them in these proceedings. Nonetheless it wants to submit its stand in the case, which is, that it seeks justices and not revenge. Imbued with this desire it submits as follows :-

The case has its origin in the success attained by Shankar Guha Niyogi in bringing about a settlement beneficial to labour in its dispute with the Associated Cement Companies at Jamul, Bhilai and the contract labour workers employed in the Iron Ore Mines at Dalli-Rajhara. The blue collar workers at Bhilai employed in the Bhilai Steel Plant as also the industries of private industrialists such as the Shah's of the Simplex Group, the Kedia's and the Jain's were facing difficulties in obtaining relief from the owners and the managements of the industries in which they worked. Niyogi was invited to take up the leadership and some time in 1990, he shifted his residence to quarter no: MIG- 1/ 55 HUDCO, Bhilai. His wife Asha and children Kranti, Mukti & Jeet continued to stay at Danitola which is near Rajhara. The CMM's office in Bhilai was set up at quarter no : 2/ 273 MIG Colony, HUDCO, Bhilai. In the residential quarter Niyogi was served by a driver-servant Bahal Ram. The struggle against the industrialist, became more intense in the second half of 1990. Those financially affected by the struggle naturally become hostile to Niyogi, his co-activists and the workers allied to the Chattisgarh Shramik Sangh, which was the labour wing of the Chattisgarh Mukti Morcha. Activists Rai & Pandey were assaulted and

these assaults were the subject of report to the police. Niyogi also started receiving threats and one such threat is to be found in the anonymous inland letter which is at Ex P 103. Incidentally Ex P 103 was sent to the police who unfortunately do not appear to have made any serious effort to investigate the truthfulness or otherwise of the information contained in Ex P 103. Niyogi on his part started preparing his family and friends and followers for a day when he would not be alive. Entries were made by him in his diary which is at Ex P 93. This diary has been attached under Ex P 95. The threats in relation to some of the gentlemen figuring in the case as accused are to be found at Ex P 94 to P 99. These writings have been proved to be in the hand writing of Niyogi by witnesses like Dr. Gun ( PW 16), and Sudha Bhardwaj (PW 15 ). The hand writing expert PW 160 Dr. S.C.Mittal has also testified to that effect after an examination of the sample writings of Niyogi vis-a-vis writings in the diary. Niyogi also made a cassette recording of the threats received by him. The said cassette which is Article C was handed over for safe custody to his wife Asha. Niyogi presented a memorandum (Exhibit 62) to the President Of India through prosecution witness Swami Agnivesh who has been examined as PW 13. The voice in the cassette of the speaker has been certified to be that of Niyogi by his close colleagues Sudha Bhardwaj and Dr. Gun.

Amongst those seriously affected by the activities of Niyogi were industries run in the name and style of Simplex group and the Oswal Iron & Steel Pvt. Ltd. The fact that accused no 5 & 6 who are full brothers are closely connected with the Simplex Group is not disputed. Their step-brother accused no 1 is almost the Managing Director / Partner / Owner of the Oswal Iron & Steel Company. Accused no 1 was dependent to a certain extent upon the Simplex Group as they used to provide him work. Niyogi's activities had an effect upon the fortunes of accused no 1, 5 & 6. Relations between accused no 1 on the one hand and accused no 2 to 4 on the other hand were fairly cordial. In fact the relations between 1 & 2 were very intimate. This has been referred to by the learned Judge of the trial court in its Judgement at paragraphs 247 to 252 of the impugned judgement. Here after the judgement paragraphs shall be referred to only as " Paras ". Accused no 2's relations with the step brothers of accused no 1, these step-brothers being accused nos. 5 & 6 were precisely those as would be expected between a friend of their younger brother and his elder brothers. Accused nos. 3 & 4 are close to accused no 2 and it is this which has brought them in to close touch with the Shah's who are accused nos. 1, 5 & 6. In relation to accused nos. 3 & 4 they are close friend of accused no 2. Accused nos. 2, 3 & 9 were at one time or the other co-inmates of the Durg Jail and this is recited in paragraphs 241 to 246 and 257 to 262.

Accused no 9 was not only a prison-mate of accused 2 & 3. It has been brought out in evidence that he had unauthorisedly occupied a Bhilai Steel's staff quarter which quarter was in the close proximity of that in the occupation of accused no 4. Accused no 4 was in occupation of his quarter as a member of the staff of the Bhilai Steel Plant working there as a Crane Operator. It is therefore established that accused persons were inter-related either by ties of kinship, friendship or as Jail-mates or neighbours.

The first glimmerings of the conspiracy against Niyogi was a trip to Nepal in March 1991. Accused nos. 1,3 & 4 set out for the Nepal journey by motor vehicle bearing registration no MP 24 B 6622 which vehicle belongs to accused no 1. Accused no 2 joined the trio at Nepal, from according to him, SIWAN a place in Bihar where accused no 4 claims to have gone to visit his personal friend presently a Member of Parliament named Mohammed. Shahbuddin. The Honourable Court is requested to take judicial notice of news paper reports linking Mohd. Shahbuddin with the murder of Chandra Shekhar Prasad, an ex-President of the Jawahar Lal Nehru University's Students Union. In Nepal, two rooms were hired - one being occupied by accused no 1 & 2 and the other by accused nos. 3,4 & the driver of the vehicle. In the course of the Nepal visit certain purchases were made from a provision store run under the name and style of Madhuban Stores. On the reverse of the cash memo issued by the

Madhuban Stores is a list of weapons/ ammunition of different makes & their prices. This writing is proved to be in the hand writing of accused no 2 - the writing being at the ex P 393 (8). The hand writing expert Dr. S.C.Mittal who is examined as PW 160 has testified to that effect. This document was found in the search of the house of accused no 1. The plea of accused nos. 1 to 4 is that the Nepal visit was made with the sacred object of having a *Darshan* of Pashupati Nath. This defence has been rejected by the learned trial Judge for the very correct reason that normally temple visits are made in the company of one's family. Another indication about the conspiracy against Niyogi is to be found in the documents found in premises occupied or used by accused nos. 1 & 5. From the house of accused no 1 searched by PW 192 R.S.Prasad conducted on 12/11/91 were found a number of documents which have been bunched together at Ex P 393 (1) to Ex P 393 (15). Documents pertaining to the Nepal visit are at Ex P 393 (1) to 393 (6), 393 (8). Ex P 393 (12) P 393 (13) is a letter addressed by accused no 2 to accused no 1 and the significant recital therein, is, that accused no 2 will not hesitate to sacrifice his life in the cause of accused no 1. A letter addressed by accused no 2 was found in six torn bits in the offices of Oswal Iron & Steel Ltd. The torn bits were placed together to make ex P 298. This letter is in the hand writing of accused no 2 and is written on 28/9/91. It is

addressed to accused no 6 and is virtually an extra-judicial confession. The English translation set out in para 201 and else where reads as follows :-

" Respected Naveen *Bhai ji*

28/9/91

*Pranam*

As you had said the work has been got done. I have taken Rs. 20,000/- from Devendra Patni and have given to him. You give him this money. Rest on meeting.

Your younger Brother

Gyan Mishra

The English translation does not bring out the real sense of the communication and it is therefore necessary to repeat the important contents in Hindi, though, in the Roman script :

*Jaise aapne kaha tha kaam karwa diye hai. Maine bees hazar rupya Devendra Patni se lekar usko de diye hai. Aap inhe ye rupya de dena. Shesh milne par.*

This leaves no room for doubt as to the work entrusted to accused no. 2 having been accomplished that payment of Rs 20,000/- therefor had been made by borrowing the amount from Devendra Patni, that the said Patni had to be reimbursed by the addressee and that the author will intimate the details on meeting the addressee later. It may be remembered here that Niyogi was murdered in the early hours of 28.9.91.

Read in this

background, there can be no doubt as to accused no. 2 being the agency through whom the foul deed was done, that the assassin was paid Rs 20,000/- , that this sum was borrowed by accused no. 2 from Devendra Patni, that Devendra Patni had to be reimbursed by the addressee and that the author would reveal the other details later. Devendra Patni has been examined, and as expected he denies having been the medium for money changing hands. As an accomplice of sorts nothing different could have been expected from Devendra Patni. Devendra Patni's close association with accused no. 2 is also evident from the fact that accused nos. 2 & 4 used his phone number for calling up from Panchmari for which place they left very soon after the murder of Niyogi. Devendra Patni had also arranged for the car which took accused nos. 2 & 4 from Bhilai to Panchmari and this fact has been testified to by PW 88 Tikan Das Sahu and PW 90 Raj Kumar Harmukh and Bantu. Devendra Patni alias Devendra Jain are synonyms for the same person who is PW 158. Other indications of the conspiracy are notings of the car or jeep nos. used by Niyogi. These have been found in places connected with accused nos. 1, 4 & 5. It has been proved that the numbered car and / or jeep were being used by either Niyogi or the workers of the CMM.

The law in regard to proof of criminal conspiracy is very clear. It is not the practise of conspirators to admit strangers or outsiders to their

conclaves. Consequently courts have to look at circumstances for drawing an inference that a criminal act is the result of a decision taken by more than one person. In other words there is a meeting of minds and if the resolve is to commit an illegal act that decision itself constitutes the offence of criminal conspiracy. That the accused were acting in unison is clear from the evidence. First there was the Nepal trip to acquire arms. Next, was the jotting down of the numbers of the vehicles being used by Niyogi and his co-workers. In the rich haul in relation to accused no. 5 were found in his hand-writing names and addresses of CMM activists Rai & Pandey. As to the notings about the names and addresses of Rai & Pandey accused no. 5 says that he had prepared or got prepared this information for the police who were on the look out for Rai & Pandey. Had this been true the note would have been destroyed after the information had been passed on to the police. Better still, the noting itself would have been physically passed on to the police. In fact Rai & Pandey were well known as activists of the CMM and the Police would have been encountered no difficulty in tracing them out. After all their addresses must have been available at the office of the CMM at Bhilai. Accused no 5 has been compelled to come out with an excuse and a lame one at that, because the note happens to be in his handwriting. Where there is nothing to indicate his authorship, accused no 5 has found no difficulty in hunting out proxies

to take the blame. One such proxy is his own son PW 98 Ketan Shah who claims to be the author of the ex P 261 attached under seizure memo Ex P281 . Ex P261 purports to be a war plan to combat Niyogi. Ketan says that this document was prepared by him or rather prepared on his instructions. The learned trial Judge has dealt with this aspect of the case in paras 219 to 227. In particular paras 220 to 222 deal with ex P 261. He has rightly held that Ketan Shah who had started working in the Simplex Industries just a month before 20.9.91 could not have been the author of Ex P261. The maturity shown by the author in Ex P261 bears out the conclusion of the learned Judge. One of the documents found at the home of accused number 4 was the diary Ex P71 in which Niyogi's jeep number was written. Accused number 9 an ordinary cycle-repairer forcibly occupied a Bhilai Steel Plant quarter close to that of accused no 4. It is respectfully submitted that in so doing, accused no. 9 was acting on the instructions of his collaborators, in particular, accused no 4. This shows the need for the killer to be in close touch with other conspirators, particularly accused no. 4 so that communication with them was easy . The other item proving a criminal conspiracy is to be found in the sudden affluence of accused numbers 2, 3, 7 & 8. A Cinema Talkie at Bhilai known as Maurya Talkie has a cycle stand which is contracted out by the owner. In the past the contractor was one who had bid for the privilege to run the cycle stand

at a price of Rs 19,000/- per month. Finding this to be unlucrative, the said contractor Rajjappan reduced the price to Rs 15,000/- per month. Accused no 2's elder brother Prabhu Nath Mishra intervened and prevailed upon the owner of the Maurya talkie to award the contract to accused no. 3 - his quoted price being Rs 25,000/- month. Accused no. 3 had visited the owner of the Maurya Talkies Sunil Agarwal in this connection in the company of accused no. 4. The daily collection from the cycle stand, were credited in the account which accused no. 2 had with a Bank. That account had been recently started by accused no. 2. Assisting accused no. 3 in tending to the cycle stand were accused nos. 7 & 8.

One more item proving the conspiracy is the disappearance from Bhilai of accused nos. 1, 2 and 4 & 9 either immediately or soon after 28.9.91 i.e. the date of killing the of Niyogi. In respect of accused no. 9 it is said that he had left for Bombay even prior to 28.9.91. This version we get from PW 51 Reshmi Bai whose interest in shielding accused no. 9 is not in doubt. This lady, without the formality of a marriage, was living with accused no. 9 for a considerable period. In one case in which accused no. 9 had been sent to Jail as an under-trial Reshmi Bai arranged for his bail. This she herself admits. She knows the charge that accused no. 9 faces in this case. Having regard to her closeness to accused no. 9, she is bound to make claims and denials to suit the interest of accused no. 9. With all her

ignorance and illiteracy, she certainly would try to support a plea of alibi advanced by accused no. 9. Accused no. 9 who was working and living in Bhilai for a considerable period suddenly disappeared. At this stage, it will be enough to say that the disappearance was occasioned by a desire to distance himself from Bhilai. The same step was taken by accused no 1. He set out on a long journey in an automobile which took him to places like Nagpur, Nawegaon, Madras, Bhadrachalam, Jamshedpur etc. Accused nos. 2 & 4 left Bhilai on 4.10.91 and went to Panchmari. They stayed at Panchmari till about the 9.10.91. Thereafter they went different ways - accused no 2 returning to Bhilai where he was arrested and accused no. 4 elsewhere - eventually to be arrested on 17.11.91 at his village in district Gazipur, State of UP. Admittedly, accused nos. 2 & 4 lived together in a hotel at Panchmari between 4.10.91 & 9.10.91. It has come in evidence that accused no. 3 was not so fortunate because he had come under police surveillance. In fact, accused no. 3 had been arrested on 3.10.91 though the police papers show him to have been arrested on 13.10.91. Knowing of this happening, accused nos. 1, 2 & 4 made themselves scarce. This act occurring soon after the killing is also an indication of these persons being privy to the murder. In the chain linking the conspirators, is also, the use of fake names by accused no. 1 on his travels and the attempt to create a make-believe picture so as to mislead the investigation. Accused no. 4

claims that he went to his village to attend to his ailing wife . As a matter of fact if his wife was ailing and if he wanted to attend to her, he would not have gone to Panchmari. The learned trial Judge who is conversant with the travel routes says that Panchmari and Gazipur lie in opposite directions Panchmari is not on the way to Gazipur. Therefore neither the route taken nor the mental attitude expected of a person who had received the bad news of his wife ailing, supports, the plea taken by the accused no. 4. In fact he appears to have left Bhilai hurriedly and was arrested fairly late. This is of special significance because accused no. 4 was holding the responsible post of a Crane Operator at the Bhilai Steel Plant. Jobs with Public Undertakings are difficult to obtain and those who obtain such jobs can hardly afford to be careless in the matter of attendance. If they have to leave they put in an application for leave and these applications are precise. Accused no. 4 did give such an application but the same was written in a very careless manner. Accused no. 4 made no efforts to contact his employer after 4.10.91 to correct the casualness shown by him. It was the police who had to bring him back to Bhilai. It may be asked why accused no. 2 did not follow the example of accused nos. 1 , 4 & 9 to prolong his stay from out of Bhilai. The answer lies in the different ways which different human beings think and act, On the one hand was the desire to keep away from Bhilai to avoid the wrath of the CMM people and

the police, and on the other hand, was the craving to find out what accused no. 3 was revealing in police custody . This explains the contradictory behaviour of accused no. 2. As to accused no. 9, one of the witnesses speaks of his being found in or near about his village of Nibahi in UP. The witness speaking of this is a PSI under which the Nibahi village falls. He says that accused no. 9 was seen in and around Nibahi in October 1991. It is difficult to attach credence to what this witness has to say, for, his alleged sightings of accused no. 9 have not been recorded in the police station diary. It is argued that the witness has not been declared hostile by the prosecution and what he says binds the prosecution. Every witness examined by a party citing him is not one whose testimony appearing in every single line can bind the party examining him. If that were the rule there would be the pitfall of witnesses being tutored before they came into the witness box. Witnesses, perfect & imperfect in perception, recall and narration exist and when evidence is appraised Courts have to heed these factors. And all said and done, the witness does not say more than that accused no. 9 was found at Nibahi some where in the first week of October 1991. The murder took place on 28.9.91 and the modern means of transport do not render it impossible to travel between Bhilai and Nibahi within 30 to 40 hours.

This brings me to the actual killing. Admittedly there is no eyewitness to the killing of Niyogi. It was argued and rightly that where a case depends upon circumstantial evidence, Courts have to be careful. In particular, evidence of motive is said to be of crucial importance in a case depending upon circumstantial evidence. There is no evidence that accused no. 9 had any personal motive to kill Niyogi. There is no evidence that he was in any way connected with accused nos. 1, 5 & 6 in whose flesh Niyogi had become a thorn. Having said this, let it not be forgotten that society has always had the phenomenon of what is known as hired or professional killers. In recent times their numbers seem to be on the increase and in no era of human history has the professional killer been absent. Accused no. 9 is sought to be fastened with the liability of killing Niyogi on the basis of four or five items. Each of these is dealt with hereafter.

First, is the fact of accused no. 9 sharing a common roof with accused no. 2 & 3 when they were Jail-mates in the Durg prison. The prosecution has tried to show that being Jail-mates they must have met. That must have been laid the back ground of an intimacy between them. The defence on the other hand has gone to the extent of contending that they were separately quartered and therefore did not come in touch with each other. In fact, accused no. 2 has examined a Police-man in disgrace who testifies to this effect. We need not go into these contradictions for it is

sufficient that accused no 9 was residing and working at Bhilai <sup>h</sup> were lived and worked the other accused.

In this connection a very important piece of evidence is ex PW 298 in the hand writing of the accused no. 2. Amongst other things ex PW 298 speaks of the doer of the assigned work having been paid Rs 20,000/- and his having carried out the assigned task. Witness Satya Prakash who has testified as Ex PW 105 says that accused no. 9 was roaming about in rural U.P. on a red coloured motor cycle of Suzuki make. This shows that all of a sudden a humble cycle-repairer had acquired and was using a fairly costly vehicle for moving about in U.P. The evidence of Satya Prakash and Vishambhar Sahani ( PW 124 ) has been subjected to trenchant criticism by the defence. It is contended both are accomplices, that the statement of Vishambhar was recorded in violation of the law and that both of them have supported the prosecution because of the fear/ pressure of the CBI. There is no substance in this criticism. In fact Satya Prakash's sister -in-law, is a cousin of accused no. 9. Accused no. 9 was got treated by doctors after he met with an accident by Satya Prakash. Satya Prakash not only took accused no. 9 to the doctors but also had him lodged at the home of a friend because the treatment was to be a prolonged one. In the course of the trial accused no. 9 complained of chest & abdomen pains which indirectly corroborates the testimony relating to his having met with an

accident while riding the Suzuki. Accused no. 9 does not say that Satya Prakash harbours any personal animosity against him. In fact accused no. 9 was a close marital connection and judicial notice has to be taken of the fact that people living in the rural areas respect this sort of relationship. Vishambhar Sahani is from Nepal and he is the Brother-in-law of Keshnath who in turn is a brother-in-law of Satya Prakash. It is not accused no. 9's case that Vishambhar has any personal grudge against him.

The contention that Satya Prakash or Vishambhar are accomplices and therefore incapable of inspiring confidence remains to be examined. Section 133 of the Evidence Act says that " an accomplice shall be a competent witness against an accused person ; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice."

This is the lawmakers recognition that an accomplice is not to be distrusted merely because of his complicity in a crime. There may be, and there are, several occasions where there is no alternative but to take recourse to the testimony of a co-participant in a crime or crimes to nab the other culprits. Section 114 of the Evidence Act in the illustrations appended, incorporates in one of them, a rule of caution viz. that an accomplice is unworthy of credit, unless he is corroborated in material particulars. This rule of caution has developed into something well

recognised and accepted almost as if it were a statutory provision. It is respectfully submitted that Satya Prakash and Vishambhar are not accomplices. It is no one's case that they participated in either the conspiracy or the killing of Niyogi. Thus, they cannot be termed accessories before the fact or co-participants in the killing. At the most, they can be accused of having failed to unmask accused no. 9 though informed by him of his being the killer of Niyogi etc. etc. They would be guilty of not conveying out the information revealed to them by the killer. This may make them akin to harbourers of an offender. This, however, is not a trial for harbouring of offenders. Section 133, if carefully read, speaks of an accomplice being a co-participant in the crime for which crime the accused is being tried. If Satya Prakash and Vishambhar were conspirators to the killing or abettors of the killing of Niyogi they would be accomplices within the meaning of section 133. But as they do not answer that description, they cannot be said to be accomplices within the contemplation of section 133.

It was argued and with great vehemence ( though later retracted by learned counsel for accused no. 9 ) that in the matter of recording the statement of Vishambhar, the law had been violated. Section 166 - A of the Code of Criminal Procedure 1973 ( CODE) was relied upon. Carefully read, this section is in the nature of an enabling provision. The use of the word

"may " in the middle of the section indicates the permissive or directory nature of the provision. And assuming the worst viz. That Section 166 - A is mandatory in relation to the recording of a statement of a witness residing outside India, the defect is cured by section 465 (1) of the CODE. This section cures an irregularity or illegality in amongst other stages, an investigation into the commission of the crime. By resorting to section 465 of the CODE, even a violation of section 166 - A is not of any consequence.

It is true that Satya Prakash & Vishambhar did not reveal the contents of the confession by accused no. 9 prior to being questioned by the CBI. Even if they are treated as quasi - accomplices, there version is corroborated in material particulars by unimpeachable evidence. There is first the recovery of a cache of arms and ammunitions at or near about the ancestral home of accused no. 9 at Nibahi. Next, there is the recovery of the red coloured Suzuki from the home of Satya Prakash. Both these recoveries were made on the basis of information given by the accused no. 9 to the CBI. Recoveries of the cache of arms/ ammunition and the Suzuki motor cycle constitute proof that corroborates witness Satya Prakash. The statements cum - attachments were effected under Ex P 285 & P 286. This was done on 24.8.93 and witness supporting the investigating officer on the subject is PW 104 Dinesh Baloni . It has been suggested that the cache of arms / ammunition was secreted in an open space accessible to one and

all. This argument overlooks the fact that author of the concealment was accused no. 9 himself as recited in his statement leading to discovery. Accepting the authorship of concealment is recited in the relevant documents and that is admissible under section 27 of the Evidence Act . As to the Suzuki, it was kept in the home of Satya Prakash. Its registration plate was missing and the identifying marks on the chassis and engine had been erased. There is no difficulty in believing that the erasure was the handiwork of either accused no. 9 or those who had made available the vehicle to him and who did not want to be traced. Vishambhar is a teacher in a school at Nepal and cannot be accused of being an accomplice however broad the meaning ascribed to that word. Vishambhar drove away Keshnath and accused number 9 , the moment the narration of accused no. 9 was over. Keshnath had brought accused number 9 with him so that Vishambhar could help in securing a refuge for the fugitive. However, Vishambhar wanted no part in this and that is why accused no. 9 had no alternative but to abandon the idea of settling down whether permanently or temporarily in Nepal. It was argued that an adverse inference should be drawn against the prosecution because it did not examine Keshnath. Under the law, no particular number of witnesses are required to prove any fact. Keshnath could not have done more than what had already been done by Satya Prakash and Vishambhar. Unnecessary duplication results in wasting

precious public time and those who exercise caution in this matter are rendering a public service. The number of witnesses examined and the bulk of record of this case is forbidding as it is. Satya Prakash and Vishambhar corroborate each other and are further corroborated by recoveries made pursuant to information conveyed by accused no. 9. It is true that both the witnesses went to the office of the CBI at Delhi on their own and in the case of Satya Prakash at least without being paid the fare. This does not mean that the witnesses were fear-stricken or are deposing in Court because of that fear or pressure. Satya Prakash is an educated person having given up studies after having failed the BA examination. Though educated he is in straitened circumstances. Yet he makes no secret of the fact that he had committed a crime in helping accused no. 9 to find a refuge whether in Gorakhpur district or Nepal. A person who frankly admits his error and who does not try to cover it up by mouthing platitudes should be reckoned a truthful person and it must not be forgotten that a person is not untruthful on every occasion. There are people who have regard for the truth however questionable their conduct in other spheres. That a man gives or helps a fugitive to obtain refuge is no proof of his also being a liar. Vishambhar's memory in remembering the date on which Keshnath and accused no. 9 visited him is contrasted with the mistake he makes in relation to the year of the visit of Keshnath and accused no. 9. These tricks of memory are a

common human frailty and therefore do not affect the credibility of the witness.

The last circumstance as against accused no. 9 is to be found in the deposition of the father and son arms and ammunition dealer from Raipur. This duo are Jaykuddin and Nuruddin. Their shop is run in the name and style of Badruddin Mulla Shamsuddin. They testify of the visit made by accused no. 9 on 14.9.91 in the company of B.K. Singh. B.K Singh had brought with him the licence standing in the name of Satya Narayan Singh. On the strength of this licence, he made certain purchases inclusive of three LG cartridges. Two of these cartridges were in the cache of arms & ammunition recovered from information furnished by accused no. 9. Satya Narayan Singh was recompensed by the return of some cartridges lest he come into trouble as his license had been used. Unfortunately, the prosecution had to take the risk of examining Jay Narayan Tripathi in this connection. This gentleman happens to be related to accused No. 2, and, as expected, did not support the prosecution on the subject. The only loss, is the inability of the prosecution to establish the recompense to Satya Narayan Singh. B.K. Singh and Satya Narayan Singh had died prior to the recording of evidence at the trial and were therefore not examined. Even otherwise it is doubtful if they would have supported the prosecution seeing that their part in the transaction was not entirely without blemish. Exception

is taken to the testimony of Nuruddin contending that it is impossible to believe that he would remember a single visit of accused no. 9 as also his features. The learned trial Judge has been impressed by the narration of Nuruddin and has commented upon the sharpness in the observation and recall powers of different people. He has seen no reason to disbelieve the claim made by Nuruddin. Some degree of faith reposed by the learned trial Judge in Nuruddin should be the result of his demeanour in the witness box. An inference based upon demeanour unless shown to be the result of credulity, should be accepted by a Court of Appeal. It is respectfully submitted that the evidence of Nuruddin and Jaykuddin should be accepted. It establishes that less than a fortnight prior to the murder of Niyogi, ammunition was purchased in the presence of accused no. 9 and on the basis of an impersonation. It is said that the identification of accused no. 9 made in court by the witness is unreliable as it was not preceded by an identification parade. It cannot be disputed that an identification in court becomes more reliable if preceded by a similar recognition in a parade held before the testimony given in court. But this is not an inflexible rule. Where the witness is proved to have a good memory and where he has no reason to testify falsely, his deposition carries conviction and more so when supported by other credible evidence. The prosecution has not been that fortunate when trying to establish the acquisition of the murder weapon by

accused no. 9. The witness examined on the subject viz. Arvind Tripathi has not been believed by the trial Court and it must be conceded that the disbelief rests on strong grounds. Some links in a chain are normally weak and such a weakness does not discredit the entire linkage or the soundness of the conclusion resting upon the joints. To summarise the evidence against the accused no. 9 is :-

1. His proximity to accused no. 2 to 4.
2. His acquisition of three LG cartridges on 14.9. 91 from the shop of Badruddin Mulla Shamsuddin or at least his presence there when the said LG cartridges were acquired.
3. His abrupt departure from Bhilai where he had been living and working for more than seven years on or about the date of Niyogi's killing.
4. Accused no. 9's sudden affluence after 28.8.91 in that he then possessed arms and ammunition of good value and a Suzuki motorcycle equally valuable.
5. Accused no. 9's confession about the killing to Satya Prakash and Vishambhar.
6. Accused no. 9's frequent complaints of pains in the chest and abdomen resulting from the mishap that he had undergone when in U.P. and about which Satya Prakash has spoken.

7. The linkage of the above circumstances suffices to establish the conclusion that accused no. 9 was the killer of Niyogi.

Much has been made of the discrepancy in the weights of the pellets bearing nos P1 to P3. The discrepancy is between the reading given by Ballistic Experts J. P. Nigam and Roop Singh. But the difference is less than  $\frac{1}{4}$  th of a gramme. This is not significant seeing that no two scales ever agree. The learned trial judge has referred to this aspect of the matter. It is submitted that the view taken by him is a reasonable one specially because Roop Singh's version is qualified by the statement that it was based upon an approximation. It was argued that the prosecution has to establish the safe and sealed transmission of the pellets etc. from Bhilai to the State Forensic Science Laboratory at Sagar and also from the Session Courts at Durg to Central Forensic Science Laboratory, New Delhi. The investigating officers and the recipients at the two laboratories have spoken of the sealed condition of the articles which they handled prior to and after the transmission. That is enough to exclude the possibility of any tampering. In relation to the process of examination on the basis of which the experts have reached the conclusion unpalatable to the defence, it is enough that the reasons given by them are sound. It is not required that the Court should examine every item of evidence presented by the prosecution with the blinkers of suspicion impossible to dislodge. Evidence in a criminal

case is certainly to be examined with great care for the accused are presumed to be innocent until proven guilty. But as the trial Court, puts it, there is no presumption that the CBI fabricates evidence. It was argued that the prestige of the CBI is at stake and that the reversal of the trial Court's verdict, would impair its good name. This is an argument of desperation and there is really no trace of any shady work throughout the course of investigation.

Look now at the evidence against the other accused beginning with accused no. 1. Accused no. 1 certainly was a loser - extent apart - pursuant to the activities of Niyogi . As one financially interested in Oswal Iron and Steel Private Limited, he would be adversely affected if the volume of business coming from the Simplex group was reduced. And quite apart from this, accused no. 5 & 6 were his brothers - albeit step brothers. Accused no. 5 and 6 were obsessed with the part played by Niyogi against industries run by them. The large number of documents collected from the accused no. 5 on the subject of Niyogi indicates that he had become a nightmare to accused no.5. In relation to accused no. 6, the letter at Ex P 298 reproduced earlier was addressed to accused no. 6. If his brothers were distressed on account of the activities of Niyogi, accused no. 1 would also be dismayed. The question arises as to why Ex P 298 ( addressed to accused no. 6 ) was found in premises in the possession of the accused

no.1 ? The answer lies in the common human trait of a demand being made upon the principal beneficiary being conveyed through a smaller beneficiary. Businessmen are careful about their pennies and it is possible that accused no. 1 may have advised accused no. 2 to address the letter to accused no. 6 so that the money paid to the killer was reimbursed by that person and not required for him. Moreover, accused no. 2 may have desired to establish his role and get his share of the reward from the richer accused no. 6. Ex P298 speaks of there being more to convey to the addressee by the author. That accused no. 1 was the conduit between accused no. 2 on one hand and accused no. 5 & 6 on the other hand is more or less clear. That Ex P 298 should be found in the office of accused no. 1 though it is addressed to accused no. 6 and that too in a torn condition, is not to be wondered at. After all, accused no. 1 decamped very soon after the killing. The days before he left Bhilai could not have been easy ones for him. In the diary and tapes of Niyogi he has been mentioned several times and referred to as one of the principle conspirators. The killing of Niyogi had created a strong feeling of resentment against the industrialists of Bhilai, not excluding accused no's 1, 5 & 6. The accused no. 1 left Bhilai as early as he could and what really incriminates him is the course of conduct followed by him during his travels. He moved from place to place in his vehicle bearing registration

no. MP 24 B 6622. This vehicle stands in the name of Oswal Iron and Steel Private Limited. He first went to Nagpur where he stayed in different hotels. The first hotel to get his custom was Hotel Grant which has been proved by exhibit marked Q - 80 / 348. Next he stayed at Hotel Sona . In his stay at Hotel Grant accused no. 1 had given out his name to be Hemant Singh. At hotel Sona he gave out his name to be C. K. Shah. Accused no. 1 then moved on to Hotel President in Madras where his name was given out to be Shah Chandra. At the toll tax barrier in Gudur, district Nellore, Andhra Pradesh an entry was made about the collection of toll tax from accused no. 1. At Bhadrachalam accused no.1 stayed at Hotel Godavari where he gave out his name to be C. K. Shah. At the Navegaon Bandh Tourist Lodge accused no. 1 described himself as C. R. Shah. At hotel Surya Nagpur, accused no. 1 gave out Ram Singh to be his name. At Hotel Continental in Nagpur accused no. 1 gave out his name to be R. K. Singh. In Jamshedpur accused no. 1 stayed at hotel Central Point under the assumed name of H. K. Shah. All the relevant entries in the hotel registers or records are proved to be in the handwriting of accused no.1 . No explanation is given as to why he was travelling so fast and assuming so many assumed names for staying at different places. In Nagpur accused no. 1 even purchased blood from a blood bank. This blood was sprinkled on vehicle MP 24 B 6622 which vehicle was at a later stage abandoned.

According to the learned trial Judge the abandonment of the vehicle at village Nagara was to lead astray the investigation. No serious exception can be taken to this conclusion. The close intimacy between accused no. 1 and accused 2 is to be found in various documents collected from premises in the possession of both the accused. In the first is Ex P 298 which is a written confession of accused no. 2. As was to be expected accused no. 2 denies that Ex 298 bears his handwriting and signature. The accused no 1 denies that Ex 298 was seized from his premises. The theory trotted out is that the accused no. 2 was made to scribe and sign Ex 298 which was thereafter torn and the torn pieces were later found in the premises of accused no 1. Ordinary intelligence should not be denied to the police whether of the State or the CBI. If the idea was to fabricate and plant incriminating documentary evidence, nothing prevented the concoction of a document purporting to be a letter of accused no. 2 addressed to accused no. 1 or better still to accused nos. 1, 5 & 6. There is a naturalness about the prosecution version about Ex P 298 which compels acceptance in its entirety. Ex P 393 (13) shows accused no. 2 promising to sacrifice his life in the cause of accused no. 1. Ex P 393 (10) is a letter written by accused no 2 to accused no. 1. Ex P 393 is a letter written by accused no. 2 to Ramesh of Oswal Iron and Steel. It was a request to Ramesh to send Rs 2000 through accused no. 3. The letter goes on to recite that accused no. 2

had spoken to accused no. 1 who had instructed him to recover the money from Ramesh. Accused no. 1 was with accused no. 2 during the march 1991 visit to Nepal. Significantly, the two of them stayed together in one room, while lesser mortals like accused nos. 3, 4 and the driver of the vehicle were sent in the other room. Accused no. 2 acted as the scribe of Ex P 393/8. This document recites the different arms available at Nepal and the prices thereof was found from the home of accused no 1.. To summarise, the evidence against the accused no. 1 it consists of :-

1. Strong resentment against Niyogi for his activities leading to labour unrest and agitation adversely affecting the profits of the accused no. 5, 6 and himself .
2. Accused no. 1 keeping a track of the movements of Niyogi .
3. The close intimacy between accused no. 1 & accused no. 2 as evidenced by Ex P 393/10, 393/11, 393/9, 393/13 Ex P 447, P 448 etc.
4. The Nepal visit made in March 1991 made by accused no 1 to 4. This if read in the background of exhibit P393(8) establishes the visit to have been an arms - collection errand.
5. The disappearance of accused no. 1 within days of Niyogi's killing, his wanderings from place to place and hotel to hotel using on a number of occasion fake names and fake addresses. The absence of an

explanation for this unusual behaviour from accused no. 1 makes the matter worse.

In relation to accused no. 2, apart from the Nepal trip and Ex P 393 (B) his closeness to accused no. 1, his unexplained visit to Panchmari very soon after the killing of Niyogi, and his proximity to accused no. 3 & 4, and his being the author of Ex P 298. This document at Ex P 298 though somewhat indirectly worded is a written confession about his role in getting Niyogi killed and his rewarding the killer with money borrowed from Devendra Patni and the need to reimburse the said Patni. In the background of the intimacy between the brothers accused nos. 1, 5 & 6 on the one hand, and accused nos. 3, 4 & 9 with accused no. 2 it can be safely inferred that he i.e. accused no. 2 was the central figure between the lower and the higher ends of the conspirators.

Accused no. 3 appears to have been nabbed very early in the course of investigation. His participating in the Nepal visit, his unexplained affluence within days of Niyogi's killing and his getting credited the earnings from the cycle stand in the account that of accused no. 2 had with a bank, proves his complicity in the crime.

Accused no. 4 has been described as a very close friend of accused no. 2. Ex P 126 was found at the home of accused no. 4 though it was addressed to Simplex Castings and Engineering which belongs to accused

nos. 5 & 6. No explanation is forthcoming as to how Accused no. 4 obtained possession of Ex P 126 which was addressed to and should have been in the possession of Accused nos. 5 and / or Accused no. 6. The obvious inference is that Ex P126 changed hands because of the intimacy between Accused no. 4 on one hand and Accused nos. 5 & 6 on the other. Ex P 71 found at the home of Accused no. 4 has a noting about the registration number of the jeep which Niyogi used to travel in. Then comes his disappearance first to Panchmari and after that unexplained. A permanent and responsible job is abandoned by accused no. 4. His bare word apart there is no proof that his wife was really ill.

As to the accused no. 5, the documents attached under Ex P 299 proved by PW 185 R.P. litoria and Dr D.R. Gaurkar PW 114 show that a close track was being maintained by him in relation to, Niyogi, CMM and its workers. As one of the Directors of the Simplex group of industries accused no. 5 was naturally a sufferer .

Accused no. 6, was the person to whom the Ex P 298 was addressed and that makes him a part of the conspirators.

So far as the accused nos. 7 & 8 are concerned they were working for the cycle stand at Maurya Talkies under the supervision of accused no. 3.

*It has been be argued that certain incriminating factors which have appeared in the prosecution evidence have not been put to the accused in*

their examination under section 313 of the CODE. A defect of this nature does appear in the record of the questioning by the learned trial Judge. But this omission is also curable under section 465 of the CODE. The accused have not been able to show how the absence of a questioning on this or that matter has occasioned a failure of justice. On the contrary every single fact of importance testified to by the witnesses has been subjected to a severe cross examination at the hands of defence counsel, it cannot therefore be said that there has been any failure of justice.

The verdict of the trial Court suffers in one particular viz. leniency of the sentence imposed upon accused nos. 1 to 5 . At least nos. 1, 2, 5 & 6 cannot be absolved of having instigated accused no. 9 to pull the trigger. The hand that guides the trigger-man is as guilty as the one which pulls the trigger. In fact accused nos. 1, 2, 4, & 5 are more, if not, equally responsible as accused no. 9. Be that as it may, there is no question of reducing the sentence that has been inflicted by the trial Court upon those found guilty.

*Submitted to your Lordship and Ladyship by S. M. Daud, Advocate,  
representing the Chhatisgarh Mukti Morcha ( CMM ) at camp Jabalpur.  
Date : 17th September, 1997.*

## Arrest of the Accused

A-1 Said to be in custody of Durg police on 15/12/91.

A-2 At Bhilai on about 13/10/91.

A-3 Arrested formally on 13/10/91 ; really on 3/10/91.

A-4 At his village in Gazipur district ( U.P.) on 17/11/91.

A-5 On anticipatory bail.

A-6 On anticipatory bail.

A-7 On 22/11/91 at Durg (Bhilai).

A-8 On 22/11/91 at Durg (Bhilai).

A-9 Apprehended on 21/8/93 at Gorakhpur Air Force Station ; arrested by Gorakhpur Cantt police on 22/8/93 ; by CBI on 24/8/93.

## Summary of Case against Accused

A-1 Paras 466 to 481.

A-2 Paras 451 to 465.

A-3 Paras 482 to 488.

A-4 Paras 489 to 497.

A-5 Paras 498 to 518.

A-6 Paras 519 to 523.

A-7 & 8 Paras 524 to 525.

A-9 Paras 74 to 189 ( In particular para 186 ).

PWN 1	Roopram Sahu
PWN 2	Rajesh Bajaj
PWN 3	P.C. Tiwari
PWN 4	Vishnu Prasad Soni
PWN 5	A. K. Tiwari
PWN 6	Suresh Sen
PWN 7	S.L. Salam
PWN 8	M.S. Parmeshwar
PWN 9	Vishram Prasad Banjare
PWN 10	Suryadev Verma
PWN 11	Mannu Bhai Boda
PWN 12	R.N. Tiwari
PWN 13	Swami Agnivesh
PWN 14	Basant Kurnar Sahu
PWN 15	Sudha Bharadwaj
PWN 16	Punyavrata Gun
PWN 17	Vijay Shukla
PWN 18	Goukaran Gajpal
PWN 19	P.B. Nayar
PWN 20	Latluram
PWN 21	D.P. Bhattacharya
PWN 22	Ganesh Ram Chowdhry
PWN 23	G.R. Modhare
PWN 24	D.N. Sahu
PWN 25	S. Vishvanathan
PWN 26	K.S. Bhatia
PWN 27	Deep Narayan Pandey
PWN 28	Naidu Maran
PWN 29	Ajab Rao

PWN 30	M.V. Reddy
PWN 31	Atul Chandra Pal
PWN 32	K.C. Merry
PWN 33	Achamma Verghese
PWN 34	C.P. Radhakrishnan
PWN 35	K.J. Pathak
PWN 36	Mrs. Kristina Kumar
PWN 37	Asit Bose
PWN 38	Lingnath
PWN 39	Saibal Jana
PWN 40	Mithulal
PWN 41	Jasvant Kumar
PWN 42	Krishna Kumar
PWN 43	Asit Kumar Purkait
PWN 44	Anjori Ram
PWN 45	Babulal
PWN 46	K.S. Sahu
PWN 47	S.C. Sarkar
PWN 48	Rajkumar Pandey
PWN 49	Biharilal Thakur
PWN 50	Hitesh Kumar Bhasin
PWN 51	Reshmi Bai
PWN 52	Darshanand Tiwari
PWN 53	Jacob Kurien
PWN 54	Sudama Prasad
PWN 55	G. M. Ansar
PWN 56	Kunjaram Dhavale
PWN 57	Bharat Bhusan Pandey
PWN 58	Banke Bihari Yadav

PWN 59	Raj Bahadur
PWN 60	Shripad Jagannath Mategaonkar
PWN 61	Jaykuddin
PWN 62	Nilratan Ghosal
PWN 63	S. P. Singh
PWN 64	Bahalram
PWN 65	R.G. Pandey
PWN 66	Nuruddin
PWN 67	Kranti Guha Niyogi
PWN 68	Asha Guha Niyogi
PWN 69	Shri Ram Singh
PWN 70	Rajendra Kumar Syal
PWN 71	Narendra Kumar Singh
PWN 72	Jainarayan Tripathi
PWN 73	Dr. Chandra Shekhar Ghosh
PWN 74	V.K. Bansal
PWN 75	Dr. B. R. Meshram
PWN 76	Sampuranand alia S.M. Rao
PWN 77	R. K. Mishra
PWN 78	J.P. Nigam
PWN 79	Sant Kumar Sahu
PWN 80	G.N. Dubey
PWN 81	Ravindra Kumar Choudry
PWN 82	Anil Kumar Verma
PWN 83	Chandra Shekahr Dubey
PWN 84	Dr. B.P. Maithil
PWN 85	H.O. Kulbhaskar
PWN 86	Shatrughan Patel
PWN 87	Deepak Kumar Surana

PWN 88	Tikamdas Sahu
PWN 89	Santosh Gupta
PWN 90	Rajkumar Harmukh alias Bantu
PWN 91	Ravindra Kumar Mende alias Ravi
PWN 92	Surajmal Jain
PWN 93	Bhola Rao
PWN 94	Ravindra Kumar Pandey
PWN 95	D.K. Dubey
PWN 96	Bharatlal Dewangan
PWN 97	Şuresh Vishvakarma
PWN 98	Ketan Moolchand Shah
PWN 99	Yogesh Kumud Prasad Dave
PWN 100	Radheshyam
PWN 101	Yashwant Dhote
PWN 102	Kamaluddin
PWN 103	Koduram
PWN 104	Dinesh Baloni
PWN 105	Satyaprakash Nishad
PWN 106	Arvind Tripathi
PWN 107	Anil Kumar Jain
PWN 108	Vijay Kumar Sharma
PWN 109	Piushkar
PWN 110	Surendra Kumar
PWN 111	Tarasingh
PWN 112	Vyankteshwar Rao
PWN 113	M. Toppo
PWN 114	D.R. Gourkar
PWN 115	Mohanlal
PWN 116	Akshay Kumar

PWN 117	D. Sundar Pal
FWN 118	Polaiyya
PWN 119	P. K. Vijay Kumar
PWN 120	Dr. Dileep Bhalchandravalkar
PWN 121	Vishambhar Das Manikpuri
PWN 122	Mahendra Singh Patel
PWN 123	S.N. Singh
PWN 124	Vishambhar Das Sahani
PWN 125	Umesh Chandra Mishra
PWN 126	D.P. Singh
PWN 127	Bhagwati Prasad Tiwari
PWN 128	Indra Kumar
PWN 129	Musti Khan
PWN 130	Vijay Bajaj
PWN 131	Rajesh Dua
PWN 132	Ajay Kumar Mishra
PWN 133	Pradeep Kumar Sural
PWN 134	Ananta Ramesh Rao Primpal Rao
PWN 135	T.K. Sengupta
PWN 136	Raman Mangal Das Pachigar
PWN 137	Shekhar
PWN 138	M.Mohan
PWN 139	Kingshuk Chakravarty
PWN 140	R.Rijvi
PWN 141	C.A. Shivkumar
PWN 142	Ramesh Bhasin
PWN 143	Mangulal Panchbudhdev
PWN 144	Balkrishna
PWN 145	Sahas Ram Bishan

PWN 146	Baban Rao Neware
PWN 147	D.V. Singh
PWN 148	Janardhan Pandey
PWN 149	Anami Kumar
PWN 150	Shambhu Prasad Choulagai
PWN 151	Adant Kumar
PWN 152	C.M. Patel
PWN 153	Mahendra Pratap Singh
PWN 154	Vikaram Singh Thakur alias Pappu
PWN 155	H.S. Kapur
PWN 156	Ajay Kumar Singh
PWN 157	M. V. Bhaskar Rao
PWN 158	Devendra Jain
PWN 159	Roop Singh
PWN 160	Dr. S.C. Mittal
PWN 161	S.N. Saxena
PWN 162	Iqbal Ahmad
PWN 163	S.K.A. Naqvi
PWN 164	Pramod Kumar Raoka
PWN 165	S.P Shukla
PWN 166	Manohar Vasudev Rao Pohekar
PWN 167	Satish Joshi
PWN 168	M. R yadav
PWN 169	K. Bhattacharya
PWN 170	M.D. Pandey
PWN 171	Shamser Singh
PWN 172	K.S. Bhasyam
PWN 173	Rajesh Tiwari
PWN 174	M.P Singh

PWN 175	J.C. Prabhakar
PWN 176	Triloki Nath Pandit
PWN 177	P.T. Mataiyya
PWN 178	N.M. Sheravat
PWN 179	Harbhajan Ram
PWN 180	Hoshiyar Singh
PWN 181	N.K. Pathak
PWN 182	M.G. Agarwal
PWN 183	B.S. Kanwar
PWN 184	Mithilesh Kumar Jha
PWN 185	R.P. Litoriya
PWN 186	Akhileshwar Prasad
PWN 187	R.S. Dhankar
PWN 188	S.K. Palo
PWN 189	Mrs. Mitrayi Mathur
PWN 190	B.N.P. Ajad
PWN 191	Raj Kumar Shukla
PWN 192	R.S. Prasad