Spl. Cri Reference u/s 366 of Cr PC

Death Sentence

उच्च न्यायालय, मध्यप्रदेश, जबलपुर

for Confirmation of

आदेश पत्रक MAGA 1371/97 Death Sentence

Cri Ref 5

मामला क्रमांक ..... सन् १९९ Division Bench (Criminal)

State ..... विरुद्ध Paltan Mallah @ Ravi S/o Nokhai Mallah aged 32 yrs R/o vill. Nibaha P.S. Radrapur Distt Deoria U.P.

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
		10.7.97

Reference u/s 366 of Cr PC for confirmation of death sentence awarded to the accused Paltan Mallah @ Ravi S/o Nokhai Mallah in ST No 233/92 received from the Court of 2nd Addl. Sessions Judge Durg along with lower Court's records on 9-7-97

Let it be registered as Cri Ref and place before the Hon'ble Judges for final hearing

Notices be issued to DM/SP and the accused person in Jail at once.

Paper books be prepared immediately

Note
Ch
11/7 Pkh

for Addl Regis Incr

FOR COPYING FEES ONLY

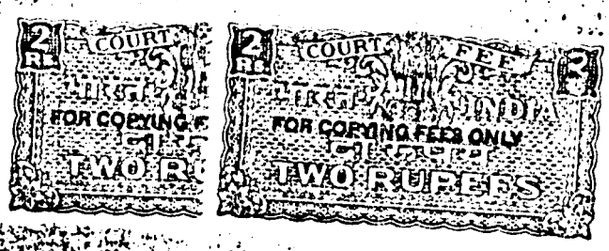
Cr.Ref.No.5/97 : State of M.P. v. Paltan Mallah alias Ravi
Cr.A.No.1278/97: Mool Chand Shah v. State of M.P.
Cr.A.No.1371/97: Paltan Mallah alias Ravi v. State of M.P.
Cr.A.No.1441/97: Gyanprakash Mishra & 2 others v. State of M.P.
Cr.A.No.1442/97: Chandrakant Shah v. State of M.P.
Cr.A.No.1863/97: State of M.P. v.Naveen Shah and 2 others

JUDGMENT

The following Judgment was delivered by :

Miss.Usha Shukla,J. - Shankar Guha Niyogi, a well known Trade Union Leader of Chhattisgarh Mukti Morcha, was shot dead in bed at his residence on the night between 27th and 28th September, 1991. Nine persons, namely, (1) Chandrakant Shah, (2) Gyanprakash alias Gyanu (3) Avdhesh Rai (4) Abhay Kumar Singh alias Abhay Singh (5) Moolchand Shah (6) Naveen Shah (7) Chandra Baksh Singh alias Chhote (8) Baldeo Singh and (9) Paltan Mallah alias Ravi were tried for this murder by IInd Additional Sessions Judge, Durg on various charges of conspiracy, abetment and murder. Accused Paltan Mallah was also charged under section 25(1)(a) and 27 of Arms Act. At the conclusion of the trial, accused Nos.6, 7 and 8, namely, Naveen Shah, Chandra Baksh Singh and Baldeo Singh, were acquitted while accused No.9 Paltan Mallah was held guilty of murder under section 302 IPC and was awarded sentence of death. He was absolved of the charges under the Arms Act. The remaining five accused persons were convicted u/s 302 read with Section 120-B IPC and were sentenced to imprisonment for life alongwith sentences of fine.

2. For confirmation of capital sentence Cr.Ref No.5/97 was made by the trial Court. Accused No.9 Paltan Mallah had also challenged his conviction and sentence by filing Cr.A. No.1371/97. Separate appeals were filed by accused No.1 Chandrakant Shah and accused No.5 Moolchand Shah. They are Cr.A.No.1442/97 and Cr.A.No.1278/97 respectively. Cr.A.No.1441/97



was filed jointly by remaining three convicted accused, namely, Gyanprakash Mishra, Avdhesh Rai and Abhay Kumar, and Cr.A.No. 1863/97 was filed by the State of Madhya Pradesh against the order of acquittal passed by the Additional Sessions Judge. All these five appeals alongwith the death reference will be disposed of by this common judgment.

3. Shankar Guha Niyogi was a popular and powerful labour leader with a large following. He was a tireless worker agitating for the welfare of labour demanding living wages, bonus, re-instatement of retrenched labour and their regularisation, etc. Chhatisgarh Mines Shramik Sangh was formed under his leadership. Niyogi had also formed The Chhattisgarh Mukti Morcha. He was associated with various other labour organisations. In the year 1990, Niyogi shifted from Rajehara to Bhilai and took up residence at Qr.No. MIG 1/55 Hudko, Bhilai, with office of the Chattisgarh Mukti Morcha (CMM) at MIG 2/2/73. His family continued living at Rajehara

4. Bahel Ram (PW 64) was a driver of Chattisgarh Mines Shramik Sangh (CMSS). He was living with Niyogi at his Bhilai residence those days. On the fateful night, Niyogi had returned home around 1.30 a.m., and after a brief and formal conversation with Bahelram, went to his bedroom. Bahelram himself went and slept in the veranda. An hour or hour-and-a-half later, Bahelram woke up at a sound like explosion of a cracker. He also heard Niyogi's cry " मां मां " (Oh mother). He then rushed towards Niyogi's room and saw him writhing in bed. Niyogi was bleeding from his back. He was shifted to Sector 9 Hospital where Dr.Chand-Shekhar Ghosh (PW73) found him dead.

5. Dr.V.P.Meshram (PW 75) conducted the postmortem examination that morning and found gunshot injuries on the upper and medial part of the left scapular region. There were

six entry wounds of gunshot as shown in the diagram drawn in the postmortem report Ex.P.176. Three of these wounds were communicating through the thoracic cavity, out of which one had penetrated through and through the body of scapula bone. The remaining three had penetrated the scapular and para vertebral muscles. There were lacerations on the left upper pole of the lung with prolapse of left lung. Posterior part of pericardium had a tear with massive haemopericardium. There was a punctured wound on the left ventricle of the heart. Niyogi had died as a result of these anti-mortem gun shot injuries.

6. Information about this attack on Niyogi was received on telephone at P.S.Bhilai Nagar by Sub-Inspector Dubey (PW 80). It was recorded in Roznamcha Sanha (copy Ex.P.194-A). Sub-Inspector Dubey and Inspector Tiwari (PW 173) immediately reached the residence of Niyogi where Sub-Inspedtor Dubey (PW 80) recorded report Ex.P.156 of Bahelram in the form of Dehati Nalishi. F.I.R. Ex.P.195 was recorded on the basis of this Dehati Nalishi. This set the investigation in motion.

7. The offence was initially registered u/s 307 IPC which was later converted into one u/s 302 IPC. After the first day's proceedings in investigation by Inspector Tiwari (PW 173), the investigation was entrusted to Dy.S.P.Shri M.G.Agarwal (PW 182). But eventually the investigation was handed over to the C.B.I. on 9-11-1991 and it was conducted by R.S.Prasad (PW 192), the then Deputy S.P., C.B.I. (New Delhi) S.I.C.-2 Wing.

8. On completion of investigation a challan was put up against the aforesaid 9 accused persons, and in due course, accused No.6, 7 and 8 were acquitted while the remaining six were convicted for offences as described above.

9. Accused Nos.5 & 6,namely, Moolchand Shah and Naveen

Shah are real brothers while Accused No.1 Chandrakant Shah is their step-brother. Moolchand Shah and Naveen Shah are Directors of M/s Simplex Engg. and Foundry Works, which had two units at Bhilai and one at Tedesra in Rajnandgaon. Accused Naveen Shah was Director of Simplex Castings. Another factory of this Simplex group was known as Sangam Forgings. Accused Chandrakant Shah was Director of Oswal Iron and Steel Pvt.Ltd. This company was supplied material for cutting and processing from the Simplex Castings.

10. The prosecution case is that the bulk of the work of Oswal Iron Industries run by accused Chandrkant Shah came from the Simplex Castings. In the year 1991 the Simplex Group of companies was adversely affected on account of industrial unrest. Consequently the work of Oswal Iron Industries also suffered a set-back.

11. The person who was behind the agitations was Shankar Guha Niyogi who had formed the Chattisgarh Mukti Morcha (CMM) and organised the working class. Niyogi had shifted from Dalli Rajehara to Bhilai on the demand of the workers that he represent their interests.

12. At Bhilai Niyogi took up the leadership of the labour movement. He organised Processions, Dharnas and made instigating and provocative speeches against the industrialists. Much of his activities were directed against the Simplex Group of Companies and it was this group which had retrenched the maximum number of workmen and was paying them low wages. On Vishwakarma day on 17-9-1990 a huge procession was taken out by CMM and CMSS raising slogans against the Simplex Group of Companies and other industrialists. The procession was converted into a meeting which was also addressed by Niyogi. Demands of regularisation of labours and re-instatement of dismissed employees were raised. A strike was going on in Simplex Castings Urla since 19-12-1990 under the leadership of

Niyogi. The workers were obstructed at the gate and there was lot of slogan-raising so that police guard had to be posted in front of the gate of Simplex Castings, Urla (PW 8).

13. Processions and meetings were held on a number of occasions under the leadership of Niyogi during the year 1990-91. A mammoth meeting was held in August, 1991 which was addressed by Niyogi. In this meeting Niyogi threatened that after 15th of August the agitation will acquire more aggressive form. Such activities continued throughout the month of August 1991. And in September 1991 Niyogi led a delegation to Delhi and met the His Excellency then/President of India Shri Venkatraman and other political leaders.

14. According to the prosecution, Niyogi was arousing the labour and was proving inconvenient to the industries at Bhilai. Simplex group of industries was the worst hit by his activities, and this provided the motive for his elimination.

15. The prosecution story further goes that a strategy was worked out at the house of accused Moolchand Shah to exterminate Niyogi and to contain CMM. The plan included character assassination, legal proceedings and other manipulations.

16. The strategy was acted upon. Niyogi was incarcerated between February 1990 - 1991. A plan was also afoot to kill him. A conspiracy for this purpose was hatched. Accused Nos. 1, 3 & 4 - Chandrakant Shah, Avadhesh Rai and Abhay Singh - went together to Nepal to purchase fire-arms. Accused Gyanprakash Mishra was also associated with this plan and joined them at Nepal where fire-arms were purchased.

17. It is the prosecution case that the actual perpetrator of the crime of murder of Niyogi was the hired assassin, accused

No.9-Paltan Mallah alias Ravi. Although Paltan was a resident of village Nibahai in U.P., he was currently residing at Bhilai where he had a cycle-repairing shop. He had absconded after the incident and was later arrested by Suresh Sharma, Master Warrant, Indian Airforce, u/s 25 Arms Act, Official Secrets Act, and Motor Vehicles Act. He was handed over to the police at P.S.Cantonment, Gorakhpur in U.P. On interrogation by the police his true identity was revealed. And on his information, one foreign made revolver, one country-made pistol and a cloth belt with 13 cartridges of 12 bore and 6 of .38 bore were recovered from his father's house/under ground (burried). Two of these cartridges were of L.G.make. Information supplied by him also led to the recovery of a red coloured Suzuki motor-cycle from the house of Satyaprakash (PW 105) in village Chainpur. On expert examination it was found that L.G.cartridges of 12 bore could be fired from this countrymade pistol. After test fire and detailed examination, the ballistics expert recorded his opinion that the three pellets which were removed from the body of Niyogi were fired from this countrymade pistol.

18. It is also alleged that while he was a fugitive from law, accused Paltan had confessed to Satya Prakash (PW 105), Vishambhar Sahani (PW 124) and Keshnath that he had killed Niyogi in complicity with Gyan Prakash and others.

19. Prosecution also relied on recovery of certain articles from the house of accused persons on search being made on different dates. It was also alleged that after this incident accused Chandrakant Shah had absconded and stayed at different hotels at different places under different names.

20. Accused Avdhesh Rai was an associate of Gyan Prakash Mishra. After Niyogi murder, accused Avdhesh Rai was given a contract of cycle-stand on the recommendation of Prabhu Nath

Mishra, elder brother of accused Gyan Prakash Mishra. The income from this cycle stand was deposited in the account of Gyan Prakash.

21. Gyan Prakash and Abhay Singh also absconded to Pachmarhi on 4-10-1991.

22. The prosecution examined as many as 192 witnesses, their evidence running in nearly 500 pages. As many as 455 documents were proved by the prosecution, besides 69 others of defence. The trial Court considered the evidence in detail and held the following facts and circumstances proved :

(A) Simplex Group of Industries had various Units. Moolchand Shah was the Director of Simplex Group of Industries. Accused Naveen Shah was the Director of Simplex Castings. Accused Chandrakant Shah was Director of Oswal Iron and Steel Pvt.Ltd. Most of the materials for cutting and processing was supplied to Oswal Iron and Steel Company by Simplex Castings.

(B) It was also found that Simplex Group of Industries had retrenched the maximum number of workers, and their wage level was also low.

(C) Chattisgarh Mukti Morcha had taken up the cause of labourers. Number of processions Dharnas and meetings were being organised. The agitations were mainly directed against Simplex Group of Industries, as is evident from the numerous reports made to the Police, which were recorded in the Roznamchas proved by S.L.Salam (PW 7). On 17-9-90 a large procession was taken out by the CMM in which slogans were being raised against the Simplex Company also. The procession ended up in a meeting in which provocative speech was given by Niyogi.

(D) Salam (PW 7) proved activities of Niyogi who was organising demonstrations and processions and was making

provocative speeches. On 14-11-1990 prohibitory order u/s 144 Cr.P.C. was imposed restricting gathering of persons at the gates of Simplex Industries.

(E) On 15-11-90 Niyogi addressed a meeting of workers and specifically mentioned the Simplex Group as the industry against which the agitation was directed. He threatened that the factory would be closed unless Moolchand Shah and Naveen Shah came to him for talks.

(F) Salam's evidence shows that Niyogi was incessantly indulging in Dharnas and provocative speeches. On 15-8-91 there was a massive procession and Dharna in front of Simplex gate where Niyogi made a provocative speech. On 28-8-91 a procession was organised against Moolchand Shah (Accused No.5) and Kailash Pati Kedia.

(G) Sub-Inspector Parmeshwar (PW 8) has proved Ex.P.51 which is a complaint sent by Simplex Castings to Station House Officer Urla complaining that Niyogi was giving provocative speeches at the gate of the factory where the workers had gone on strike from 18th December 1990. This complaint also mentioned that striking labourers had put up a Pandal outside the gate of the factory and prevented persons entering the factory gate. On the request of Simplex management, police guard was provided.

(H) Sub-Inspector Vishwanath Prasad Banjari (PW 9) also speaks about the procession taken out by the CMM.

(I) Sudha Bharadwaj (PW 15) and Dr.Gun (PW 16) have also spoken about the movement started by Niyogi, and it appears from their statements that the agitation was directed particularly against the Simplex Group.

(J) Labour Commissioner R.G.Pandey (PW 65) stated that

he had received the demand letters of CMM. Therefore, there was unrest in certain industries including Simplex Castings. He had called a number of meetings in which the industrialists always remained absent.

(K) Relying on the statement of Basant Kumar Sahu (PW 14) and Ganesh Ram Choudhary (PW 22) the trial Court held that maximum number of employees were retrenched from the Simplex Group of Industries, and workers were clamouring for reinstatement.

(L) The trial Court also found it proved that the Simplex Engineering and Foundary Works had filed civil suits for injunction against the respondents including Niyogi and CMM for restraining them from carrying out any demonstration, Gherao or slogan shouting within 200 meters of the gate of the factory. Ex.P.32 is the copy of the plaint relating to Simplex Engineering Unit No.2, and Ex.P.33 is the copy of the petition under Order 39 Rule 1 & 2 of the Code of Civil Procedure. Ex.P.35 and Ex.P.36 are the copies of plaint and injunction application by Simplex Engineering & Foundary Works Unit No.1. In all these documents it was averred by the plaintiffs that they were suffering loss of lacs of rupees on account of the illegal activities of the defendants.

(M) The trial Court found that evidence on record established that the Simplex Group of Industries was the most adversely affected by the agitation of workers which was instigated by Niyogi.

(N) It was also found proved that in 1991, Niyogi had started receiving threats from the industrialists. Some of the workers of CMM were being attacked.

(O) On 27-9-1991 Narendra Kumar Singh (PW 71) met Niyogi at Durg. On that occasion Niyogi told him that the industrialists

were intimidating and assaulting his workers. He also told him that the industrialists had formed their own private army and used their Gundas to crush the workers' agitation. Niyogi added that the Shahs of Simplex, and Kedia, wanted to get him killed. Later the same night, Niyogi re-iterated his apprehensions from the Shahs of Simplex, and Kedia, at the dinner in Piccadilly Hotel at Raipur with Narendra Kumar Singh (PW 71) and Rajendra Kumar Sayal (PW 70).

(P) In his representation Ex.P.62 to the President of India also, he complained that industrialists were trying to break the workers' organisation, and there was danger to life and limb of the workers and their leaders.

(Q) Niyogi had also expressed this apprehension to his wife Asha Niyogi (PW 68), his daughter Kranti Guha Niyogi (PW 67) and Dr.Gun (PW 16). All these three witnesses stated about a cassette Art.C in which Niyogi had recorded his message. This message was transcribed by Sudha Bharadwaj (PW 15). Ex.P.101 is that transcription. This too records apprehension of life from the industrialists. Simplex Group of Industries was particularly mentioned in this recorded cassette, in which Moolchand Shah was personally named.

(R) The prosecution has also proved the letter Ex.P.103 received by post in the name of Niyogi in which he was fore-warned about the conspiracy to kill him. In this letter Chandrakant Shah was named as the master-mind to whom the work of Niyogi's elimination had been entrusted by the Simplex Group.

(S) The trial Court held on the basis of certificate Ex.P.155 that accused No.2 Gyan Prakash Mishra and accused No.3 Avadhesh Rai also had criminal history and had been confined in District Jail Durg on different occasions and for different periods between

the years 1985 and Oct.1991. Accused Paltan had also remained in this jail four times between Oct.1986 and March 1991, and for a few months in 1988, all three of them were together in this jail.

(T) It was also found that sometime before the murder of Niyogi, accused No.9 Paltan had forcibly occupied Qr.No.F-6 Camp 1 Bhilai in the neighbourhood of Krishna Kumar (PW 42). The quarter of accused Abhay Singh was also close by. Avadhesh Rai and Gyan Prakash also lived in Camp No.1.

(U) It was also found that accused Chandrakant Shah, Gyanprakash Mishra and Avadhesh Rai had gone together to Nepal in March 1991.

(V) After the murder of Niyogi, accused Paltan and Chandrakant Shah absconded from Bhilai. Accused Gyanprakash and Abhay Singh also left Bhilai for Pachmarhi and accused Abhay Singh did not return back. He was eventually arrested from his hometown Gazipur in U.P. on 17-11-91.

(W) The Court also relied on the evidence of search and seizure in the houses and offices of accused persons. On the search of house of Chandrakant Shah a number of articles were seized as per seizure memo Ex.P.393. This long list included bills of hotel Yellow Pagoda Nepal. A bill of Provisional Stores Madhuwan of Nepal was also seized, being Ex.P.393A. At the back of this bill the makes and prices of some guns and pistols were recorded.

(X) In the search of his office in Akash Ganga Complex from where accused Chandrakant Shah looked after his property dealing work, pieces of a letter purporting to be written by accused No.2 Gyan Prakash to Accused No.6 Naveen Shah, were seized vide seizure memo Ex.P.297. These torn pieces were pasted together and the letter was marked Ex.P.298, which, when translated in English, reads as follows :

" Respected Naveen Bhaiji,

Pranam. As you had said the work has been got done. I had taken 20 thousand rupees from Devendra Patni and had given to him. You give him this money. Rest on meeting.

Your Younger brother

Gyan Mishra."

Seizure of this letter has been mentioned in the Malkhana Register Ex.P.455. The trial Court took this letter to be a confessional statement of Gyan Prakash to the commission of the crime on the previous night.

(Y) Triloknath Pandit (PW 176) was the Assistant Accountant in Oswal Iron and Steel Company. He had deposed that accused Chandrakant Shah had stopped coming to this factory since one month or one-and-half-month before 27-10-1991.

(Z) The trial Court also found that Chandrkant Shah had absconded from Bhilai within a week of the murder and was staying at different hotels at different places, sometime under assumed names.

(AA) Search of the house of accused Moolchand delivered a confidential note about Niyogi, which is marked as Ex.P.261. This is in the nature of a master strategy plan to destroy Niyogi's influence. A number of paper cuttings alongwith a list of cases pending against Niyogi and his associates, were also seized as per seizure memo Ex.P.281. Search was also made at the office of accused Moolchand Shah at Simplex Engineering and Foundry Works, and a number of documents including a half-written letter addressed to Home Minister about Niyogi-Ex.P.116-were seized vide seizure memo Ex.P.299.

(BB) Search of house of Gyanprakash produced an application written by Chandrakant Shah to I.G.Police on 3-7-1988 requesting him to free Gyan Prakash from charge under TADA. Ex.P.295 is the copy of order of the TADA Court dated 11-8-1988 releasing him and others on bail.

(CC) In the search of house of accused Abhay Singh diary Ex.P71 was recovered in which registration number of Niyogi's jeep was written. A News Paper Ex.P.126 addressed to Simplex Castings was also recovered from his house.

(DD) After the murder of Niyogi accused Avadhesh Rai took a contract of cycle stand at the rate of Rs.25000/- per month which had earlier been contracted out for Rs.15000/- per month. The earnings from this cyclestand were being deposited in the Syndicate Bank account of accused Gyanprakash Mishra.

(EE) As against accused No.9 Paltan Mallah the prosecution had adduced evidence about his disclosure statement leading to recovery of a country-made Katta, a foreign made revolver, and 13 cartridges of 12 bore, of which two were L.G.Cartridges. Six more cartridges of .38 bore were also recovered on the basis of his information recorded in Ex.P.285. These articles were buried in a corner of the house of his father wrapped in a polythene bag. The evidence of ballistics expert Roop Singh (PW 159) was that the L.G.cartridges of 12 bore could be fired from the country-made pistol Article W 1 which was recovered at the instance of accused Paltan. He also found that pellets extracted from Niyogi's body had come from firing 12 bore L.G.cartridges. He also found that these pellets were fired from the 12 bore country-made pistol Art.W 1. His reports are Ex.P.398 and Ex.P.399. The trial Court found the evidence of recovery given by PW 104 Dinesh Baloni and S.H.O.Mishra (PW 125) to be reliable.

Expert evidence of Roop Singh (PW 159) was also believed.

(FF) A red coloured motor cycle was also recovered on information given by this accused. This recovery was made from the house of Satya Prakash (PW 105) who is admittedly related to Paltan. The chasis and engine numbers of this vehicle had been erased.

(GG) The trial Court was also impressed by the evidence of Zakayuddin (PW 61) and Nuruddin (PW 66), and held it proved that on 14-9-91 one B.K.Singh had purchased a single barrel gun and 5 cartridges on his own licence, and 3 L.G.cartridges and 10 shot cartridges on the licence of Satya Narayan Singh. Nuruddin (PW 66) also deposed that B.K.Singh was accompanied by accused Paltan.

(HH) The trial Court also found it proved that accused Paltan confessed before Satyaprakash (PW 105) that he alongwith Gyanprakash murdered Niyogi with a country-made pistol while he was sleeping, and that accused Moolchand, Naveen Shah and Chandra kant Shah had collaborated with them, adding that he committed this crime for money.

(II) Confession was also made by him before Visambhar Sahni (PW 124) in Nepal that on the instructions of persons of Simplex company, he alongwith Gyanprakash Mishra Murdered Shankar Guha Niyogi.

23. On the basis of the above facts and circumstances the trial Court held that there was sufficient evidence about conspiracy between accused Chandrakant Shah, Gyan Prakash, Avadhesh Rai, Abhay Singh and Moolchand Shah, and the object of the criminal conspiracy was murder of Niyogi. Accused Paltan Mallah was hired for this purpose. Paltan shot Niyogi

dead that night and fled to U.P. on his motor-cycle. The trial Court acquitted Naveen Shah, Chandra Baksh and Baldev Singh for want of evidence, and convicted accused Paltan under section 302 IPC, and the remaining five u/s 302 read with section 120-B IPC.

24. Senior Advocates Shri V.R.Manohar, Shri Rajendra Singh, Advocates Shri U.Awasthy Shri S.C.Datt, and Shri Surendra Singh, and/Shri M.D.Dhote, and / representing different accused/appellants in different appeals, advanced elaborate arguments before us. Shri Surendra Singh was appointed amicus curiea by this Court for accused Paltan. The correctness of the findings and conclusions arrived at by the trial Court were vehemently challenged by them all. They have all argued that there was no evidence of conspiracy, nor was there any legal evidence to prove that accused Paltan committed the murder, much less that this was done in pursuance of the conspiracy. Their contentions were that the prosecution failed to prove that the Simplex group of Companies, or any of the accused, had any motive to eliminate Niyogi. The Roznamchas and reports proved by the prosecution only go to show that there were agitations and Dharnas led by Niyogi. But that is a normal phenomenon everywhere where labours are employed in factories and industries.

25. On behalf of accused Chandrakant Shah, it was particularly argued that there was no evidence to prove that his factory, the Oswal Industry, was affected on account of strike in the Simplex Company. Moreover, there was no cogent evidence that any strike was actually going on. It was pointed out that Pradeep Kumar Sural (PW 133) himself admitted that the production in Simplex Castings was not affected by any strike by the workers, because the labourers were procured through the Industrial Labour Welfare Co-operative Society. Had production really suffered, this could have been proved from the records of the Simplex Castings. The trial Court has referred to the vague statement

of Trilokinath Pandit (PW 176) that about 1½ months prior to 27-10-91, the supply of scrap from the Simplex Castings was reduced resulting in the closure of the company. But as against his testimony, four witnesses, K.S.Bhatia (PW 26), Atul Chandra Pal (PW 31), K.C.Mary (PW 32) and Achamma Vergese (PW 33), who were all employees of M/s. Oswal Iron and Steel Company at the relevant time have admitted that this company had never closed down for want of material. These witnesses have also proved the job registers of this company and they have successfully shown that there was no dearth of work in this company during the years 1990 to 1992. It was also argued that Chandrakant Shah's visit to Nepal was entirely innocuous. He does not deny visiting Nepal with his friends. But that trip was a Pilgrimage to the famous temple of Pashupatinath. There was nothing to suggest that any criminal conspiracy was brewing between them. The allegation that fire-arms were purchased by them during this visit in March, 1991, has not been proved. This allegation is based on the scribling on the back of the cash memo of Madhuwan, Kathmandu, marked Ex.P.393 (A), mentioning the names of some guns and pistol alongwith their price. It is very significant to note that all these weapons were of foreign make. But according to the prosecution story itself, a country-made pistol was used in this crime and not any sophisticated foreign-made weapon. Therefore, this circumstance does not help the prosecution.

26. About the slip of paper Ex.P.239 on which the car and jeep numbers were written, which was allegedly recovered from his office, it is said that the jeep was registered in the name of CMM while the car was registered in the name of Dr.Gun although

it was being used by Niyogi. The trial Court treated this too as an incriminating circumstance against this accused Chandrakant Shah. But no adverse inference can be drawn from the recovery o this slip, specially when the accused was not afforded an opportunity to explain this circumstance under section 313 Cr.P C.

27. Recovery of the letter Ex.P.298, torn into pieces, from the office of Chandrakant Shah was vehemently denied. It was highly unlikely that a slip of paper addressed to accused Naveen Shah allegedly written by Gyan Prakash on 28-9-91 should be found - although torn into pieces - 2½ months' later lying in a corner of an open cupboard. If it was an important document which was to be preserved, then it would not have been torn into pieces. The wrapping of these pieces in a news-paper, makes the recovery still more mysterious.

28. Objection was also taken that accused Chandrakant Shah was not questioned specifically about this recovery, and had no opportunity of affording an explanation.

29. This letter Ex.P.298 was a subject matter of argumen on behalf of all the accused, and particularly Gyan Prakash, Chandrakant and Naveen Shah. It was argued that Gyan Prakash had denied having written any such letter to Naveen Shah. And Devendra Jain (PW 158) who is supposed to have carried this letter to Akash Ganga Complex and delivered it to accused Chandrakant Shah, stoutly denied this fact in his statement. The result was that he was declared hostile. He denied that he had paid any money to Gyan Prakash. It was argued that

this document Ex.P.298 was a very crude attempt at concocting false evidence against this accused.

30. It was also urged on behalf of the accused persons that Devendra Jain (PW 158) having turned hostile, there was no basis for the letter Ex.P.298 being interpreted in the manne done by the trial Court. Even assuming that accused Gyan Praka wrote this letter to accused Naveen Shah, a simple reading of t letter does not make it clear as to what work it referred to, f which payment was to be made. After all, they were businessmen and there may be any number of transactions involving payment o money. This letter, torn into pieces, was innocuous. If this letter really related to the murder of Niyogi, the accused persons would not have committed this utter folly of preserving it with them for the benefit of the investigating agency.

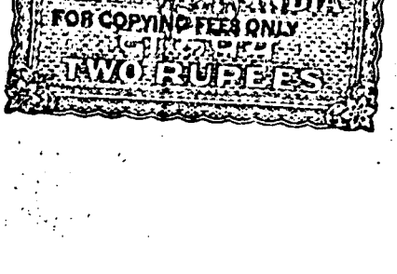
31. Regarding absconsion of accused Chandrakant Shah, this accused has admitted in his examination under section 313 Cr.P.C that he had gone out and had stayed at different hotels at different places. But this absence from home cannot be called absconsion, argued his learned counsel. This accused Chandrakan Shah had applied for grant of anticipatory bail, and there was nothing unusual in his attempt at avoiding confrontation with the police, in the background of their reputation of using third-degree methods.

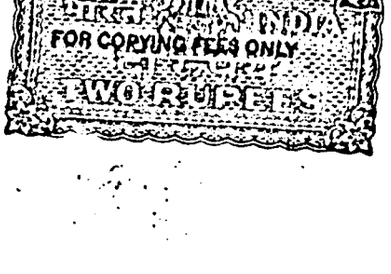
32. Regarding apprehensions of Niyogi which he had expresse in his diary and the recorded statement (transcription Ex.P.101), even assuming the deceased had made one, the allegations made by him were of a vague and general nature. He says that the industrialists of Bhilai had collected Gundas who were attacking the union leaders, that people of Simplex (Simplex Ke Loag) were causing trouble, specially Moolchand who had collected criminals. Raghunath Mishra has also been referred, whose brother, presumabl

Gyan Prakash, is also called a Gunda, whose attempt was that some untoward incident should happen. This transcription further refers to Kediya as a cunning man, adding that Moolchand and Kediya were the only two persons behind the conspiracy.

33. It was argued that such vague apprehensions expressed against the industrialists in general, and Moolchand and Kediya in particular, do not constitute a circumstance indicating the complicity of these accused persons in the crime committed against Niyogi. At most, it could constitute a link in the chain of circumstances, had those circumstances been sufficient to point to the guilt of the accused persons. But, it was argued, that such was not the case here. The same criticism was levelled against oral evidence of Rajendra Sayal regarding Niyogi's apprehensions from the industrialists of Bhilai in general, and the Simplex Group in particular.

34. The attempt of the prosecution to adduce evidence of extra judicial oral confession of accused Paltan implicating Chandrakant Shah, Gyan Prakash, Moolchand and Naveen Shah also came under severe criticism. It was argued that the first witness on this point was Satya Prakash (PW 105). He lives in village Chainpur in District Gorakhpur while accused Paltan is a resident of village Nibahi in District Devaria, 35-40 Kms away. The relationship is so distant that accused Paltan's elder cousin sister was married to elder brother of this witness. This witness says that accused Paltan had come to meet him at Chainpur in the first week of October 1991. He stayed there for a couple of days and then went away. Later on towards the end of November, Paltan stayed at a nearby place in Barhalganj where he was being treated for some injuries sustained in an accident. Satya Prakash sometimes went to see Paltan at Barhalganj. And during one such visit, Paltan is supposed to have confided





in Satya Prakash that he had murdered Shankar Guha Niyogi of Bhilai, and that his associates were Gyan Prakash, Moolchand, Naveen Shah and Chandrakant. It is argued that Satya Prakash was a got up witness. It was not natural that Paltan should voluntarily declare his crime to this man, who, the record show was much younger to the accused and was not a member of his fami or a close friend. It is also unbelievable that Satya Prakash remembered in detail not only the full name of the victim, but also that of four associates of Paltan, who were all total strangers to him. It is also significant to note that Satya Prakash was questioned by the police at the time of recovery of the motor-cycle from his house on 21-8-1993. But he did not the speak about the confession made to him. It was much later that he spoke about this confession before the CBI at Delhi. This witness admitted that he was informed in the S.P.Office at Delh that it was an offence to harbour a criminal. It is argued that Satya Prakash was forced to make a false statement about this confession of accused Paltan under threat of prosecution by the C.B.I. for harbouring a criminal.

35. The other witness of confession was Vishambhar Prasad Sahani (PW 124). He was a total stranger to accused Paltan. This man was the brother-in-law of the brother-in-law of Satya Prakash (PW 105) and had met him for the first time. It was not natural for any one to confess a crime like murder unnecessarily to such a stranger . And it was impossible for this stranger to recollect the names of Simplex Company and Gyan Prakash who had engaged him to murder Shankar Guha Niyogi. This man also did nothing to inform the police about this criminal. The learned counsel argued that this witness has been totally exposed in cross-examination (para-10 PW 124) because he insists that the CBI had approached him within 1½ months of the visit of accused Paltan, and not 1½ years later. That would take the alleged

confession to the year 1993, and not Dec.1991, because, it was argued, the CBI recorded his statement in September 1993.

36. About the abandoned Tempo Trax also it was argued that there was no evidence to show that accused Chandrakant Shah had left Bhilai in this motor vehicle, which was registered in the name of Oswal Iron and Steel Company, and not in the personal name of Chandrakant Shah.

37. About accused No.2 Gyan Prakash, it was pointed out during arguments that the only evidence against him was that he was a friend of Chandrakant Shah and had accompanied him to Nepal, and that Niyogi had mentioned his name in his diary. The fact that he had gone to Pachmarhi on 4-10-91 with his friend accused Abhay Singh did not militate against his innocence. The criticism about extra judicial confession and letter Ex.P.298 has already been referred to earlier. It was argued that there was no evidence of conspiracy, and nothing to connect him with this crime.

38. For accused No.3 Avadhesh Rai and accused No.4 Abhay Singh also it was argued that the facts that they had accompanied accused Chandrakant Shah to Nepal, and that Abhay Singh went to Pachmarhi with Gyan Prakash on 4-10-91 and was arrested at his home town Gazipur in U.P., that his name appeared in the diary of Niyogi, that Avadhesh Rai took a contract of cycle stand on 30-9-91 for Rs.25,000/-, that a news-paper was seized from the house of Abhay Singh which had been despatched to the address of Simplex Casting and Engg.works, were not such that they could constitute evidence of conspiracy.

39. About Moolchand Shah accused No.5 also, it was argued that the evidence given by the police officers of Jamul, Lal Bagh, Bhilai and Urla Chowki coupled with the various Roznamcha reports

that they have proved, as well as the copies of plaints, injunctio applications and copies of order-sheets marked Ex.P.32 to P.37, only show that Niyogi was creating trouble for the Simplex Group of Industries. It also shows that accused Moolchand was resisting him in a lawful manner by starting legal proceedings. The confidential note Ex.P.261 found at Moolchand's place reaffirms that an action plan was being prepared to take steps to curtail the influence of Niyogi. A perusal of this document shows that it was planned that the action should not be hasty, that rival trade unions should be given importance, that the criminal cases pending against Niyogi in different courts be pursued, that the financial sources of Niyogi be sealed, and that his foreign link be traced and published. It was argued that even if this document be taken to have been prepared by accused Moolchand, it only shows that what was contemplated was to subdue Niyogi by lawful means. The inference that the plan was to kill him, cannot be drawn on the basis of this document. A list of 32 cases Ex.P.262 recovered from the house of Moolchand goes to further re-affirm that the action plan was being acted upon. This too rules out that there was a scheme to physically eliminate him. If the industry under Moolchand Shah was suffering any losses on account of the trade union movement led by Niyogi, Moolchand Shah was prepared to face the challenge within the permissible limits of law.

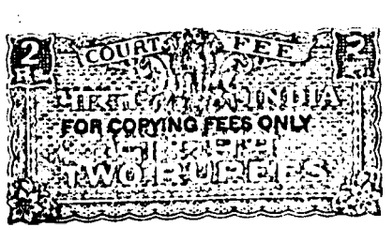
40. The incomplete letter Ex.P.116 addressed to Home Minister Kailash Chwla against Niyogi's activities, also shows that the Moolchand was prepared to combat at the political level also. These documents do not show that murder of Niyogi was there in the mind of Moolchand.

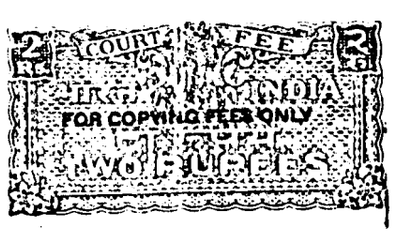
41. As for various pamphelets, newspaper cuttings about Niyogi, there was nothing unusual that Moolchand should keep track of what was said about Niyogi during his life-time, and

what the newspaper said about Niyogi's murder. This can hardly be called an incriminating circumstance against Moolchand. And about extra judicial confession, the contention has already been referred to above.

42. On behalf of accused Paltan it was argued that he had nothing to do with this crime, and has been made a scapegoat by the police. As stated by him u/s 313 Cr.P.C., after his release from jail in May 1991 in the theft case filed by the police against him, he had gone to his brother's house at Bombay, and about 1½ months later, he went to village Nibahi and stayed there. He left this village in Oct.1991 when he learnt that the Rudrapur police was searching for him.

43. There is no evidence to show that accused Paltan was in Bhilai when the murder took place. There is no evidence to prove that he ever rode a red motor-cycle. Several witnesses were examined to show that accused Paltan had taken forcible possession of Qr.No.6F Camp I, Bhilai and accused Abhay Singh and Gyan Prakash were his neighbours. But except Krishna Kumar (PW 42), all others, namely, Mithoolal (PW 40), Yashwant Kumar (PW 41) and Ashit Kumar (PW 43) have all denied it. They have specifically stated that Qr.No.F 6 was unoccupied and it used to be locked. Only Krishna Kumar (PW 42) says that he had seen Paltan living in Qr.No.6 F, and that he had a motor-cycle with him. But even he claims to have seen hi about one month before Niyogi's murder. In cross-examination this witness makes it more specific saying that he had last seen Paltan in this house a month or two before Niyogi's murder. He also contradicted himself from the statement u/s 161 Cr.P.C. - Ex.D.15 -wherein he had stated that Paltan used to be seen at night. It was argued that Krishna Kumar (PW 42) was not a witness of truth





and he should not be believed in the face of evidence to the contrary given by Mitthoolal (PW 40), Yashwant Kumar (PW 41) and Asit Kumar (PW 43). But even if Krishna Kumar was speaking the truth, he too saw Paltan last one or two months before the murder. This evidence does not help the prosecution.

44. Reshambai (PW 51) is the woman with whom Paltan lived at Bhilai. This witness also says that a couple of months before this incident Paltan had gone to Bombay. Thus, prosecution has failed to establish that Paltan was at Bhilai at the time of the incident. There is no evidence to connect him with the motor cycle which the police eventually seized from the house of Satyaprakash.

45. The prosecution against Paltan is based mainly on his discovery statement Ex.P.285. It was argued that this memorandum-cum-seizure memo was a concocted document and was prepared at one sitting, and also that it did not lead to any discovery. Accused Paltan did not possess any fire-arms and none was used by him.

46. The criticism of evidence of extra judicial confession has already been mentioned in paras 34 & 35 of this judgment and need not be repeated here. It was further argued that even if it be found that a country-made pistol, a foreign-made revolver and cartridges, etc. were recovered on the information given by the accused, even then this accused cannot be convicted for murder on the basis of this scanty evidence. The dictatorial statement of expert witness Roopsingh (PW 159) that the pellets recovered from the body of Niyogi was fired from this country-made pistol marked W 1, has no legs to stand. He has not recorded any reasons for arriving at this finding. Dr.Roop Singh (PW 159) merely conducted microscopic examination. Photographs were not

taken. It was also argued that this country-made pistol being of smooth bore, the pellets would not carry any tell-tale marks for matching with the firearm. It was argued that the report of Roopsingh was influenced by the statement in the letter sent by CBI while sending these articles for examination, that Niyogi was murdered by firing from this country-made pistol, and that the three pellets sent for examination were recovered from the body of Niyogi.

47. In short, it was urged on behalf of the convicted accused persons that the findings of the trial Court are not correct and their convictions cannot be sustained. All of them therefore deserve to be acquitted.

48. The acquitted accused persons supported the findings relating to them and urged that the State appeal be dismissed.

49. Shri K.G.Kannabaram, Senior Advocate with Dr.Shri Suresh and Shri Saxena for CBI also took us through the evidence on record. He argued that from the testimony of Sub-Inspector P.C.Tiwari (PW 3), Sub-Inspector Suresh Sen (PW 6), Town Inspector Salam (PW 7), Sub-Inspector Parmeshwar (PW 8), Sub-Inspector Banjare (PW 9), Bharat Bhushan Pandey (PW 57) and Rajendra Sayal (PW 70) it is conclusively proved that workers of Simplex Engineering and Foundry Works were carrying out agitation under the leadership of Niyogi. Niyogi was raising demands of re-instatement of dismissed employees and regularisation of workers and was delivering provocative speeches against the employers. Some of the workers of CMM had been assaulted and a prohibitory order under section 144 Cr.P.C. was imposed against Niyogi and his associates.

50. The learned counsel for the CBI urged that the

conclusions drawn by the trial Court about Moolchand Shah, Chandrakant Shah becoming desperate due to loss suffered by the Simplex Group of Industries on account of the labour movement conducted by Niyogi, was well founded. The counsel for CBI strongly supported the findings of the trial Court about conspiracy urging that the trip to Nepal by accused Chandrakant Shah, Gyanprakash Mishra, Avadhesh Rai and Abhay Singh coupled with the circumstances discussed by the learned trial Court led to the inference that the object of the trip was to purchase firearm. Reference was made in detail to the various recoveries made from the houses of the accused persons, purchase of ammunition and accused Baldeva presence at the time of purchase, the evidence of recovery of weapons at the instance of Paltan and the opinion of ballistics expert that the crime pellets were fired from the country-made pistol Art.X 2, recovere at the instance of accused Paltan. Evidence of extra judicial confession and the circumstances under which accused Paltan was arrested, as well as absconsion of accused Chandrakant Shah, Gyanprakash and Abhay Singh was also discussed by the learned counsel. In short, the counsel for CBI supported the findings arrived at by the trial Court with respect to the complicity of all the six convicted accused persons, adding that the sentences awarded were proper. It was, therefore, urged that the appeal filed by these accused persons be dismissed.

51. But the learned counsel for the CBI vehemently argued that Naveen Shah was as much involved in this case as his other brothers, namely, accused No.1 Chandrakant Shah, and accused No.3 Moolchand Shah. Naveen Shah was the director of Simplex Casting and his business was also adversely affected by the movement of Shankar Guha Niyogi. It was also emphasised that the letter Ex.P.298 which was recovered in a torn condition from the office of Chandrakant Shah was actually addressed by accused Gyanpraka

to this accused Naveen Shah. It was argued that this letter of Gyanprakash written on 28th September 91, the day on which Niyogi died, was actually a confessional statement of accused Gyanprakash and it shows that Naveen Shah was one of the hirers of the murderer who was paid Rs. 20,000/- that day. It was urged that in the confession made by accused Paltan before Satyaprakash (PW 105) also, Naveen Shah was named alongwith his brothers. It was contended that the case of this accused Naveen Shah stands on the same footing as convicted accused Moolchand Shah.

52. About acquitted accused Chandra Baksh and Baldev Singh it was argued that both of them were friends who looked after the cycle stand which was taken on contract by accused Avadhesh Rai after the murder of Niyogi at the exhorbitant rate of Rs. 25,000/- per month. Accused Baldev used to deposit the income of cycle stand in the Syndicate Bank account of Gyanprakash. It was argued that these circumstances were sufficient to hold that both these acquitted accused were also co-conspirators in this crime. The acquittal of these three accused persons, therefore, cannot be sustained. The learned counsel urged that the State appeal be allowed and the three accused be also convicted and sentenced for conspiracy and murder.

53. Shri Dilip Naik, Additional Advocate General while supporting the arguments of Shri K.G.Kannabaram, submitted that appeals filed by the accused persons deserve to be dismissed, and State appeal against acquitted accused persons deserves to be allowed.

54. We have carefully considered the arguments advanced by both sides and have also gone through the evidence on record. It is not disputed before us that Shankar Guha Niyogi died a violent death. Dr.Meshram (PW 75) found antf -

mortem gun shot injuries on his body which were sufficient in the ordinary course of nature to cause death. The details of the injuries are given in his report Ex.P.176 and have been described in some detail in para-5 of this judgment. The entry wounds were located on the upper and medial part of the left scapular region. Death was homicdal. He was shot in bed while sleeping in his room, as has been testified by Bahalram (PW 64).

55. Bahalram was the only other person present in this house that night. He was sleeping in the verandah. He woke up at the sound of gun shot which sounded to him like a bursting cracker. He also heard the cry of Niyogi, and rushed to his room. He found the lights on and the bed-side window open.

56. Niyogi was fired from the window which opened in the courtyard. The scene was reconstructed by Shri Nigam (PW 78), Senior Joint Director F.S.L. Sagar, who had reached the spot on 4-10-91. He considered the line of fire, the dispersal of pellets and other relevant factors, and submitted his opinion in report Ex.P.187 that the fire was from a 12 bore country-made pistol from a distance of about 2 feet. Senior Scientific Officer of the ballistics Department, Central F.S.L. New Delhi Shri Roopsingh (PW 159) also agreed that Shankar Guha Niyogi was shot by a country-made firearm from a close range. This report of his is Ex.P.396.

57. Shri J.P.Nigam (PW 78) had also examined the 6 wads recovered from the scene of the crime, the pellets recovered from the body of the deceased, the pieces of mosquito net and other articles, and submitted his report Ex.P.190. This witness had deposed in Court that the 6 wads were of an L.G.Cartridge and that a short barrel 12 bore pistol was used. There is no reason to disagree with the opinion of these two expert witnesses that the fatal shot was fired from a country-made 12 bore short

barrelled pistol, and L.G.made cartridge was used.

58. There are no eye-witness-es to this incident. Bahalram (PW 64) did not even hear any foot-steps after the shot, much less the sounds of a motor cycle. No foot marks were found by the police, or Senior Scientific Officer of the Mobile unit - Shri Maithil (PW 84), who had reached the scene as early as 5.30 that fateful morning. The assailant had left no clues excepting the wads, and the pellets which were recovered from the body of the deceased.

59. There is ample evidence on record to show that Niyogi was a powerful and a popular labour leader. His was a sensational murder. The local police took up the challenge of this blind murder, but eventually the investigation was entrusted to the CBI which registered the case for investigation on 6-11-1991 and obtained the case diary from Shri M.G.Agrawal (PW 182) on 9-11-1991.

60. A perusal of the record shows that long before the entry of the CBI, the news papers carried the headlines on front page that Niyogi was murdered by Paltan Mallah by firing a country-made pistol. Ex.P.275 " Amrit Sandesh", Ex.P.281(29) "Samvet Shikhar", Ex.P.281(31) "Desh Bandhu", are some such news items published in Hindi daily news papers of Raipur dated 15-10-1991. We do not find any explanation as to how suspicion had fallen on Paltan.

61. The learned counsel for CBI argued that accused Paltan had a criminal background and was found absconding from Bhilai immediately after the incident. But we agree with the submissions made in defence that the prosecution evidence does not establish the presence of Paltan in Bhilai at the relevant time and, therefore, the question of his absconsion does not arise. The learned

counsel for accused Paltan, rightly pointed out that of the four witnesses examined by the prosecution about Paltan Mallah's residence in Quarter No. 6 F, Camp I, Bhilai, in the neighbourhoo of accused Abhaysingh, three witnesses, namely, Mithoolal (PW 40), Jaswant Kumar (PW 41) and Asit Kumar (PW 43) denied this fact. The fourth, namely, Krishnakumar (PW 42) is not a reliable witness. He has contradicted himself from his earlier statement under section 161 Cr.P.C. (Ex.D.15-A to A and B to B). According to the prosecution story the photograph of Paltan was shown to him by the police whereupon he had stated that this was the man who lived in Quarter No.6 F and was seen coming and going at night. But in his statement before the Court, he denied that any photo-graph was shown to him by the police. He also denied that he had seen Paltan moving during the night. On the contrary, he emphatically stated that he had never seen him at night, and had only seen him at day-time on one or two occasions. We do not find the testimony of this witness to be worthy of acceptance What is more, even this witness admitted in cross-examination that he had last seen Paltan in this house one or two months before the murder of Niyogi. This witness does not, therefore, prove the presence of Paltan in Bhilai immeidately before the crime.

62. Prosecution witness No.51 Reshami Bai who was living as a wife of Paltan also testified that Paltan had left Bhilai a couple of months before this incident. Reshami Bai, Mithoolal, Jaswant kumar and Asit Kumar were of course declared hostile by the prosecution. But nothing has been elicited in their evidence to show that they were suppressing the truth.

63. Zakayuddin (PW 61) and Nuruddin (PW 66) are father and son who sell arms and ammunition in Sadar Bazar Raipur in the name of Badruddin Mulla Shamsuddin. They have proved from their

records that on 14-9-1991, one Birendra Kumar purchased a 12 bore single barrel gun and 5 cartridges from his shop on his own licence, and also purchased 13 cartridges on the licence of Satyanarayan Singh. But Zakayuddin (PW 61) admitted that the make of the cartridges has not been mentioned in the bills-book Ex.P.149 or the sale-register Ex.P.148. Nuruddin (PW 66) improves upon his statement by asserting that out of these 13 cartridges, 3 were of L.G.Make. Nuruddin says that Birendra Kumar was accompanied by another person whom he had left in his shop when he had gone to call an armouror of his acquaintance to choose a gun for him. Nuruddin identified accused Paltan being that other person.

64. The evidence of Nuruddin was vehemently criticised on behalf of accused Paltan on the ground that he has not given any identification mark or any other reason for being able to identify this accused as the companion of Birendra Kumar. The police did not arrange any test identification parade. The CBI had shown him the photograph of the person who had accompanied Birendra Kumar on 14-9-1991 and he says that he had identified that person in the photograph. Nuruddin (PW 66) identified accused Paltan in the trial Court. But he has admitted in cross-examination that he had seen all accused persons on 3-4 occasions when he had come to Court in connection with the hearing of this case. Nuruddin (PW 66) admitted in cross-examination that about 100 persons had purchased arms and ammunition from his shop in September, 1991, and he can identify each one of them. It was argued that this claim of his was unacceptable. Unless there be any special reason for identifying a particular customer, it was not possible that this shop-keeper should recognise some one who had visited his shop only once, and that too, not as a customer, but only as a

companion of the purchaser. We find considerable force in this defence contention.

65. We were referred to the conclusion drawn by the trial Court in para-134 of the judgment that B.K.Singh had purchased 3 L.G.cartridges on the licence of Satyanarayan Singh on 14-9-91, These three cartridges were kept by Paltan Mallah, and that after Niyogi's murder, Jaynarayan Tripathi (PW 72) came from Bilaspur to Raipur and purchased 3 L.G.Cartrdiges. After receiving 3 L.G.cartridges from Jaynarayan Tripathi, B.K.Singh had returned them to Satyanarayan Singh. It was vehemently argued that these conclusions were entirely baseless and unfounde Jaynarayan Tripathi has not supported the prosecution story. He does not say that the cartridges purchased by him on 3-10-91 were of L.G.make. Zakayuddin (PW 61) has proved the carbon copy of bill no.318 dated 3-10-1991 in bill-book Ex.P.149, and corresponding entries at page no.33 of the sale-register Ex.P.148 None of these entries record that the cartridges sold to Jaynarayan were of L.G.make. His licence Ex.P.159 also does not contain any entry about purchase of L.G.cartridges.

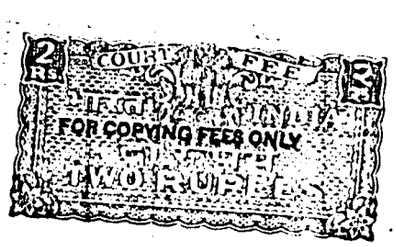
66. Jaynarayan Tripathi denied that Gyanprakash and Abhay Singh came to his house on 3-10-1991. He denied that Gyanprakash asked for 3 L.G.Cartridges of 12 bore. He does not say that he had given any L.G.Cartridges to Gyan Prakash. He denied the statement Ex.P.171, recorded by A.C.J.M., Durg, under section 164 Cr.P.C. and almost the entire statement under section 161 Cr.P.C. being Ex.P.172 A to A and B to B. He was declared hostile by the prosecution. We have carefully gone through the statement of this witness Jaynarayan Tripathi recorded during the trial and we do not think that he can be branded as a false witness. He says that his statements under section 164 and 161 Cr.P.C. were obtained under duress and threat, after subjecting him to

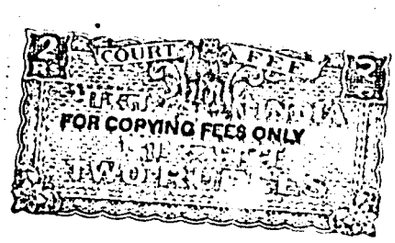
physical and mental torture under police confinement. In fact he had lodged a protest in this regard on 7-12-1991 by filing M.Cr.C.No.3742 of 1991 under section 482 Cr.P.C. and Article 21 of the Constitution of India. He also filed Misc. Petition No. 4342/91 on 16-12-1991 on identical grounds. The petitions have been marked Ex.D.32 and Ex.D.33. These petitions were dismissed and in M.P.No.4342/91 the Court made an observation that the petitioner had a remedy under the Criminal Procedure Code, as is evident from the copy of the order Ex.D.34. A perusal of the statement of this witness creates a doubt about the fairness and impartiality of investigation.

67. We do not find any material on record to hold that accused Paltan Mallah had obtained 3 L.G.cartridges from Birendra Kumar Singh. That Birendra Kumar Singh returned 3 L.G.cartridges to Satyanarayan Singh after receiving 3 L.G.cartridges from Jaynarayan, appears to be a cock-and-bull story.

68. But the important question is not where accused Paltan procured the arms and ammunition from. The question is whether the L.G.Cartridge causing the death of Niyogi was fired by accused Paltan. To establish this fact, the prosecution has led evidence of recovery of a country-made pistol and some cartridges including two L.G.cartridges on the information given by Paltan Mallah, on interrogation by Sub-Inspector Umesh Mishra (PW 125).

69. The fact that accused Paltan Mallah was apprehended by Suresh Sharma, Master Warrant, Indian Air Force, and was handed over to the Police for investigation of offences under section 25 of the Arms Act, the Official Secrets Act, and the Motor Vehicles Act, was also admitted by Paltan Mallah in his statement under section 313 Cr.P.C. But we agree with the defence contention that the prosecution has not been able to prove that accused Paltan had concealed his identity, and had given out his name as





Sanjay Yadav. The claim of Inspector Umesh Chandra Mishra (PW 125) is that it was only after intensive interrogation (Gahan Pooch tach Par) on his part that he could discover the true identity of this man who was arrested by Suresh Sharma of the Indian Air Force as Sanjay Yadav. This Suresh Sharma was not examined at the trial. Nor was accused Paltan questioned about the allegation that he had given his name as Sanjay Yadav to Warrant Officer Suresh Sharma, or to Inspector Umesh Chandra Mishra. It is significant that seizure memo.Ex.D.45 relating to the illicit arms and ammunition found in possession of this accused when he was handed over by Warrant Officer Suresh Sharma to Inspector Umesh Chandra Mishra (PW 125), has been signed by this accused as "Paltan Mallah alias Ravi." A perusal of this seizure memo shows that it was prepared at the Airport itself where this accused was handed over to Inspector Umesh Chandra Mishra by the Officers of the Air Force. The signing of this document by Paltan Mallah as "Paltan Mallah Urf Ravi" belies the allegation that it took special efforts on the part of the Police to ascertain his correct identity.

70. The conduct of Inspector Umesh Chandra Mishra has been subjected to severe criticism on behalf of accused Paltan, and, we think, not unjustifiedly. This Inspector admitted in para-14 of his statement that on 22nd and 23rd August, 1993 he did not require the custody of accused Paltan for interrogation in connection with the offences under the Official Secrets Act or the Arms Act. And yet he obtained Police remand of this accused on 22nd August, 1993. He admitted before the Court that he was aware of the fact that accused Paltan was wanted by the police in connection with the murder of Shankar Guha Niyogi. He also knew that Paltan carried a reward of Rs.1 lac. This witness Inspector Mishra admittedly claimed and received this reward. We would not comment upon the validity of this claim of his. But we are unable

to appreciate this Inspector's enthusiasm in meddling with the investigation into the Niyogi murder case. The cross-examination of Inspector Mishra shows that he was aware of the fact that Niyogi Murder Case was being investigated by the CBI. He has admitted that Ashok Tadiyal and Sudama Prasad, both Inspectors of the CBI, had arrived at Police-Station Cantonment, Gorakhpur on 22nd August, 1993, even before he made the application for police remand (See: para-11 PW 125). Under these circumstances, one fails to understand why Inspector Mishra, who was Inspector, Police-Station Cantonment in District Gorakhpur of Uttar Pradesh, indulged in questioning this accused Paltan with respect to the crime of murder allegedly committed by him in a far away place in the State of Madhya Pradesh, much beyond his jurisdiction. In the normal course, the accused ought to have been handed over for interrogation to the CBI without any loss of time.

71. R.S.Prasad, the then D.S.P.(CBI), took up investigation of this case in November, 1991. He was subjected to searching cross-examination about the date on which he had reached Gorakhpur after the apprehension of accused Paltan at Police - Station Cantonment. This witness admitted his presence at Gorakhpur on 24th August, 1993 but, he could not give even a rough estimate of time when he had reached there. He could not specifically deny the suggestion made in paragraph 44 of his statement that he had arrived at Gorakhpur on 23rd August, 1993. It must be remembered that accused Paltan was arrested at Gorakhpur on 21st August, and Inspector Mishra had informed his superior officers by wireless about it on the same day. (Para 20 PW 125). It is not too much to expect that these police

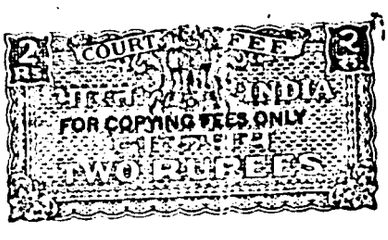
officers had promptly informed the CBI about the arrest of this absconding accused in this much publicised case. It was natural that the CBI should have immediately rushed to Gorakhpur to take charge of the offender. It is highly unlikely that it would take the CBI 3-4 days to reach Gorakhpur. The persistent refusal of D.S.P.Prasad to look into the case diary and state the exact date when he had reached Gorakhpur, is extremely unreasonable and irrational (See para-29 and 30 PW 192).

72. It is also significant to note that D.S.P.Prasad admitte that Inspector Ashok Tadiyal had also assisted him in investigation. He could not deny the suggestion that Ashok Tadiyal and Sudama Prasad had reached Gorakhpur before him, and he would not look into the case diary to confirm the date . The defence contention is that the entries in the case diary would have shown that D.S.P.Prasad had himself reached Gorakhpur much before Inspector Umesh Chandra Mishra, interrogated Paltan, and it would also have confirmed the presence of Ashok Tadiyal and Sudama Prasad at Police-Station Cantonment, Gorakhpur on 22-8-1993. This argument cannot be brushed aside as having no force.

73. It must be remembered that accused Paltan was arrested under the Arms Act and the Official Secrets Act on 21-8-1993. It is surprising that Inspector Umesh Chandra Mishra could not have him delivered to the CBI till 25-8-1993, much after the alleged disclosure statement Ex.P.285 allegedly made by accused Paltan, leading to the alleged discovery of Pistol Art.X.2, and ammunition including L.G.Cartridges. The defence contention that there was something fishy about Inspector Mishra's act of keeping accused Paltan in Police custody, till the 25th August, 1993, and that the memorandum-cum-seizure memo Ex.P.285 was manufactured by Mishra in complicity with the CBI cannot be said to be groundless.

74. This documents Ex.P.285 has also been subjected to very severe criticism. It runs in 5 pages of foolscap size. It purports to be a record of what accused Paltan stated before Inspector Mishra and witnesses including Dinesh Baloni (PW 104), and proceeds on to record that the party went to village Nibahi, recording all the details of Paltan taking them to his father's house, and eventual recovery of arms and ammunition near the northern wall of the room. It was argued on behalf of the accused that this document was prepared in one sitting at the Engineering College Hostel, Gorakhpur, itself, and this accused neither gave any information about these articles nor did he take them to his father's house, or recovered any guns or c.rtridges. We carefully examined this document Ex.P.285 and we find ourselves in agreement with the defence contention that the entire document must have been prepared at one sitting. The explanation of Inspector Mishra that he had written this document upto "Sadhe Barah Baje Din Ravani Hoker", and leaving the sentence incomplete, went to village Nibahi, and there completed the document by recording the recovery and thereafter obtained the signatures of witnesses and the accused the entire proceeding concluding at 04.05 P.M. having commenced at 10.30 a.m., is not found acceptable. We have not been shown any rules in U.P. Police Regulations or any other Instructions that the memorandum and seizure should be recorded in one single document in the form of a continuous narrative, as has been done in this case.

75. This document Ex.P.285 shows that the statement of accused was taken in the presence of two witnesses, namely, Ram Bihari Singh and Dinesh Baloni. Out of them only Dinesh Baloni (PW 104) was examined. He is an employee of Gorakhpur Engineering College with his residence in the campus. Engineering College is 8 Kms away from Police Station Cantonment. (Para 10-PW 104) and village Nibahi was 40-45 kms away from Cantonment Police Station (Para 11 PW 104).



And these two witnesses accompanied the Police to village Nibahi where the alleged seizure was made. The Police had called Mirza Farooq Beg also from the neighbouring field and Ex.P.285 bears the signatures of Beg also. But for some unexplained reason, Mirza Barooq Beg was given up by the prosecution although he had appeared before the trial Court on 31-1-1996. And Dinesh Baloni admitted in cross-examination that he was on friendly terms with Inspector Umesh Mishra.

76. It may also be noted that reading paragraphs 13 and 22 of the statement of Dinesh Baloni (PW 104) shows that the alleged recovery was made from the southern corner of the verandah. But contrary to this, document Ex.P.285 records that the arms and ammunition were recovered near the Northern wall of the room. This, by no means, is an insignificant discrepancy.

77. It was also a queer co-incidence that a "Khurpi" was readily available at the same spot for digging out the concealed guns and cartridges.

78. Niyogi was murdered at Bhilai in the early hours of 28-9-1991. It is alleged that the murder was committed by accused Paltan. He absconded after the incident. It is the prosecution case that he fled from one place to another and also went to Nepal in order to escape apprehension. We find it rather strange that in this interval of nearly two years while he was a fugitive from law, he could not get rid of the weapon allegedly used by him for committing this crime. We find it rather unnatural that he would carry the crime-weapon with him hundreds of kilometers away to his paternal home, and there bury it in the open verandah, and also place a Khurpi over it for promptly digging it up when the police party arrives.

79. For all these reasons, we find that the evidence

regarding the disclosure and seizure made at the instance of accused Paltan does not inspire confidence. Prince or pauper, famous or obscure, the principles of evaluation of evidence remain the same. Incriminating circumstances have to be proved beyond reasonable doubt. And where two views are possible, the one in favour of the accused, has to be accepted. No compromise is possible with these principles, and Courts have to guard against being swayed by considerations that a well-known public figure was made the target of the dastardly crime.

80. Since the recovery of country-made pistol Art. X 2 becomes doubtful, the opinion of Ballistics Expert Roopsingh (PW 159) that the 3 pellets recovered from the body of Niyogi were fired from this country-made pistol, loses significance.

81. The learned counsel for this accused challenged the correctness of the report Ex.P.399 given by Roopsingh (PW 159), on the ground that the report does not contain the details leading to this conclusion. The work sheet Ex.P.399A specifically refers to microscopic examination and photographic details given in photographs Ex.P.400, Ex.P.401 and Ex.P.402. These are composite photomicrographs of the 3 crime pellets and the test slugs. The expert writes that the individual characterstics on all the 3 pellets tallied with test slugs. But the photographs Ex.P.400 to Ex.P.402 do not support this opinion. Shri Roopsingh himself admitted the points of difference in his cross-examination.

82. The learned counsel for the CBI referred to Ramnath's case (AIR 1978 SC 120) in support of his contention that the Court would not be justified in rejecting the opinion of the Expert given on the basis of comparison microscope.

We have gone through this judgment and find that in that particular case, no photographs were taken by the Expert who had examined the markings under comparison microscope. But in the instant case, photographs were taken by the Expert and we are not satisfied from these photographs that the striation marks on the crime pellets and the test slugs matched or tallied.

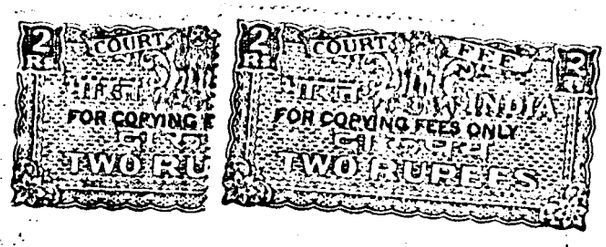
83. Prosecution also adduced evidence that on the basis of information supplied by accused Paltan a red coloured Suzuki Motor Cycle was recovered by Inspector Umesh Mishra from the house of Satyaprakash. We have already discussed above that Umesh Mishra's conduct has not been clean. Even otherwise, red motor cycle has not been proved to have any connection with this crime.

84. We also find no cogent and reliable evidence to show that accused Paltan owned such a motor cycle, much less that he escaped on it from Bhilai. Sub-Inspector D.P.Singh (PW 126) was posted at Police Station Rudrapur in September,1991. Village Nibahi came under this Police-Station. This Sub-Inspector has been produced by the prosecution to depose that on 12-10-1991 he had seen accused Paltan riding a red-coloured Suzuki Motor Cycle No.MP-24-1707 at the road trisection in Ramlakhan Bazar. One Rishikesh Upadhyaya was riding pillion. This Sub-Inspector says that they had searched Rishikesh Upadhyaya on the road side But just as they wanted to search the canvas bag dangling on the motor cycle, accused Paltan raced the vehicle and fled towards village Nibahi. This Sub-Inspector gave him a chase, but could not catch him. What sort of a police officer was he that he helplessly watched a suspect running away before his own eyes, but could not catch him, although he claims to have recognised this man to be Paltna of village Nibahi.

85. But this was not the only time when Paltan had given him a slip. Just a couple of days later on 14-10-1993, he had accompanied Bhilai Police to village Nibahi where Paltan's house was raided at night. Sub-Inspector D.P.Singh says that accused Paltan was sleeping on the terrace of his house, but he could not be apprehended because he jumped from the terrace and escaped in the sugar cane fields. It certainly does the police no credit that this person suspected of a grave offence like murder, was living in his home village at Nibahi and was freely moving around in a conspicuous red Suzuki motor cycle, but the police could not apprehend him. Nor on 12th October 1991, nor on the 14th, or thereafter.

86. When Sub-Inspector D.P.Singh was examined by the CBI on 20-12-1991, he had stated that he wanted to ascertain the identity of the motor cycle driver, but he latter sped away. He was confronted with his statement Ex.D.46 - A to A in cross-examination. But he denied having said so. He has also contradicted himself with his statement Ex.D.47 which was recorded by the Police on 14-10-1991. In this statement he has not spoken about giving a chase to Paltan. D.P.Singh appears to be a witness of doubtful credibility.

87. Our attention was invited to para-10 of the statement of Sub-Inspector D.P.Singh wherein he says that 8 or 10 days before the above incident of stopping and giving a chase to Paltan at this trisection, this Inspector had learnt that accused Paltan had come to village Nibahi 8 or 10 days before, and was constructing a house. This incident of chase was admittedly of October 12, 1991. Eight or ten days before would mean around 2nd of October. And on this day he says he learnt that Paltan had arrived in the village 8 or 10 days before. This establishes his presence at Nibahi around 23rd



September, 1991. This means that on 28th September, the date on which Niyogi was murdered, Paltan wa. very much in village Nibahi. The evidence of D.P.Singh thus does not support the prosecution case.

88. Satya Prakash (PW 105) says that Paltan had come to mee him in village Chainpur in the first week of October, 1991 and ha stayed with him for a couple of days or so. He had come on a red coloured Suzuki Motor cycle. Subsequently in the last week of November,D91 Paltan met with a road accident and spent about a month at village Badhalganj where he was undergoing treatment This motor cycle was left by Paltan at the house of SatyaPrakash and it is alleged to have been recovered from this place on 24-8-1993 on the information given by Paltan to Inspector Umesh Mishra. The learned counsel for the accused emphasised during arguments that this witness Satya Prakash was a wholly unreliabl witness who has been set up to give false evidence about extra judicial confession, and escape of accused Paltan to Nepal. On his own admission Satya Prakash knew that Paltan was wanted by the CBI and carried a reward of Rs.1 lac. And yet he harboured him and actively assisted him in his flight.

89. It has been argued that Satya Prakash has been compelled to make a false statement under the threat of prosecution for harbouring a criminal. We have subjected his statement to scrutiny. We find that although he has spoken in great detail about Paltan's taking refuge with him and his assistance in his escape to Nepal, yet the possibility of his being a tutored witness set up by the CBI cannot be excluded.

90. Moreover we find it rather strange that the police could not reach this relative of Paltan at a distance of mere 35-40 kilometers from Nibahi till the accused himself took them

there, and this motor cycle remained undetected at the house of Satya Prakash for nearly two years.

91. Be that as it may, asalread mentioned above, nothing turns on the recovery of this mot cycle as it has not been shown to be in any way connect with the crime.

92. The major incrim ating circumstances relied against Paltan were recovery of Pistol Art.X.2 on his information, the opinion of Ballisti Expert that the crime pellets were fired from this pistol and the confession made by him to Satya Prakash (PW 105) and V ambhar Prasad Sahani (PW 124). As we have already discussed ove, we do not find the evidence of recovery beyond reproach. And we are also not impressed by the evidence of Ballistics Expert Shri Roopsingh that the crime pellets were fire from this pistol. Once this evidence is found to be unreliable, we do not think that conviction can be based only on the basis of the oral confession allegedly made to Satya akash and Vishambhar Prasad Sahani. On merits also, we do not ind that this evidence stands scrutiny.

93. Satya Prakash was not a close relative of Paltan. He was also much younger to him in age. The trial Court has recorded his age to be 29 years when he was examined as a witness in the year 1996, more than 4 years after the alleged confession. Satya Prakash was not holding any influential position and was the youngest of the 3 brothers. He had failed in B.A.final examination and in paragraph 42 of his statement he has called himself an educated unemployed. We find it extremely unlikely that Paltan would choose such a person to make a confession to.

94. Satya Prakash has given a detailed statement before the trial Court wherein he deposed that accused Paltan had come to

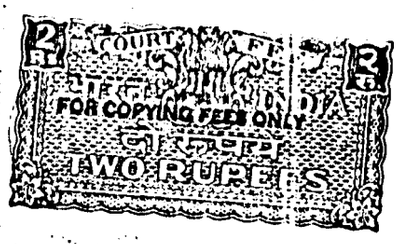
meet him in village Chainpur in the first week of October, 1991, and that in the last week of November, 1991, Paltan met with an accident at a place 3-4 kilometers from Chainpur and stayed in the house of Shriram Dubey in Badhalgan for nearly one and a half months. It is here that Paltan is said to have told SatyaPrakash about his committing murder of Miyoni at Bhilai, implicating Gyan Prakash, Moolchand, Naveen Shah and Chandrakant Shah too. This brings the said confession to the last week of December, if not later. And it was then that Satya Prakash took Paltan to his brother-in-law Kashnath in Dohariya Bazar, District Gorakhpur and left him there with a request to send him to Nepal But these dates do not tally with those given by him in his statement to the CBI in Ex.D.41. To the CBI he had said that it was in the last week of October, 1991 that Paltan had come to meet him at Chainpur. And that, it was in the beginning of November, 1991 that Paltan had met with an accident at Badhalganj He denied having made this statement to the CBI. This witness has given a confused statement about the time when Platna had met him at Chainpur and the period he stayed at Badhalganj, and also the time when he left Badhalganj.

95. Shriram Dubey of Badhalganj has not been examined. One also wonders why Satya Prakash left this relative of his alone in an injured condition at Badhalganj and did not take him to his own house at Chainpur. Had he really been close to him, he would not have left Paltan alone at Badhalganj.

96. At the cost of repetition we would say that what Satya Prakash has stated before the trial Court brings the time of the said confession to the last week of December, or later. But in cross-examination in para-18 he says thatthe confession was made in the beginning of December, 1991. This renders his claim to confession doubtful.

97. We also find it unworthy of credit that accused Paltan would give Satya Prakash all the details about whom he had killed at what time and with what weapon, and also would name all his accomplices too. What is more surprising is that Satya Prakash who is a resident of District Gorakhpur in Uttar Pradesh having nothing to do with the persons named Niyogi of Bhilai, or Gyan Prakash, Moolchand, Naveen Chand, or Chandrakant Shah, could remember that it were they who were named by Paltan. He also remembered other details narrated by Paltan, that he had murdered Shankar Guha Niyogi of Bhilai while he was asleep at night, using a country-made pistol, and that Gyan Prakash Mishra, Moolchand, Naveen Shah and Chandrakant Shah had associated with him. The questions put to him in para-43 show that Satya Prakash does not have a particularly sharp memory. He could not give any of the dates when he had met Paltan in October and November, 1991. He could not recollect the date on which he had learnt about the automobile accident in which Paltan was injured. He did not remember the date on which he took Paltan to his brother-in-law Keshnath. He did not remember the date on which he returned home from the house of Keshnath. And yet he remembered the names of Gyan Prakash, Moolchand Shah, Naveen Shah and Chandra kant Shah as the accomplices of accused Paltan in the murder of Niyogi. Satya Prakash admitted in paragraph 23 of his deposition that Gyan Prakash, Moolchand, Naveen Shah and Chandrakant Shah were not known to him from before, and that he had heard their names for the first time when Paltan made the confession. He did not note down their names anywhere. And yet he could remember their names and could reproduce them to the CBI nearly two years later. We do not think Satya Prakash was capable of performing such an unusual feat of memory.

98. Confessions are usually made when an offender suffers from qualms of conscience and repents his action. Sometimes he



confesses to a person in the hope that that person would help him out of the difficult situation. But in this case these circumstances and considerations were totally absent. Accused Paltan is not said to have confessed out of remorse. Nor was it necessary for him to make a clean breast of it to Satya Prakash for making good his escape to Nepal. Satya Prakash himself admitted in para 22 of his deposition that if Paltan had only told him that he wanted to go to Nepal, without confessing to murder, he would still have helped him out. He could not give any reason why Paltan took him into confidence and volunteered the information that he had committed the murder, giving all the details about the time, place and manner, including the names of his accomplices. Satya Prakash does not say that he had read in the newspapers or had learnt from the T.V. news that Paltan was a wanted criminal.

99. For all these reasons we do not consider it safe to rely on the evidence of Satya Prakash or the question of retracted oral extra judicial confession. The criticism levelled against above him during the arguments as mentioned in para 34 does not seem to be without force.

100. Vishambhar Prasad Sahani (PW 124) is the other witness of confession. He was a total stranger to accused Paltan whom he was meeting for the first time. There was hardly any necessit for him to confess a crime like murder to such a stranger. It was also difficult to believe that this stranger would recollect the names of Gyan Prakash and of Simplex Company as the associates of Paltan in this crime of murder of Shankar Guha Niyogi. What is more, in his cross-examination (para.10 PW 124) he insisted that the CBI had approached him within one and-a-half months of the visit of accused Paltan, and not one-and-a-half year from his visit. That would take the alleged confession to around August 1993 and not December, 1991, because it is on record that the CBI

had recorded his statement in September, 1993. This contradicts his statement in chief-examination that the alleged confession was made to him in December, 1991 and also contradicts the story of Satya Prakash that Paltan had gone to Vishambhar Sahani in December, 1991.

101. We are, therefore, not prepared to hold that any such confession was made by accused Paltan.

102. It was the prosecution case that Niyogi was murdered in pursuance of a conspiracy, and the hand that pressed the trigger was that of accused Paltan. But the above analysis of the evidence on record shows that the prosecution has not proved beyond doubt that accused Paltan was responsible for the fatal shot. There is no evidence to show that he had been used by the other accused persons to eliminate Niyogi. We also refuse to read the torn pieces forming the letter Ex.P.298 to say that Rs.20,000/- were paid to the assassin of Niyogi. And that this assassin happened to be accused Paltan, has not, in our view, been established.

103. It is true that the prosecution has adduced evidence in the form of various Roznamcha reports, that Niyogi was leading labour movement at Bhilai. But these very reports show that this movement was not directed against the Simplex Group of Industries alone. Other Industrialists like Kedia, B.R.Jain etc. were also referred. On this point reference may be made to Roznamcha Report Ex.P.2 which refers to Kedia Company, B.K.Company and Bhilai Wires alongwith Simplex Company. Roznamcha Report Ex.P.8 also refers to Kedia, Jain and Khetawat alongwith Moolchand Shah. There are many more such reports in which Kedia Distillery, B.R.Jain, Khetawat etc. have been mentioned as the Industrialists against whom Niyogi was leading

the labour movement. In fact report Ex.P.111 lodged by Asha Niyogi (PW 68) who is the widow of Shankar Guha Niyogi, contains the names of Kailash Pati Kedia, B.R.Jain, S.P.Khetwat and many others as suspects who had conspired to kill Niyogi. What we mean to say is that simply because the Simplex Group of Companies was affected by the labour movement of Niyogi, it cannot be concluded that it were Moolchand Shah and Chandrakant Shah who had conspired to kill Niyogi. We find considerable force in the arguments that the confidential note Ex.P.261 and the unfinished letter Ex.P.116, rather than pointing to the guilt of Moolchand Shah, go to show that they were prepared to meet the challenge of Niyogi by lawful means.

104. During the course of arguments we were also referred to the entries in the diary Ex.P.93, said to be made by Niyogi from time to time, and also his recorded message which was transcribed as Ex.P.101. Reference was specifically made to the entries marked Ex.P.94 to P.99 in this diary. We have examined these entries, and, without entering into the controversy whether or not these entries were made by Niyogi, we find that these entries only contained certain references to names including those of Gyanu and Avadhesh Narayan. But many other persons are also named in these entries. As, for example, in Ex.P.95, name of Ajit Jogi also appears. And in Ex.P.96, the names of "Shakeel Abbas and Oker Hussain of Congress I" have been mentioned. We do not think that any adverse inference can be drawn from the mere fact that the diary, assuming that it was written by Niyogi as testified by expert witness S.C.Mittal (PW 160) contains the names of some of the accused.

105. Much was tried to be made of the entry Ex.P.94 which is as follows :

> " Got five lacs from Simplex, Gyanu collected firearm from Pradeep of Sector-9, got a man from Sivan District to kill Niyogi. Accidentally

the party was arrested due to a police raid after Bomb Kand of Durg."

106. We do not know who was this Pradeep Singh. But evidently this entry contains allegations about some persons hired from Sivan District. It also says that the plot was foiled. It is also significant that accused Paltan has nothing to do with Sivan district, and has not been named anywhere in this diary.

107. We would also like to point out that immediately before this entry are names of some other persons with the following remarks :

" Responsible for so many stabbing of Kedias and Chattisgarh Distillery workers ..... - paid by Kedias."

108. We are firmly of the view that these entries in the diary can at best be taken to be the suspicions and apprehensions of Niyogi and do not take the prosecution case any further.

109. Reference may also be made to the entry at page 32 of this diary which is in Hindi and reads as follows :

" Simplex - Kedia Jaise, Udyogpatiyon Ne Durg Jila Ke Ala Afsaron Ko Milakar Ek Fasivadi Giroh Bana Chuke Hai. Dukh Ke Bat Yah Hai Ki Durg Evam Rajnandgaon Jile Ki Nyayapalika Bhi Is Giroh Me Shamil Ho Chuke Hai "

110. It was emphasised by the counsel for defence that it is repeatedly shown that if Niyogi had apprehensions from Simplex, Kedia was also not far behind.

111. The same thing is true about the transcription Ex.P.101 even assuming that this was the message recorded by Niyogi. It also names Simplex and Kedia as the persons behind the conspiracy against him. We agree that nothing turns on these two documen-ts,

the diary and the message allegedly recorded by Niyogi.

112. A catena of cases was cited before us about the law relating to circumstantial evidence. The principles relating to appreciation and evaluation of circumstantial evidence are well settled, that the circumstances on which the prosecution relies must be consistent with the guilt of the accused and must be incompatible with the hypothesis of his innocence.

113. On a careful analysis of the evidence on record, we find only the following circumstances proved in this case :

(i) Niyogi was a popular labour leader who was carrying on labour movement for the welfare of labour.

(ii) Simplex-Group of Companies was one of the Industries affected by this movement.

(iii) Simplex Engineering had filed Civil Suits for injunction against several persons including the deceased, alleging that they were suffering loss on account of the agitations.

(iv) Niyogi had expressed apprehensions for his life from the Industrialists including Shah's of Simplex.

(v) Accused Chandrakant, Abhay Singh, Gyanprakash and Avadhesh Rai had together gone to Nepal in March 91.

(vi) Soon after murder of Niyogi Chandrakant Shah absconded from Bhilai and accused Gyanprakash and Abhaysingh left for Pachmarhi.

(vii) Chandrakant Shah stayed in different hotels at different places,

(viii) Accused Paltan also fled from his home Nibahi in U.P. in his bid to escape from the police.

(ix) On 30-9-91, accused Avadhesh Rai took cycle stand contract Ex.P.314 at the rate of Rs.25000/- per month.

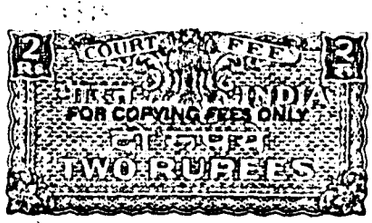
(x) The income of the cycle stand used to be deposited in the Syndicate Bank in the account of accused Gyanprakash.

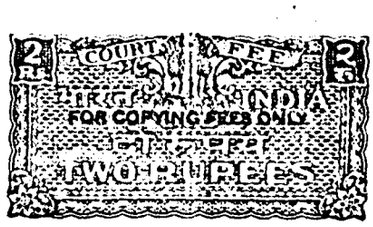
114. The first four of these circumstances only go to show that the agitation and labour movement carried on by the deceased was proving inconvenient to the Simplex Group of Industries. But the prosecution's own case shows that the same was also true for several other Industries of that area. And if Niyogi had apprehensions from the Shahs of Simplex, he had also expressed the same fear from other Industrialists also, as has been deposed by Narendra Kumar Singh (PW 71), Rajendra Kumar Sial (PW 70) and others.

115. We are also unable to appreciate the visit of Chandrakant Abhay Singh, Gyan Prakash and Avadhesh Rai to Nepal as evidence of conspiracy to kill Niyogi. As argued on behalf of the accused persons, this visit was wholly innocuous. The prosecution could not prove that any of these accused persons had purchased any firearms from Nepal. Ex.P.393 (8) on which the prosecution had relied contains a list of foreign made pistols. We agree with the defence argument that, firstly, there is no evidence to show that any of the accused persons had purchased any of these weapons. And secondly, since it is established that Niyogi was murdered by a country-made pistol, the evidence relating to foreign made weapons is of no avail.

116. Some evidence is there about Chandrakant Shah's absconsion from Bhilai and his stay at different hotels at different places. But his learned counsel has tried to explain this circumstance by arguing that he was trying to escape torture at the hands of the police. We, however, think that this circumstance alone is not sufficient to hold this accused guilty in this case. The same is also true about accused Gyan Prakash and Abhay Singh's escape to Pachmardi.

117. Against accused Paltan the only circumstance that we find proved is that he was running away from home in order to





avoid arrest by the police. Evidently this circumstance alone is not sufficient to hold him guilty.

118. We are also of the view that cycle-stand contract Ex.P.314 in the name of Avadhesh Rai, or the deposit of income in the name of Gyan Prakash are not incriminating circumstances.

119. The circumstances found proved in this case are wholly insufficient to establish that these accused persons, or any of them, conspired to cause the murder of Niyogi, and that accused Paltan killed him, much less in pursuance of the conspiracy. The result is that the State Appeal No.1863 of 1997 is dismissed and Cr.Appeals No.1278/97, 1371/97, 1441/97 and 1442/97 are allowed. The conviction and sentence against Moolchand Shah, Paltan Mallah, Gyanprakash Mishra, Avadhesh Rai, Abhay Singh and Chandrakant Shah are set aside. These accused persons be set at liberty unless required in connection with some other case. Death Reference No.5/97 is disposed of accordingly.

120. Before parting with the case we would like to place on record our appreciation for the able assistance rendered to this Court by amicus curiae-Senior Advocate Shri Surendra Singh, who devoted his valuable time and put in a lot of labour to study the bulky record to defend the pauper accused.

TYPIST 01. Application received on.
02. Applicant told to appear on.
03. Applicant appeared on.
04. Application (With or without further or correct particulars) Sent to record room on.
COMPARER 05. Application received from record room with record or without for further or correct particulars.
06. Applicant given notice for further or correct particubars on.
07. Applicant given notice for further funds on.
08. Notice in column 7 or 7 complied with on.
Head Clerk 09. Copy ready on.
Copyist 10. Copy delivered or sent on.
11. Court fee realised.

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Sd/- S.K.Dubey
J U D G E
26-6-1998

Sd/- Miss Usha Shukla.
J U D G E
26-6-1998

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