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(CHATTISGARH INSTITUTE OF LAW)

JUDGEMENT

(Pronounced today the 23rd June 1997)

COURT OF SECOND ADDITIONAL
SESSIONS JUDGE, DURG (M.P.)

(Presiding Officer Mr. T.K. Jha)

COURT OF SECOND ADDITIONAL
SESSIONS JUDGE, DURG (M.P.)

(Presiding Officer Mr. T.K. Jha)

Central Bureau of Investigation,
New Delhi.

SESSIONS CASE NO. 233/92

Prosecution

VERSUS

1. Chandrakant Shah, S/o. Ramji Bhai Shah
Age-39 years
Resident - 21/24, Nehru Nagar (West) Bhilai,
Tahsil & Dist - Durg(M.P)
2. Gyan Prakash, Alias Gyanu
S/o. Chotkan Mishra, Age-30 years
Resident - Baba Flour Mill, Camp -1
Road No. 18, Bhilai
Tahsil & Dist - Durg (M.P.)
3. Avdhesh Rai
S/o. Ram Ashish Rai
Age - 31 years
Resident - Qr. No. 7A
Road No. 5, Sector -4 , Bhilai
Tahsil & Dist: Durg (M.P)
4. Abhay Kumar Singh, Alias, Abhay Singh
S/o Vikram Singh
Age - 34 years
Resident - 7 G, Camp - 1, Bhilai
Tahsil & Dist: Durg (M.P)
5. Moolchand Shah
S/o Ramji Bhai Shah
Age - 56 years
Resident: Simplex Colony
Malviya Nagar, G E Road, Durg (M.P)

6. Naveen Shah
S/o Ramji Bhal Shah
Age - 53 years
Resident Simplex Colony
Malviya Nagar, G E Road
Durg (M.P)
7. Chandrabaksh Singh Alias (Chhotu)
S/o. Bharat Singh
Age - 25 years
Resident G-36, ACC Colony
Jamul, Bhilai
Tahsil & Dist: Durg (M.P)
8. Baldev Singh Sandhu
S/o Rawail Singh Sandhu
Age - 28 years
Resident - R - 37, M.P. Housing Board Colony
Industrial Estate, Bhilai
Tahsil & Dist: Durg (M.P)
9. Paltan Mallah Alias Ravi
S/o Nokhai Mallah
Age - 32 Years
Resident - Nibahi, Thana - Rudrapur
Dist: Devaria (U.P)
Present Address - Bhilai
Tahsil & Dist: Durg (M.P)

..... **Accused**

Court:- Sessions case arising out of criminal case no.13/92 CBI New Delhi versus Chandra Kant Shah and eight others as per commital order passed on 7.7.92 by Mr. J R Kujur, Judicial Magistrate Class-I, Durg.

JUDGEMENT

(Pronounced today the 23rd June 1997)

1. The accused Moolchand Shah, Navin Shah, Chandra Kant Shah, Abhay Kumar Singh, Avdesh Rai, Chandra Baksh, Baldev have been tried under Sections 120-B read with Sec. 302 IPC. The accused Gyan Prakash Mishra has been tried under Sec. 120-B read with Sec. 302, 302 read with Sec-34, 114 read with 302 IPC and accused Paltan Mallah has been tried under Sec. 120-B read with Sec. 302, 302 in the alternative 302 read with Sec. 34 and 25 (1) (A) and 27 Arms ACT.

2. This is not disputed that accused Moolchand Shah, Naveen Shah and Chandra Kant Shah are brothers. Accused Moolchand Shah and Navin Shah are amongst the Directors of different units of the Simplex Group of industries. This is also not disputed that accused Chandra Kant Shah was in the Board of Directors of Oswal Iron and Steel Pvt. Ltd., Company, Bhilai.

3. This is also an admitted fact that in the March 1991 accused Chandra Kant Shah, Avdesh Rai and Abhay Singh travelled together from Bhilai to Nepal in Tempo Traveller No. MP24B-6622. This is also not disputed that accused Gyan Prakash Mishra met the said three accused persons in Nepal by travelling via some other route. The owner of the Tempo Traveller No. MP24B-6622 is accused Chandra Kant Shah.

4. This case is known by the name "NIYOGI MURDER TRIAL". In the public undertakings of this country Bhilai Steel Plant, Dist. Durg, M.P. is one of the premier Steel Plants producing the best quality of steel. The raw material of iron ore for this steel plant comes from Rajhara, a massive mine at a distance of 80 k.m. The deceased Shankar Guha Niyogi was leading the labour working at Rajhara Mines over a period of past 2 decades to solve their problems. Deceased Niyogi became by and by so popular among the labourers that more than 50,000 labour were organised under him. Deceased Niyogi formed a Central Organisation of the labour which was known as "CHATTISGARH MUKTI MORCHA". Deceased Niyogi had become a labour leader of national level in his life time.

5. In Bhilai Dist. Durg, M.P. industrial development was going on at a fast pace. Alongside the problems of the labour in the industrial units were also increasing. In the year 1989 there took place a workers' agitation in ACC, the leading Cement producer of the country at Jamul, Bhilai. Under the leadership of Niyogi a settlement was reached between the labour and the contractor/management. This settlement was in favour of the labour. Considering this un-paralleled success under the leadership of Niyogi, labour working in various industrial establishments in Bhilai area invited Niyogi to lead them to solve their problems. Niyogi came to Bhilai in the year 1990 to meet his pre-determined destiny. He made Quarter no. MIG-1/55, Hudco, Bhilai as his residence where he generally lived with his servant Bahal Ram. Deceased

Niyog's wife Asha and children Kranti, Mukti and Jeet as usual lived at village Danitola (near Rajhara). Niyogi set up the office of the Chattisgarh Mukti Morcha at the MIG-2/273 Hudco, (Bhilai).

6. In the later half of year 1990 Niyogi started widespread agitation extensively against Simplex, Kedia, BEC, BK and some other industrial units in this region demanding regularisation of the services of the workers and a living wage. During this movement the industrialists started sponsoring murderous attacks on the workers of CMM. During this movement there were attacks on the life of Uma Shankar Rai, a prominent Chattisgarh Mukti Morcha leader. Regarding which after investigation the police filed a charge sheet in the court against accused Baldev Singh alongwith some other persons. Apprehensions were being expressed that these attacks were being engineered by Simplex and Kedia group industrialists through certain hired gundas. Even deceased Niyogi apprehended a serious danger to his life from the owners of the Simplex and Kedia groups of industries. In this context Niyogi had begun to receive threats. Niyogi mentioned in his diary that he apprehended a danger to his life from the accused Moolchand Shah of the Simplex group and in the said diary the names of the other accused persons were also mentioned.

7. The object of the journey undertaken by the accused Chandra Kant Shah, Gyan Prakash, Avdesh and Abhay Singh in March 1991 by Tempo Traveller No. MP24B-6622 to Nepal was to plot the murder of Niyogi and to acquire arms illegally from Nepal.

8. The agitation launched by Niyogi was becoming more strong. The largest number of workers were retrenched by Simplex group. The Simplex Engineering and Foundry began to sustain a loss of several lakhs of rupees due to the agitation launched by Niyogi. For this the industrial unit filed civil suits no. 1-A/91 and 2-A/91 in District Court, Durg. Alongwith other office bearers of the Chattisgarh Mukti Morcha deceased Niyogi was also made a defendant. On the plaintiff's application for temporary injunction the court passed an order on 17-1-91 restraining the defendants from causing any obstruction within 200 meter area around the main factory of the Simplex Engineering and Foundry Works Ltd., Bhilai.

9. This agitation by Niyogi had become unbearable to the Simplex group like the scorching mid day sun in summer and ultimately in the accused Paltan they got a man who proved a source of solace by killing Niyogi for money.

10. Niyogi sensed so much imminent danger of assaults on the workers that he alongwith a committee of representatives presented a representation to the then President of India at Delhi around 11th September, 1991. Swami Agnivesh (the then Member of Parliament) introduced Niyogiji to the President of India.

11. Before proceeding to Delhi deceased Niyogi recorded his apprehensions and objective in a cassette which he kept at his house.

12. Accused Paltan was originally from village Nibahi (Dist. Deoria, U.P.) but was doing the job of repairing cycles at Bhilai for last two/ three years. He was

involved in the criminal activities of this area and against him criminal cases under Sec. 307, 353, 397, 341, 294, 506 (B), 323 IPC and 25 & 27 Arms Act were pending in various courts.

13. Deceased Niyogi had gone to Raipur on 27.9.91 by his car with driver Deepak Sarkar. There he had a meeting with Rajendra Sail, Secretary General of PUCI and Reporter N.K. Singh of the "India Today". He gave information to these two persons about his labour movement and at the same time he expressed to them his apprehension of a danger to his life from Kedia and Moolchand Shah and Chandra Kant Shah of Simplex group. At around 12 in the night Niyogi left Raipur for Bhilai. After leaving Niyogi at Quarter No. MIG-1/55 driver Deepak Sarkar went to the office MIG-2/273.

14. In the night after having a brief and formal conversation with his servant Bahal Ram in his quarter MIG-1/55 deceased Niyogi went to sleep in his room. After a few hours Bahal Ram heard a noise of bursting of firework in the room of Niyogi. Frightened he went to the room of Niyogi and found that the light was on and Niyogi was writhing on his bed. The window of the room was open. Bahal Ram went and called a neighbour Shripad Mategaonkar. Shripad Mategaonkar sent his son and called a few workers from the office of the Chattisgarh Mukti Morcha. Niyogi had been shot. He was instantly removed to the Sector 9 hospital Bhilai. Probably before reaching the hospital Niyogi was dead. After examining him for some time the doctors declared Niyogi dead. Thus in the history of the labour movement of this country there occurred an end of a leader of the national level. After the Panchnama of the dead body of deceased Niyogi three doctors carried out the postmortem and opined that Niyogi's death was due to shooting. Thus this was a case of murder of a labour leader.

15. The initial investigation was undertaken by a Deputy Superintendent of Police M G Agrawal of the neighbouring district Rajnandgaon. The workers of the Chattisgarh Mukti Morcha were not satisfied with the police investigation. In view of their agitation the M.P. government requested the Central Government for the investigation by the Central Bureau of Investigation into this murder case. Under the orders of the Central Government the CBI New Delhi took up the job of investigation.

16. After collecting evidence during the investigation the CBI reached this conclusion that in the night of 27th and 28th of September 1991 while Niyogi was sleeping, the accused Paltan and Gyan Prakash Mishra came to his quarter on a motorcycle. Accused Gyan Prakash Mishra stayed outside the quarter & accused Paltan loaded country made pistol with L G cartridges and fired at Niyogi. Accused Gyan Prakash Mishra took Rs. 20,000 from his friend Devendar Patni and gave to accused Paltan. Accused Gyan Prakash Mishra addressed a coded letter to the accused Navin Shah and gave it to Devendar Patni and told him to go and collect the money Devendra Patni gave this letter to the accused Chandra Kant Shah. This letter was later on recovered in a torn condition from the office "Jain & Shah" of the accused Chandra Kant Shah (Akash Ganga Complex, Bhilai). The torn pieces of this letter were joined.

17. After killing deceased Niyogi the accused Paltan fled to U.P on a red coloured Suzuki motorcycle and went on taking shelter here and there.

18. Two/three days after the murder of deceased Niyogi the accused Avdresh Rai secured contract of the cycle stand at Maurya talkies at Bhilai for Rs. 25,000 on the recommendation of Prabhu Nath Mishra, elder brother of accused Gyan Prakash Mishra. Accused Chandra Baksh & Baldev were also used to look after the job of this cycle stand. The income from this cycle stand used to be deposited in the account of accused Gyan Prakash Mishra at the Syndicate bank. Thus, this chargesheet was filed against all the accused person including the absconding accused Paltan.

19. The Central Bureau of Investigation delcared a reward of Rs. 10,0000 to be given to any person who would inform about or apprehend the absconding accused Paltan. About two years after this incident on 21.8.93 coincidently an air force officer Suresh Sharma arrested accused Paltan under the name of Sanjay Yadav and then handed over to the S.H.O. Police Station Gorakhpur Cant. On close enquiry the police found that the arrested Sanjay Yadav (Impersonated name) was in reality the absconding killer of the labour leader Niyogi. The incharge officer Police Station Gorakhpur Cantt. on the basis of the memorandum of the accused Paltan Mallah, recovered a country pistol, American revolver & several cartridges from his house (village Nibahl) which were concealed by him in a hole in the ground. On the memo statement of the accused Paltan a red coloured Suzuki motorcycle was recovered from the village (Chainpur) of his relative Satya Prakash. This motorcycle bore no. plate or registration number and its chassis number and engine number had been rubbed out. Therefore it could not be found as to who was the registered owner of this red coloured Suzuki motorcycle.

20. After the arrest of accused Paltan Mallah it was learned that during his abscondence he had made his extra judicial confession before his relative Satya Prakash (resident of Chainpur U.P.), Keshnath resident of Doharia Bazar (U.P.) and Vishambhar Shani (resident of Nepal).

21. Three pellets extracted from the body of deceased Niyogi were sent by the court to the ballistic expert. The ballistic expert said in his report that these three pellets were fired from the country pistol seized on the basis of the memorandum of the accused Paltan Mallah. Thus the Central Bureau of Investigation of New Delhi submitted in this court a supplementary charge sheet against the accused Paltan Mallah also.

22. To prove the prosecution case the Central Bureau of Investigation examined : PWN-1, Rupram Sahu, PWN-2, Rajesh Bajaj, PWN-3, P.C. Tiwari, PWN 4, Vishnu Prasad Soni, PWN-5 A.K.Tiwari, PWN-6 Suresh Sen, PWN-7 S.L. Salam, PWN-8 M.S.Parmeshwar, PWN-9 Vishram Prasad Banjare, PWN-10, Suryadev Verma, PWN-11 Mannu Bhai Boda, PWN-12, R.N. Tiwari, PWN-13 Swami Agnivesh, PWN-14 Basant Kumar Sahu, PWN-15 Sudha Bhardwaj, PWN-16, Punyavrata Gun, PWN-17, Vijay Shukla, PWN-18, Goukaran Gajpal, PWN- 19, P.B.Nayar, PWN-20 Latluram, PWN-21 D.P. Bhattacharya, PWN 22

Ganesn Ram Chowdhry, PWN -23 G.R. Mordhare, PWN-24 D.N. Sahu, PWN-25 S. Vishvanathan, PWN-26 K.S. Bhatia, PWN- 27 Deep Narayan Pandey, PWN 28 Naidu Maran, PWN- 29 Ajab Rao, PWN 30 M.V. Reddy, PWN 31 Atulchandra Pal, PWN- 32 K.C. Merry, PWN 33 Achamma Verghese , PWN-34 C.P. Radhakrishnan, PWN-35 K.J. Pathak, PWN - 36 Mrs. Kristina Kumar, PWN 37 Asit Bose, PWN-38 Linganath, PWN- 39 Saibal Jana, PWN - 40 Mittulal, PWN-41 Jasvant Kumar, PWN-42 Krishna Kumar, PWN-43 Asit Kumar Purkait, PWN-44 Anjoreram, PWN-45 Babulal, PWN-46 K.S. Sahu, PWN-47, S.C. Sarkar, PWN-48 Rajkumar Pandey, PWN- 49 Biharilal Thakur, PWN-50 Hitesh Kumar Bhasin, PWN-51 Reshmi Bai, PWN- 52 Darshnanand Tiwari, PWN-53 Jacob Kurien, PWN-54 Sudama Prasad, PWN-55, G.M. Ansar, PWN- 56 Kunjaram Dhavale, PWN-57 Bharat Bhushan Pandey, PWN-58 Banke Bihari Yadav, PWN-59 Raj Bahadur, PWN-60, Shripad Jagnanath Mategaonkar, PWN-61 Jakyuddin, PWN-62 Nilratan Ghoshal, PWN-63 S.P.Singh, PWN-64, Bahalram, PWN-65 R.G.Pandey, PWN-66 Nuruddin, PWN-67 Kranti Guha Niyogi, PWN- 68, Asha Guha Niyogi, PWN-69 Shri Ram Singh, PWN-70 Rajendra Kumar Syal, PWN-71 Narendra Kumar Singh, PWN-72 Jainarayan Tripathi, PWN-73 Dr. Chandra Shekhar Ghosh, PWN-74 V.K. Bansal, PWN- 75 Dr.B.R. Meshram, PWN-76 Sampurnanand alias S.M.Rao, PWN-77 R.K. Mishra, PWN-78 J.P. Nigam, PWN-79 Sant Kumar Sahu, PWN-80 G.N. Dubey, PWN-81 Ravindra Kumar Choudry, PWN-82 Anil Kumar Verma, PWN-83 Chandra Shekhar Dubey, PWN-84 Dr.B.P. Maithil , PWN- 85 H.O. Kulbhaskar, PWN-86 Shatrughan Patel, PWN-87 Deepak Kumar Surana, PWN-88 Tikamdas Sahu, PWN-89 Santosh Gupta, PWN-90, Rajkumar Harmukh alias Bantu PWN- 91 Ravindra Kumar Mende Urf Ravi, PWN-92 Surajmal Jai, PWN-93 Bhola Rao, PWN- 94 Ravindra Kumar Pandey, PWN-95 D.K. Dubey, PWN- 96 Bharatlal Dewangan, PWN- 97 Suresh Vishvakarma, PWN- 98 Ketan Moolchand Shah, PWN- 99 Yogesh Kumud Prasad Dave, PWN- 100 Radheshyam, PWN- 101 Yashvant Dhote, PWN- 102 Kamaluddin, PWN-103 Koduram, PWN-104 Dinesh Baloni, PWN- 105 Satyaprakash Nishad, PWN-106 Arvind Tripathi, PWN- 107 Anil Kumar Jain, PWN- 108 Vijay Kumar Sharma, PWN- 109 Piushkar, PWN- 110 Surendra Kumar, PWN-111 Tarasingh, PWN- 112 S. Vyankteshwar Rao, PWN- 113 M. Toppo, PWN- 114 D.R. Gourkar, PWN-115 Mohanlal, PWN-116 Akshay Kumar, PWN-117 D. Sundar Pal, PWN- 118 Polaiyya, PWN- 119 P.K. Vijay Kumar, PWN- 120 Dr. Dileep Bhalchandravalkar, PWN-121 Vishambhar Das Manikpuri, PWN- 122 Mahendra Singh Patel, PWN-123 S.N. Singh, PWN-124 Vishambhar Das Sahani, PWN- 125 Umeshchandra Mishra, PWN- 126 D.P. Singh, PWN- 127 Bhagvati Prasad Tiwari, PWN- 128 Indra Kumar, PWN- 129 Musti Khan, PWN- 130 Vijay Bajaj, PWN- 131 Rajesh Dua, PWN- 132 Ajay Kumar Mishra, PWN- 133 Pradeep Kumar Sural, PWN- 134 Ananta Ramesh Rao Primpal Rao, PWN- 135 T.K. Sengupta, PWN-136 Raman Mangal Das Pachigar, PWN- 137 Shekhar, PWN-138 M. Mohan, PWN- 139 Kingshuk Chakravarty, PWN- 140 R. Rijvi, PWN- 141 C.A.Shivkumar, PWN- 142 Ramesh Bhasin, PWN- 143 Mangulal Panchbudhdev, PWN- 144 Balkrishna, PWN- 145 Sahas Ram Bishan Kumbhalkar, PWN- 146 Baban Rao Neware, PWN- 147 D.V.Singh, PWN- 148 Janardhan Pandey, PWN- 149 Anami Kumar, PWN- 150 Shambhu Prasad Choulagai, PWN- 151 Adant

Kumar. PWN-152 C.M. Patel, PWN-153 Mahendra Pratap Singh, PWN- 154 Vikaram Singh Thakur alias Pappu, PWN- 155 H.S. Kapur, PWN- 156 Ajay Kumar Singh, PWN-157 V. Bhaskar Rao, PWN- 158 Devendra Jain, PWN- 159 Roop Singh, PWN- 160 Dr. S.C. Mittal, PWN- 161 S.N. Saxena, PWN- 162 Iqbal Ahmad, PWN- 163 S.K.A. Naqvi, PWN- 164 Pramod Kumar Raoka, PWN- 165 S.P. Shukla, PWN- 166 Manohar Vasudev Rao Pohekar, PWN- 167 Satish Joshi, PWN- 168 M.R. Yadav, PWN- 169 K. Bhattacharya, PWN- 170 M.D. Pandey, PWN- 171 Shamsheer Singh, PWN- 172 K.S. Bhasyam, PWN- 173 Rajesh Tiwari, PWN- 174 M.P. Singh, PWN- 175 J.C. Prabhakar, PWN- 176 Triloki Nath Pandit, PWN- 177, P.T. Mataiyya, PWN- 178 N.M. Sheravat, PWN- 179 Harbhajan Ram, PWN- 180 Hoshiyar Singh, PWN- 181 N.K. Patak, PWN- 182 M.G.Agrawal, PWN- 183 B.S. Kanwar, PWN- 184 Mithilesh Kumar Jha, PWN- 185 R.P.Litoriya, PWN- 186 Akhileshwar Prasad, PWN- 187 R.S. Dhankar, PWN- 188, S.K. Palo, PWN- 189 Mrs. Maitrayi Mathur, PWN- 190 B.N.P. Ajad, PWN- 191 Raj Kumar Shukla and PWN- 192 R.S. Prasad have been examined.

23. The accused persons have pleaded not guilty. Their defence is that they are innocent & have been falsely implicated in this case. Accused Paltan stated under the provisions of Section 313 Cr. P.C. that in the month of Aug. 1990 he was in Bhilai. On 4.8.90 he was operated upon in the Sector-9 Hospital of Bhilai. On 7th Aug. 1990 a dacoity was committed in a bank and the police started looking for him. He was admitted in the hospital for 15 days & after his discharge from the hospital he came to his house at Bhilai-3. Thereafter he came to the house of his paternal uncle at Khursipar (Bhilai). His uncle advised him to go to his home (Nibahi U.P.) as the police were on the look out for him. He went to Nibahi and after staying there for 3 months, he came back to Bhilai. That time. Shailesh Singh was the City Superintendent of Police Bhilai. One day when he was taking tea at his home the police came and took him away. But since he had the medical certificate of his admission in the hospital, he was released by the police. He was detained in the police station for one month and by giving electric shock to him, the police used to ask him as to how many offences he had committed. Police Superintendent Shailesh Singh used to tell him that he would be made a dacoit like Phoolandevi. He was sent to jail in connection with three false cases of theft. He was released from the jail after 4 months. After his release from the jail he came to his house at Bhilai-3 in the 5th month (May) year 91. That night the police raided his house but he was at the house of his uncle at Khursipar Bhilai. He fled to his brother at Bombay. One or one and a half months after staying in Bombay he went to Nibahi (U.P.). In Sept. '91, during his stay in village Nibahi (U.P.) a lot of dacoities used to take place in that region. He had strained relations with certain Muslim families of the village. During that period when he had gone to some relative at another village, in his absence Rudrapur police had raided his house. In the morning when he came back the watchman told him that the police were looking for him. That watchman also advised him that he should better leave the village. This is the incident of 12-10-91. Therefore he kept wandering here and there. The City Superintendent of Police Shailesh Singh has falsly implicated him in this case. He used to tell him often that he wanted to make him like Phoolandevi. Accused Paltan had

submitted a list of seven witnesses. One witness Radhe Pandey appeared in the court but he was given up without examination. One Suresh Vishwakarma P.W.No. 97 was also named as a defence witness but he was also given up without examination. The remaining 5 defence witnesses were not available at the given addresses and they could not be traced.

24. Accused Gyan Prakash Mishra has stated under the provisions of Section 313 Cr. P C that he belongs to a political family. There are a number of rivals who want to end his and his brother's politics. These people connive with the police to finish their politics. He opposes the oppression of the police. Therefore the police are inimical to him. The then principal had refused to admit him for M.A. final at the instruction of the then Police Superintendent. He wanted to contest the election of the student union. Against the refusal of admission he had preferred a writ petition in the Honourable High court in which the then Police Superintendent Surinder Singh was also implicated as a party. Due to the writ petition the Honourable High Court had stayed the students' union elections of all the universities in Madhya Pradesh. The Hon'ble High Court had also censured the Police Superintendent. The Superintendent of Police had , therefore, to express regrets to him (accused Gyan Prakash Mishra). Therefore the then Superintendent Police Surender Singh was inimical to him. In the year 88 the police had arrested him under "T.A.D.A." on false grounds but the designated court released him. He has filed a complaint in court against S H O Chaoni R. P. Sharma and C.S.P. R.S. Singh which is still pending in the court. Thus the local police and CBI have implicated him falsely in this case owing to enmity. The accused Gyan Prakash Mishra has examined 4 defence witness in defence respectively D.W.N.1 N.P.Chandel, DWN-2 K.K.Verma, DWN-3 Shyam Krishna Tiwari and DWN-4 B.N. Upadhyay.

25. The accused Chandra Kant Shah has stated u/s 313 of Cr. P.C. that he has no connection with Simplex Industries Group. He carried out production under the name of Oswal Iron and Steel Private Limited and from it he earned good profit. In his factory there had never been any strike of the workers. The investigating agency has falsely implicated accused Gyan Prakash Mishra and Avdhesh Rai and along with them implicated him also.

26. The accused Moolchand Shah has stated u/s 313 of Cr P.C. that under the pressure of former Prime Minister V.P. Singh, former central minister Vidya Charan Shukla, George Fernandes, Purshottam Koushik, Swami Agnivesh and other politicians and trade unions he has been falsely implicated in this case. He apprehends that the office bearers of C.M.M. have also implicated him falsely.

27. Accused Avdhesh Rai has only stated u/s 313 Cr. PC that he was pressurized that if he did not give a statement against accused Gyan Prakash Mishra, he would be also implicated in this case. Police officials bore accused Gyan Prakash Mishra malice. He (Avdhesh Rai) was detained by the police since 3-10.91.

28. Accused Navin Shah has stated u/s 313 Cr. P.C. that he did not suffer any loss from the labour movement. After the murder of Shankar Guha Niyogi under

pressure from former Prime Minister V.P.Singh, V.C. Shukla, Swami Agnivesh and P.U.C.L., one or the other industrialist of this area had to be implicated in this case. Since these people are politically weakest hence they were falsely implicated.

29. Accused Abhay Singh has stated under Section 313 Cr. P.C. that in Oct.'91, his wife fell ill so he had to go to Ghazipur (U.P). He went to Pachmari along with accused Gyan Prakash Mishra & after staying for 2 days he proceeded to Ghazipur from there. The C B I people arrested him & brought him from Ghazipur. Prabhunath Mishra, elder brother of accused Gyan Prakash Mishra, was a leader of the I.N.T.U.C. So he used to frequent his house. This accused has admitted that he had gone to Nepal by Tempo-Trax along with accused Chandrakant Shah & Avdresh Rai and accused Gyan Prakash Mishra had already left for Nepal.

30. Accused Chandrabaksh states u/s 313 Cr.P.C. that under the pressure of the C B I he has been falsely implicated.

31. Accused Baldev has also stated u/s 313 Cr. P.C. that he has been falsely implicated in this case and that he is innocent.

32. Questions at trial

i. Whether accused Paltan committed the murder of Shankar Guha Niyogi on 27/28.9.91?

ii. Whether accused Paltan had in his possession without license a country made pistol, American revolver & cartridges?

iii. Whether accused Paltan used the country pistol in the commission of an offence?

iv. Whether accused Paltan committed murder of Shankar Guha Niyogi in furtherance of common intention/conspiracy of the other accused persons?

v. Whether commission of any offence is proved against any accused. If yes, then what would be the proper punishment?

33. For the sake of the convenience, the evidence in question is considered subjectwise as follows:

i. Incident of murder.

ii. Who committed the murder?

1. Arrest of accused Paltan on 21.8.93 & on his memorandum recovery of country pistol, American revolver, 2 L.G. cartridges and other cartridges and motorcycle.

2. Report of Ballistic expert.

3. Opportunity of acquiring L.G. cartridges & country pistol.

4. Extra Judicial confession.

5. Absconding from this region after murder.

6. From where did the money come.

iii. Seizures from the accused:-

1. Search & seizure at the house of accused Chandrakant Shah.
2. Search & seizure at the Akash Ganga Complex Bhilai.
3. Search & Seizure at the house of accused Mulchand Shah.
4. Search & seizure at the office of accused Mulchand.
5. Search and seizure at the house of accused Gyan Prakash Mishra.
6. Search & seizure at the house of accused Abhay Singh.

iv. Accused Paltan: where he lived and totality of his personality.

v. Mutual relations among the accused persons.

vi. Handwriting of the accused.

vii. Diary & cassette of Niyogi.

viii. Movement by Niyogi & motive of the crime:

1. Loss to the Simplex group of industries.
 2. Retrenchment of workers by the Simplex industries.
 3. Attacks on the workers of the Chattisgarh Mukti Morcha
- ix. Beginning of the conspiracy and its apprehension.

x. The purpose of the journey to Nepal.

xi. Apprehension of Niyogi :-

1. To which people he told this apprehension.
2. Representation to the President of India.
3. The events of 27.9.91.

xii. Absconding by the accused persons.

1. Accused Gyan Prakash Mishra.
2. Accused Abhay Singh.
3. Accused Chandrakant Shah.

xiii. Diary of Niyogi

xiv. Cassette of Niyogi.

xv. Evidentiary value of the diary & cassette of Niyogi.

xvi. Which accused persons are named by accused Paltan in his confession.

1. Gyan Prakash Mishra
2. Mulchand Shah
3. Navin Shah
4. Chandrakant Shah

xvii. Evidence against each accused:

1. Gyan Prakash Mishra
2. Chandrakant Shah
3. Avdhesh Rai
4. Abhay Singh
5. Mulchand Shah
6. Navin Shah

7. Chandrabaksh alias Chhotu

8. Baldev Singh

xviii. Whether there can be involvement of any other person/group's in the murder of Niyogi.

1. Internal struggle in the Chattisgarh Mukti Morcha.

2. People's war group

3. Kailashpati Kedia or his agent

4. Any other industrialist.

5. Jharkhand Mukti Morcha

xix. Findings-

i. The incident of murder

Bahalram (P.W.No.64) deposes in the para 10 that in the night of 27/28.9.91 Niyogi returned to Bhilai (quarter no. MIG 1/55 HUDCO, Bhilai) at about 1 or 1.30 a.m. from Raipur by car. He told car driver Deepak Sarkar to go and sleep in the office. Deepak Sarkar took the car to the office of the Chattisgarh Mukti Morcha at Hudco. Niyogi also went to sleep in his room.

35. After around 1 or 1 1/2 hours Bahalram (P.W. No.64) heard a sound of explosion of a cracker. At the same time Niyogi shouted "Ma go". Balram (P.W.No. 64) at once went to the room of Niyogi where the light was on. Niyogi was writhing. Bahalram called out "babu babu" to Niyogi out but Niyogi did not respond. This frightened him. He was at a loss to know as to why Niyogi was writhing. That time a mosquito net was also fixed on the bed of Niyogi. He was frightened and at once fetched the elderly neighbour Shripad Mategaonkar (P.W.No.60) and his son. When these three persons returned to the room there was some smell of gun powder. When they lifted the mosquito net, they found the back of Niyogi smeared with blood which clearly indicated that Niyogi had sustained then an injury immediately before this.

36. Bahalram (P.W.No.64) further says that when he had entered the room of Niyogiji after hearing a noise of explosion he had seen that the light was on and the window was also open. The elderly person Shripad Mategaonkar (P.W.No. 60) told him that someone had shot Niyogi and he will have to be removed to a hospital. Statement of Bahalram (P.W.No.64) is supported by Shripad Mategaonkar (P.W.No. 60).

37. Bahalram (P.W.No.64) went on scooter alongwith Shripad Mategaonkar's (PWN 60) son to the office of Chattisgarh Mukti Morcha & informed Basant Kumar (PWN-14), Deepak Sarkar and other persons that Niyogi has been shot by some body. Basant Kumar (PWN 14) also states in the para 13 of this deposition that Bahalram (PWN 64) woke him up and told him that Niyogiji was shot by some one from the open window. These people removed Niyogi at once to the Sector 9 Hospital Bhilai, the best hospital of the area. Bahalram (PWN 64) went to inform about his incident to Neel Ratan Ghosal (PWN 62) & Anup Singh at thier houses.

38. The statement of Bahalram (P.W. 64) clearly shows that there are two windows in the bed room of Niyogiji which opened on the facing street. Both these windows are at a distance of about 5 to 6 hands from the front gate. Similarly the sketch map Exhibit P 93 drawn by the Patwari Sant Kumar (PWN 79) after inspecting the scene of incident also clearly shows that there are four windows in quarter no. MIG 1/55 which face the courtyard. The courtyard is about 9 feet wide. The front door used for entrance into the courtyard from outside is only 4 feet high. It is therefore clear that any person after crossing the gate, which was only 4 feet high, could easily reach the window of the room where Niyogiji was sleeping. Bahalram (PWN 64) has firmly stated in the para no. 19 of his cross examination that the height of the iron gate in front of the quarter is equal to the height of waist. That gate can be easily climbed over. Thus the statements of this witness & Patwari Sant Kumar (PWN 79) are absolutely reliable that the height of the front gate of the quarter no. MIG 1/55 is so little that any average person could easily climb over that gate and reach the said window of the room in which Niyogi was sleeping.

39. Sub-Inspector G.N.Dube (PWN 80) of Police Station Bhilai Nagar states that from 10. p.m. on 27.9.91 till 8.a.m next day he was on duty at the police station. At about 4.25 a.m. Basant Kumar (PWN 14) informed him at the Police Station on phone that someone had shot at the labour leader Shankar Guha Niyogi and he has been removed to the Sector 9 Hospital Bhilai. He entered this information at the Sanha at serial no.194. A certified copy of this Sanha is exhibited and marked as Ex.P.194. This Sub-Inspector informed Town Inspector Rajesh Tiwari (PWN 173) on phone at his residence. The Town Inspector reached police station at once. Thereafter Sub-Inspector G.N. Dube (PWN 80) and Town Inspector Rajesh Tiwari (PWN 173) and Constable Jagannath proceeded to the scene of occurrence Quarter no. MIG 1/55 Hucdo Bhilai.

40. Sup Inspector G.N. Dube (PWN 80) on reaching the scene of occurrence entered First Information Report (Ex.P. 156) on the basis of Dehati Nalishi (complaint) of Bahalram (PWN 64). He sent this report through constable Jagannath to the Police Station Bhilai Nagar for framing the charges of offence. The offence registered at the police station is Ex. P.195.

41. At about 6 a.m. a personnel of Forensic Laboratory Bhilai and photographer reached the spot. On completion of the proceedings by these people, Sub Inspector G.N. Dube (PWN 80) drew up a seizure memo of the articles found in the room of Niyogi.

42. It is clear from the paras 4 and 5 of the deposition of Sub Inspector G.N. Dube (PWN 80) that he had seized one mosquito net of military colour with a big hole in its corner, wads of cartridge (packing, a round paper of which bears in English L.G.), 2 pieces of the cork of the packing, burnt pieces of the mosquito net which were smelling of gun powder, a round piece of plastic, a round piece (of paper) bearing blood stains, one bottle of Amritanjan, one Key brand match box, one packet of Charms cigarettes containing four cigarettes, one pillow bearing blood stains, one bed sheet bearing blood stains on the head side, one

mattress bearing blood stains, one pair of hawai slippers and all the sweepings of the room. This witness indentified all the seized articles and stated that these were the same articles that he had seized.

43. The defence counsel have argued that one book was said to be lying on the bed of Niyogi and that one attache case was also lying in the room but the Sub Inspector G.N. Dube (PWN 80) has not shown these articles as seized in his seizure memo (Ex.P.157). If for any reason these two articles were not seized nevertheless It does not make different to the fact that Niyogi was shot dead. Mere non seizure of these two articles does not cast any doubt on the case of prosecution.

44. Dr. B.P. Maithil (PWN 84), the Senior Scientific Officer of Forensic Laboratory (Mobile unit, Bhilai) was informed of the crime at around 4.50 a.m. on the same day by the police control room. Dr. Maithil (PWN 84) reached the quarter no. MIG 1/55 at about 5.30 a.m. By that time Niyogi had been removed to Sector 9 hospital Bhilai. The rest of the scene of the incident was in its original condition. Dr. Maithil (PWN 84) inspected the scene of crime and found that it was an MIG type of quarter, on its right side there were one door and 4 windows. In the front there is one courtyard and a gate. As per photograph no. 1, the window no. 2 from the left side was found open in the night. This window was fitted with iron rods and a curtain. These rods were fitted horizontally. Niyogi was said to have been sleeping in the left side room of the quarter. There were plants and trees etc. in the centre of the courtyard facing the window no. 2. The height of the courtyard in front was 3 1/2 feet. From there one could easily reach the window. In this context one important fact that was detected was that one edge of the inside of the courtyard just in front of the said window was found clear of cobwebs etc. whereas the other edge was still having cobwebs on it even after incident. It can be infered from this that some person had jumped over to enter from that side which was cleared of cobwebs.

45. Dr. B.P. Maithil (PWN 84) further says that on inspection inside the window of the room where Niyogi was sleeping he found a wall on the left side of that window and one the left side a wooden bed was placed right next to the window. A military coloured said mosquito net was fixed on the bed. In the lower corner of the mosquito net towards the left side of the window at one place there was a star like burn and torn portion of 5 inch by 5 inch area. This is shown in the form of photograph no. 11 on whose corner there appears to be dark spot of one inch width. From the photographs no. 2, 3, 4, & 5 blood and wads of cartridge etc. as seen on the bed through the burnt portion of the mosquito net. The distance of the mosquito net from the left side of window must be about 6 inches and that of the central point of the pillow of Niyogi from the wall would be about 1.8 feet. The inside of that room had been very closely inspected by doctor B.P. Maithil (PWN 84). On removing the mosquito net and inspecting the bed he found that blood had been discharged in large quantity on the right side of the pillow 8 inches away from the wall and 1.6 inches below the bed, as is seen in photograph no.6. At the same place 2 blood stained wads with were found. Further below more wads of brown paper & packing material of cartridges

were found out of which L.G. L.G. L.G were marked on a round piece of paper. A round piece of plastic and other pieces were found in the rear portion of the bed as shown in the photograph no.7, 8, 9 & 10. And on inspecting the inside of the mosquito net burnt pieces of the mosquito net were found stuck. Some pieces were also found scattered on the bed. Wads & its pieces were found scattered on the right side of the bed i.e. behind Niyogi & upto the length of the feet. There was no sign of the wads or the bullet crossing the mosquito net. The height of the hole made in the mosquito net was found to be around 3.1 feet from the floor of the room. The distance from the right corner of the window diagonally to the hole was found to be 2.10 ft. Dr. B.P.Maithil (PWN 84) conducted preliminary examination at the scene of occurrence as follows:

(1) Nitrite test: This test was found to be positive around the burnt portion of the mosquito net, western wall and book (book kept between the pillow and wall).

(2) Lead Test: It was found to be positive on the scattered pieces of mosquito net.

(3) Benzadine Test: It was found positive for the blood spilt over the bed.

46. With a view to examine the injuries sustained by the body of the deceased Niyogi, Dr. B.P. Maithil, (PWN 84) went to the mortuary situated at Durg along with a photographer and van of Forensic Laboratory. He instructed the photographer to take photographs of the deceased which are numbered as photo no. 12 to 16. The photograph of the wounds caused by the pellets on the left side shoulder of the deceased was taken and it was found that these pellets have scattered in a triangular form. The diameter of the region in which pellets had scattered was 6 cms. Tattooing marks were found near the wounds. He advised the investigator that the pellets extracted during the postmortem be kept in safe condition and skin surrounding the pellet wounds also be kept safely. Viscera of the deceased also be preserved safely. Doctor B.P. Maithil searched for any possible foot prints, finger impressions or signs of any implement on the spot of occurrence but he could not trace any such marks. Dr. Mainthil advised the investigator to seize the following articles for examination:

1. Mosquito net, in which a star shaped hole which is surrounded by blackish marks has been formed due to firing.
2. Wads and their pieces lying on the bed.
3. Small pieces of mosquito net which got scattered during firing.
4. Clothes stained with blood for examination.

47. Dr. B.P. Maithil (PWN 84) advised the investigator that after postmortem the articles seized from the deceased be sent to Forensic Laboratory Sagar, for examination. Ballistic expert from Forensic Laboratory Sagar, be called for reconstruction of the site of the incident and to determine the range and line of fire. In case, during the investigation blank cartridges or a weapon are recovered from a suspected criminal it be got examined at Forensic Laboratory, Sagar.

48. Dr. B.P. Maithil (PWN-84) after inspection and examinations, immediately

made rough notes and got them typed later on. His report is Ex-P. 200 duly signed by him from A to A.

49. Dr. B.P. Maithil (PWN-84) after inspecting the spot himself preped the map of the site of incident which is Ex-P-188. This map has been drawn on the scale of one foot equal to half an inch. Ex.P.188 is the room of the site of the incident. In this map the position of the window has been shown separately. The hole in the mosquito net has been shown separately in the form of a star. The height of the room was 9 ft. width of the room was 10 ft. 1inch and length 9.9 ft. There were two windows in the room. Height of both the windows was 3 ft. 6 inches and width 2 ft. 7 inches. The distance between the lower most rod of window and the window frame was 5 inches. The distance between the 3rd and 4th rod from below was 3 inches. Window No.1 was open whereas window no. 2 was shut. The length, width and height of the wooden bed was 6 ft., 4 ft., and 2 ft. respectively.

50. Dr.B.P. Maithil has in para-8 of his statement stated that the distance between the floor of the room to the hole made in the mosquito net was 3 ft. 1 inch. The distance between the hole in the mosquito net to the mattress spread on the bed was 1 foot. The height of the window from the floor of the room was 3.5 ft. The distance between the western wall and the hole in the mosquito net was 2 ft. 10 inches. Diagonal length between the hole in the mosquito net and window (Window No.1) was 2ft. 10 inches. The width and height of the door on the eastern side of the room were 2 ft. 6 inches and 6 ft. 8 inches respectively. The distance between the pillow and western wall was 1 ft. 8 inches. The distance between the blood and southern end of the bed was 1 ft 6 inches. The distance between the blood spot and the western corner of the bed was 8 inches. Dispersion of blood in west-east direction was 8 inches in length which has been shown as dark spot in the map. Wads were lying there. Light dots shown in the map are of other pieces of papers. The hole in the mosquito net has been shown in the south-west corner. The pillow was in the southern direction of the bed. The book was on the south-western corner. The packet of cigarettes was on the south-western corner of the bed. The distance between the bed and the nothern wall was 11 inches and from southern wall it was at a distance of 3 ft. The bed was placed against the western wall. Dr. Maithil has by mistake shown north as south and south as north, similarly, he has shown east as west and west as east. This mistake is in good faith and has not been challenged in the cross examination.

51. Dr. B. P. Maithil (PWN-84) has in his judicial statment exhibited the following:

Photo No.1 as Ex.-P. 201 and negative P- 201 A.; Photo No. 2 as P. 202, negative as P- 202 A; Photo No. 3 as P-203, negative as P-203 A.; Photo No.4 as P-204, negative as P- 204 A; Photo No. 5 as P-205, negative as P- 205 A; Photo No. 6 as P. 206, negative as P- 206 A; Photo No. 7 as P- 207, negative as P. 207 A; Photo No.8 as P- 208, negative as P- 208 A; Photo No. 9 as P. 209, negative as 209 A; Photo No. 10 as P - 210, negative as P. 201 A; Photo No. 11 as P- 211, negative as P- 211 A; Photo No. 12 as P. 192, negative P- 192 A; and Photos No.

13 to 16 as P-212 to P- 215 respectively and their negatives as P- 212 A to P- 215 A respectively.

52. The Defence has objected to report of Dr. B.P. Maithil (PWN- 84) mainly on the ground that this has been prepared late and therefore, it is doubtful. Dr. Maithil has in para- 9 of his cross-examination clarified that he had despatched the report on 30.10.91. During the inspection of the spot of the incident, he had made rough notes which he has brought today with him. Five days delay in the report is due to typing and despatching work etc. as well as involvement in inspection of the site of the incident. It is worth keeping in mind that Dr. Maithil is the only Officer in the mobile unit of science lab and he has to do all the jobs himself. Dr. Maithil (PWN-84) has prepared the report very extensively. Looking to the nature of this inspection report, if on the basis of rough notes, preparation of fair report and its despatch took 4 to 5 days, it can be said to be a reasonable time. This report is neither delayed nor doubtful.

53. Sr. Joint Director and ballistic expert Mr. J.P. Nigam (PWN-78) of Forensic Laboratory Sagar was called by Police Superintendent Durg through a wireless message. On 4.10.91 Mr. J.P. Nigam visited Qtr.No.MIG-1/55, HUDCO, Bhilai. After inspecting it, he took photographs from different angles, studied the post-mortem report of the deceased (Ex-P.176) and after opening the sealed packet, he inspected the mosquito net, bed sheet, wads and half burnt pieces of mosquito net. This expert witness reconstructed the crime spot once more.

54. It is clear from the statement of J.P. Nigam (PWN-78) that as shown in photograph no. 4 (Ex.P.183 and 184) the height of the window of that room where deceased Niyogi was sleeping, from the ground level was 3 ft. 5 inch. Eight rods of iron were fixed horizontally in this window. The gap between the lower woden frame of the window and the first rod from below was 5 inches and the gap between the rest of the rods was 4 inches. In view of above, this inference can be drawn that any person outside can put his hand inside from the rod of that window. Similarly, it is also clear that a man of even less than average height could fire from the outside window onto that bed where Niyogi was sleeping.

55. J.P. Nigam (PWN-78) has in para 10 of his statement clearly given the opinion that the injuries sustained by deceased Niyogi are gun shot wounds which can be caused by firing cartridge from a 12 bore country made pistol. This expert witness had also given the opinion that the distance from the muzzle end was around 2 ft. and the direction of firing the shot would have been diagonal and slightly downwards. Since the height of the bed on which Niyogi was sleeping is 2 ft., on firing from the window W-1 the line of fire would be diagonal and a little downwards as the expert witness has stated in para-10 of his statement. Thus, this opinion of Shri J.P. Nigam (PWN-78) appears to be correct that the deceased was fired at from the window.

56. J.P. Nigam (PWN 78) has in para-5 to 26 of his statement stated the reasons for this opinion, the gist of which is as follows:

1. When Dr. J.P. Nigam (PWN 78) put a dummy in place of the deceased

and drew the line of fire from the centre of the pellet wounds on the left side of the back of the deceased (entry wounds) passing through the centre portion of the hole in the mosquito net, the line of fire extends between the edge of the wooden frame of the window and the lower rod. Therefore, the fire arm must have been in this line of fire outside the mosquito net near the hole. Photo No. 5 (Ex.P-184) and Negative- P (84/A) show the distance from between the lower frame of the window and the 1st rod to the hole in the mosquito net.

2. In photo No. 6 (Ex.- P.185 - negative P. 185/A) by placing the dummy in place of the deceased, the line of fire has been shown extended from the centre of the pellet wounds (entry wounds) situated on the left upper side of the back to (the centre of) the hole in the mosquito net.

3. In photo No. 7 (Ex. P. 186- Negative Ex. P. 186 A) line of fire has again been shown from the window to the centre of the hole in the mosquito net to the centre of the pellet wounds on the left (upper) side of the back of the deceased using a dummy.

4. On the basis of the presence of nitrate in the burnt edges around the hole of the mosquito net and the blackishness on the outer surface, it could be said that these are gun shot wounds. From this the distance of the front end of the muzzle must have been less than 6 inches. The distance between the hole in the mosquito net and the pellet wounds (entry wound) of the deceased was about 1 ft. and 6 inches. Accordingly the distance between the front end of the muzzle and the target (deceased) must have been about 2 ft.

5. According to the postmortem report, the maximum dispersion of 6 pellets in the body could be 6 cms. (2.3. inches) and the 3 superficial injuries could be caused by wads. There was tattooing around the entry wounds. One over-shot wad of LG cartridge (12 bore) and other wads or its pieces were found scattered here and there on the left side of the bedding of the deceased. On preliminary examination, they were found to be portions of the wads of 12 bore cartridges (LG). Pellets were probably of 12 bore LG cartridges.

6. Ex- P 187 is the report of J.P. Nigam (PWN 78) which was sent to Police Superintendent Durg along with photographs nos. 1 to 7 and the map of the site of occurrence (Ex. P-188).

57. On 10.10.91 SP Durg sent the following articles for examination to Forensic Laboratory, Sagar vide letter Ex. P. 189.

1. Article:- A mosquito net marked as Ex- C-1.

2. Article- B: 6 wads marked as Exhibit W-1 to W-6. Wads kept in the court are Article-E, and J and K. These are the same wads which were brought to him for examination and on the sheets there are his markings and signatures.

3. With Article-B there is a small piece of mosquito net which has been marked as C-1 A and has been marked in the court as Article-I. This was also brought to him for examination and which also bears his markings and signatures.

4. Article-C is a bed sheet which has been marked as Ex-C and in the court it

has been marked as Article-S.

5. Article- D is a white vest which has been marked C-2 and which has been marked as Article B in the court.

6. Article-E are three pellets marked as Ex P-1 to P-3. The court has marked them as Article-R.

(No. 4 to 6 are those items which were brought to him for examination on which his markings and signatures appear. His markings and signature are not on the pellets of Article-R but on the paper in which they are wrapped.)

7. Article-F is a piece of skin marked as Ex. SK-1.

8. Article-T is the same piece and bottle which was examined by him. The pillow cover U is the same which was brought to him for examination which he marked as Article-G and on which his markings and signatures are there.

58. After examining the above exhibits, Dr. J.P. Nigam (PWN 78) found the following facts:

1. Ex - C1 is a military coloured mosquito net of around 4 ft x 6 ft. 2 inches x 4 ft. In one of the corner there is a hole 17 inches from the bottom. It has been encircled and marked as H-1. Its dimensions are about 5"x5". This hole is of a star-like shape. On the outer surface of this hole blackening is present. On the edge of this hole lead test was found to be positive and on the black portion nitrite test was found positive. Marks of burning were found on the margins.

2. Ex. C2 is a cotton half sleeved vest on which blood like stains were present. On the left side of the back of the vest near the shoulder there are three holes. They have been encircled and marked as H-1. The dimensions of these holes are .3 inches x .4 inches, 1 inch x 1 inch and 1 inch x .5 inches respectively. Lead tests on the edges of these holes were found to be positive. The maximum distance between these holes was 2.5 inches, Blackening was found absent from around the edges of these holes but very small pin holes were found.

3. SK-1 was a piece of skin whose dimensions were 3.5 inches x 2.5 inches. It was in a shrunken condition and there were six holes of .2 inches x .2 inches size. Lead test was from positive on these holes. Round black marks of abrasion were found around these holes. Burning and blackening were not found. Spread of the holes was about 2.5 inches x 2.5 inches.

4. Article-C was a white-red coloured bed sheet in which no gun shot hole was found but blood like stains were found.

5. Article-G was a pillow cover with red and yellow stripes. There was no gun shot hole in this but blood like stains were found.

6. Article-P1 to P3 were round partially deformed pellets of lead whose gross weight was 11.661 gms. and average weight was like that of standard LG pellets.

7. Article-W-1 to W-6, Ex.P. W-1 to W-2 are round overshot paper-wads on which LG is printed. On Article-E which is submitted in the court, LG is printed and there is a round plastic wad piece and round card- board wad of 0.73 inch

diameter. This is the overshot wad of 12 bore cartridge.

In Article W-3 and W-4 there are partially deformed portions of two cardboard cushion wads. Their diameter is around 0.741 inches and total thickness is 0.475 inches. This is the cushion-wad of 12 bore cartridge. W-5 is the round cardboard wad whose diameter is about 0.73 inch and thickness is 0.12 inch. Ex.-W-6 is round cardboard wad whose diameter is 0.73 inch. W-5 and W-6 should be undershot or over-powdred wads. Nitrite examination on all these wads was found to be positive. Ex.C-1 is a piece of military coloured mosquito net. Its dimensions are 1"x1". Marks of blackning and burns were found on this. Lead test and nitrite test were found to be positive.

On the basis of the above examination, J.P. Nigam (PWN 78) has given the opinion that W-1 to W-6 are the wads and parts thereof of fired cartridges of 12 bore. Among these the over-shot wads are of LG pellet cartridges. Ex-P1 to P3 are partially deformed lead pellets whose average weight is equal to standard LG pellets which have been fired by some smooth bore weapon. The hole found on military coloured mosquito net (H-1) is a gun shot hole which has been created on being hit by a lead projectile. This is possible with pellets such as Ex.P-1 to P-3. On the basis of the shape of hole H-1, blackening around it and burn marks on the margin, it can be said that its distance from the muzzle end of the firearm must have been within the range of 6 inches. Similarly, the hole found on the vest of the deceased (Ex.C-2) is a gun shot hole which has been made by a lead projectile. This hole could also have been made by pellets as in Ex.P-1 to P-3. The six gun shot wounds on the skin of the deceased have also been caused by the pellets as in Ex. P-1 to P-3.

59. On the basis of the presence of tattooing around the gun shot wounds on the body of deceased in the postmortem report, hole H-1 created in the mosquito net, the distance between the barrel and the hole being less than 6 inches and dispersion of the pellets on the body of the deceased being around 2.3 inches, it can be said that the wounds sustained by the deceased are likely to have been caused by firing a short-barrelled weapon/12 bore pistol from the a distance of around 2 ft.

60. The report prepared by J.P. Nigam (PWN 78) after investigations is Ex.P.-190 and he has signed in every page of it. This report was sent to SP Durg by the Director of Forensic Lab Sagar. The covering letter of the Director is Ex.P.-191. All the articles examined by J.P. Nigam (PWN 78) were returned to SP Durg under the seal of the Forensic Lab Sagar.

61. When J.P. Nigam (PWN 78) had inspected the site of the incident on 4.10.91, the articles mentioned in the site inspection report were produced before in him in sealed condition. He opened those articles for examination. On completion of the work, he sealed all these articles. When he received the articles in the Forensic Lab Sagar, all were in sealed condition.

62. When in the first week of November 1991, CBI took up the investigation, they requested the ballistic expert of Central Forensic Lab, New Delhi, Roop Singh (PWN 159) to give his expert opinion, after inspecting the site of the

incident. Roop Singh (PWN 159) came to Bhilai and inspected the site of the crime MIG- 1/55, Hudco, from 9.11.91 to 12.11.91. He reconstructed the site of the crime. On the basis of site inspection, report of Forensic Lab, Sagar and photographs, he gave the following opinion:

1. If a 12 bore LG cartridge is fired by a standard 12 bore gun manufactured in a factory, then at a distance of 2 ft. all the pellets and wads would create one hole and its diameter would be equal to 1 inch.

2. When 12 cartridges each of 12 bore LG were fired from the right barrel of a standard 12 bore double barrel gun manufactured at Indian Ordnance factory, from the distance of 5 metres, 10 metres and 15 metres, the dispersion of pellets was found to be 5.52 cm, 10.58 cm and 20.07 cm respectively.

3. From the dispersion of the 6 pellets in the body of the deceased Shankar Guha Niyogi stated to be 2 inches x 2.5 inches by the Doctor who performed the postmortem, and from the burnt edges and blackening around the 5 inch x 5 inch star shaped hole in the mosquito net, it can be said that the firing was from a 12 bore country made pistol at close range. The report of Roop Singh (PWN-159) is Ex.P.396.

63. Senior Medical Officer, Dr. Chandra Sekhar Ghosh (PWN 73) was on duty Sector-9 Hospital of Bhilai during the night of 27/28.9.91. At about 4.00 a.m. Shankar Guha Niyogi was brought to the hospital. On examining him, Dr. Chandra Shekhar Ghosh (PWN 73) found that Shankar Guha Niyogi had died. From the evidence deposed in the case, it can be presumed that when Shankar Guha Niyogi was being shifted in a wounded state from quarter No. MIG-1/55, Bhilai to Sector-9 Hospital, he died on the way. Dr. Ghosh (PWN 73) prepared bed head form (Ex.P.173) and thereafter, after duly filling in the form (P.174) informed Police Station Bhilai Nagar.

64. It appears from the statement of Dr. Ghosh (PWN 73) that during this time, a large number of persons had assembled at the Sector-9 Hospital. Keeping in mind the sensitiveness of the situation, Doctor Ghose (PWN-73) did not declare Shankar Guha Niyogi dead immediately. On the contrary, using discretion his corpse was taken and kept in the intensive care unit.

65. On 28.9.91 at about 10.20 am in the morning, Police requested the District Hospital Durg for the postmortem of deceased Shankar Guha Niyogi. A team of doctors- Dr.V.R. Meshram (PWN-75) , Dr. M.C. Mohnot and Dr. A.D. Uргаonkar started the postmortem at about 10.30 am. From the statement of Dr. V.R. Meshram (PWN 75) it appears that they were six entry wounds due to shooting on the left shoulder of the deceased. During postmortem three pellets were found in the chest (Thoracic Cavity) (left) of the deceased. There was no sign of any bullet passing through the body of the deceased (Exit Wound). Dr. Meshram (PWN 75) has stated that the remaining 3 pellets could not be traced out during postmortem as they might have remained somewhere in the muscles of the body of the deceased.

66. Dr. V.R. Meshram (PWN 75) has in para 15 of his statement said that all

the injuries found in the body of the deceased were caused by some fire arm immediately before the death. The cause of the death of the deceased was blood secretion and shock which was caused due to gun-shot injuries. The said injuries were sufficient to cause death in ordinary course of nature. Death of the deceased was within 24 hrs. of the postmortem.

67. It is correct to say that no X-ray was done to locate those pellets which could not be extracted out during postmortem. This fact can be determined judicially that the mortuary where the postmortem of the body of the deceased was carried out is far away from the District Hospital Durg and there is no facility for X-ray or other apparatus there. There is no dispute anywhere on the fact that the cause of the death of the deceased was gun shots. On behalf of the Prosecution it has been said, which forms the part of evidence as well, that after the death of labour leader Shankar Guha Niyogi, the situation of Law and Order had become very serious and sensitive. Therefore, if no X-ray was taken, after postmortem or during it, it hardly matters. The Hon'ble Supreme Court has, in Kehar Singh & Others Vs. Delhi Administration (1989-1 Cr. LJ Page-1), held that where it is undisputed that the deceased died of gunshot injury, even if no extensive postmortem is done, it does not affect the case.

68. Dr. V.R. Meshram (PWN-75) has in para-31 of his cross-examination said that both hands and legs of the deceased has stiffened and therefore, his death must have been within 12 hrs. of postmortem. In this way, the Doctor has further clarified that the death of the deceased took place between 10.30 pm on 27.9.91 to 10.30 am on 28.9.91. Thus, the postmortem report P.176 of Dr. Meshram (PWN 75) and timing given by him of the death of the deceased Shakar Guha Niyogi fully corroborates the timings described by Bahalram (PWN 64).

69. Dr. V.R. Meshram (PWN-75) has in para-16 and 17 of his statement stated that 3 pellets found in the body of the deceased and the pieces of skin were sealed and sent to the police with the advice that they be examined by a ballistic expert. Sub-Inspector, R.K. Mishra (PWN 77) received 3 sealed bottles from the District Hospital, Durg through the Doctor and he handed them over to Dy. Supdt. of Police (M.G. Agrawal PWN-182).

70. Thus, from the statements of Bahalram (PWN 64) Patwari Sant Kumar (PWN 79), and those of Sr. Scientific Officer Dr. B.P. Maithil (PWN 84) who reached the spot immediately after the incident and Sub- Inspector G.N. Dubey (PWN 80); and from the articles seized from quarter No. MIG- 1/55, it is proved beyond reasonable doubt that during the night of 27/28.9.91 when Shankar Guha Niyogi was sleeping on the wooden bed, some person shot him dead by firing from the window. This fact is confirmed by the postmortem report of Dr. V.R. Meshram, that the death of the deceased was caused by gunshot injury. This fact is further confirmed by the statement of the ballistic experts JP Nigam (PWN 78) and Roop Singh (PWN 159) who reconstructed the site of the crime and submitted their report that Niyogi was murdered by a LG cartridge being fired from a country pistol.

71. The murderer of Niyogi chose the time for crime between 3 am to 4 am.

Normally at that time a person sleeps in deep sleep. That time there is no human or vehicular traffic. Thus after committing the crime, there is the least possibility of being caught while running away. Thus the person whoever committed this crime, was determined to kill Niyogi and while he was sleeping, he fired shots from a country pistol loaded with L.G. cartridges from the window. Thus he fulfilled his aim and was successful in running away in the desolate night.

72. At that time the murder could be seen but the murderer could not be traced.

73. After all, this was a case of mysterious murder of a labour leader of national stature. According to Dy. Supdt. Police, R.S. Prasad (PWN 192) on the consent of Govt. of Madhya Pradesh, the Central Govt. handed over this case to CBI New Delhi on 6.11.91, for investigation. This has been registered as F.I.R. in S.I.C. 2 wing shown as Ex.P. 443. After investigation, this chargesheet was submitted in regard to abscondence of the main accused Paltan. C.B.I. had declared an award of Rs. 1.00 lakh to any person who informed them about the accused Paltan. Poster photos (Ex-P-444) of accused Paltan were displayed in various cities in the country. Besides this, in newspapers, radio and television, the news of accused Paltan's abscondence was being published/ broadcasted.

(2) WHO KILLED:

(1) Arrest of Paltan on 21.8.93 and on the basis of his memo statement, seizure of a country made pistol, American Revolver, two L.G. Cartridges and other cartridges, and a motor cycle.

74. Incharge, Police Station, Gorakhpur Cantt. (Uttar Pradesh) Umesh Chandra Mishra (PW 125) has in his statement, stated that on 21.8.93, Master Warrant of Indian Air Force, Suresh Sharma arrested accused Paltan Mallah by the name of Sanjay Yadav and the said officer of the Air Force handed over the accused to his Police Station. Cases under the Arms Act and Official Secrets Act had been registered against accused Paltan Mallah. On intensive enquiry, it was revealed that man who has been arrested by the name of Sanjay Yadav is, in reality, the accused Paltan Mallah.

75. Defence Counsel Advocate Mr. Ashok Yadav has during the cross-examination of Umesh Chandra Mishra (PW No. 125) presented Ex D.-45. From the perusal of this document, it is clear that Master Warrant Suresh Sharma had arrested Paltan Mallah by the name of Sanjay Yadav and seizure was carried out in this name only. Persusal of this document reveals that the accused has signed as Ravi alias Paltan Mallah. Umesh Chandra Mishra (PW-125) has clarified that at the initial stage, he did not know that the real name of the person arrested by the name of Sanjay Yadav is, accused Paltan Mallah. Police Officials note down the name of a person/ accused as is told to them by the person/ accused. It is not necessary for the Police Officer to observe minutely at the initial stages as to how the person/accused is signing. Even Paltan Mallah has not opposed at the time of cross examination that he had also admitted in the accused statement that an Air Force Officer had arrested him.

Thus, in view of the evidence, it can be easily concluded that accused Paltan had, at the time of arrest, and at the time of seizure proceedings under Arms Act and Official Secret Act, stated his name as Sanjay Yadav but after intensive enquiry of Umesh Chandra Mishra (PW 125) his real name Paltan Mallah was exposed. It appears that accused Paltan Mallah had encroached upon the prohibited land of Indian Air Force in Gorakhpur. It was due to this reason that the Indian Air Force Officer Suresh Sharma had taken action against him and handed him over to Gorakhpur Police Station (Cantt.).

✓ 76. Incharge Police Station, Umesh Chandra Mishra (PW No. 125) has stated that he came to know from newspapers that accused Paltan Mallah was being searched for in connection with the murder of a labour leader Shankar Guha Niyogi. He presented a remand application before the Court at Gorakhpur on 26.8.93 and the Court granted three days Police remand of the accused Paltan Mallah.

✓ 77. Incharge, Police Station, Umesh Chandra Mishra (PWN 125) further says that on 24.8.93 he interrogated Paltan further in presence of Dinesh Baloni (PWN 104) and witness Ram Bahadur Singh. Accused Paltan Mallah said that "He has buried one country made pistol, a foreign revolver, and a cloth belt with 13 cartridges in which there are two L.G. Cartridges and 6 other cartridges of 12 bore. He has packed these in a polythene bag, wrapped them in a plastic sheet, and tied them with a twine. He has buried the above in a land about one Km. away from the house of his father. He agreed to get the articles seized. Accused Paltan Mallah also said that he has kept a Suzuki Motor Cycle at the house of Satyaprakash who is his cousin brother-in-law's younger brother in village Chainpur, Police Station Badhalganj. He will get the same seized.

✓ 78. Incharge, Police Station, Umesh Chandra Mishra (PWN 125) told the court other statements made by the accused but since such statements fell under the category of confession, therefore, they were not admissible and the Court had not noted the same.

✓ 79. According to Incharge, Police Station, Umesh Chandra Mishra (PWN-125) after the about information was divulged by the accused Paltan, he (Mishra) accompanied by Dinesh Baloni (PWN 104), witness Ram Bahadur and Police Staff left for village Nibahi at about 12.30 in a Govt. Jeep No. U.M.B. 4504 and a private jeep. The statement given by the accused Paltan had been written by him at the Police Station. When they reached near village Nibahi, the accused Paltan Mallah asked to stop the jeep and after getting down, told that he would lead them to his father's house. Accused Paltan started walking ahead and the rest followed him. On the way, they met a man by the name of Farukh Mirza Baig and after explaining him the reason, they took him with them. It is a admitted fact that Farukha Mirza Baig is a bonafide resident of village Nibahi. On behalf of the accused persons, it has been stated that there were some civil disputes between Farukh Mirza Baig and accused Paltan Mallah's father.

✓ 80. According to Umesh Chandra Mishra (PWN 125) while walking ahead, the accused Paltan Mallah took them to his father's house and after reaching the

northern wall of the house, he told that this is the place where he had kept those articles after digging a hole. With the help of a Khurpi, lying nearby, he dug the earth and took out a bundle wrapped in a plastic sheet. After opening the bundle, Paltan Mallah took out a country-made revolver from a polythene bag and handed it over. After this, the accused handed over a foreign revolver, belt with 13 cartridges which included two L.G. Cartridges, six other. 38 bore cartridges from the same bag. Incharge Police Station noted down the description of all the articles in the roll (Pard). All these articles were kept in the same polythene bag and after wrapping it with the plastic sheet, it was sealed in a cloth. A sample seal was made. After writing the roll (Pard) on the spot, it was read over to the witnesses and thereafter their signatures were obtained and a copy of the Pard was given to the accused against his signature. Ex.P. 285 is in the writing of Incharge, Police Station and his signature is on portion E to E, and under it he has mentioned the time 16.05 (i.e. 4.05 pm).

In this seizure memo (Pard) Dinesh Baloni (PWN 104) has signed in portion A to A. Witness Ram Bahadur, Mirza Faruq Baig and the accused Paltan have signed in portion B to B, portion C to C and portion D to D respectively. Staff of the police department who had accompanied them has also put up their signatures in the seizure memo (Pard).

✓ 81. Police Inspector, Umesh Chandra Mishra (PWN 125) and Dinesh Baloni (PWN 104) have in para-6 and 5 respectively of their statements stated that accused Paltan Mallah present in the court is the person who had given the statement, on the basis of which the above mentioned articles were recovered from village Nibahi.

✓ 82. Umesh Chandra Mishra (PWN 125) has further stated in para-7 of his statement that after completing the aforesaid procedure, he left for village Chainpur, Belsadi, Police Station Badhalganj from village Nibahi in two jeeps. On reaching village Chainpur, the accused Paltan asked to stop the jeep and after getting down said that he would take them on foot to the house of Satya Prakash (PWN-105) where he has hidden a TVS Suzuki Motor Cycle. The accused walked ahead and the rest followed him. On reaching the house of Satya Prakash (PWN 105) they stopped. The accused showed a red-coloured motor cycle which was kept in a room on the western side of the Satya Prakash's house. There was no air in both the wheels of the motor cycle and it was covered with dust. With the help of the staff the motor cycle was taken out of the house of Satya Prakash (PWN 105). There was no number plate on the motor cycle. Its chassis and engine numbers had also been erased. There was no petrol in the tank and the motor cycle was not in running condition. He seized the motor cycle in presence of the witnesses and obtained their signatures. He also took the signature of accused Paltan Mallah and gave a copy to him. Ex.P-287 is the Pard (seizure memo) wherein his signatures appear in portion E to E. He has mentioned the timing under the signature as 18.15 (i.e. 6.15 pm). Signaturers of Dinesh Baloni (PWN 104), Ram Bihari Singh, Satya Prakash (PWN 105) and Paltan have been affixed in portions A to A, B to B, D to D and F to F respectively.

✓83. The aforesaid Umesh Chandra Mishra (PWN 125) after completing the above said proceedings returned to Police Station Cantt. with the seized articles, accused and witnesses and put the procedure in writing. It was 8.00 pm when they reached Police Station Gorakhpur Cantt.

84. Umesh Chandra Mishra (PWN 125) has in para-9 of the statement, recognised before the court the following articles. 12 Cartridges in a cloth belt (Note-1 cartridge has been used for firing) X-1, country-made pistol X-2, a foreign revolver X-3, .38 bore cartridges X-4, plastic sheet X-5, second plastic sheet X-8 and red-coloured Suzuki Motor cycle X-7. This witness has exhibited the tested cartridge as article X-5 and the bag in which the articles were sealed as X-9. His writing and signature appear in portion A to A. The cloth bag is sealed with a seal (P.R. Rai) in the name of Constable clerk Parshuram Rai of Police Station Gorakhpur Cantt. Umesh Chandra Mishra has stated that he had affixed this seal at the house in village Nibahi.

✓85. The prevalent practice in M.P. Police is that under Section 27 of Evidence Act., the memo statement of the accused and the seizure memo are written separately, but from the statement of Umesh Chandra Mishra (PWN 125) it appears that in Uttar Pradesh the investigating officer follows the practice of preparing only one document for the memo statement and seizure letter. There is no written provision in Law that a memo statement of the accused and seizure memo should be prepared on separate sheets of paper. This pertains less to questions of law and concerns more with convenience and practice. The investigator of any State adopts the procedure which is more convenient to him. Thus, the procedure adopted by the Police of Uttar Pradesh of writing memo statement and seizure memo is not against any rule.

✓86. Umesh Chandra Mishra (PWN 125) has in para 11 of his cross examination stated that when on 22.8.93 he had applied for the remand of Paltan Mallah at a court in Gorakhpur, Ashok Tadiyal and Sudama Prasad of CBI had come but in further cross examination in para-15, this witness has emphatically said that being a Police Officer, it was his bounden duty to interrogate accused Paltan and prompted by the urge of his duty, he had interrogated accused Paltan.

✓87. Counsel for Defence has pleaded that when the crime was already registered u/s 302 of Cr.P.C. with CBI, it was expected of Umesh Chandra Mishra (PWN 125) that instead of taking the memo statement of the accused Paltan under Section 27 of the Evidence Act, he ought to have handed him over to CBI. The question here is, whether the recording of the memo statement of accused Paltan Mallah u/s 27 of Evidence Act by Umesh Chandra Mishra (PWN 125) is contrary to the law?

88. It has already been established in the preceding paragraphs that on 21.8.93, Paltan Mallah had encroached upon the prohibited area of Indian Air Force. He gave a false name of Sanjay Yadav. The Officer of Indian Air Force Suresh Sharma had arrested him and handed him over to Gorakhpur Cantt. Police Station. Due to the above illegal act by the accused offences under

Official Secrets Act and Arms Act were registered against him. The accused was initially kept in custody for these offences. Only after intensive investigation by the Incharge, Police Station, Gorakhpur, Umesh Chandra Mishra (PWN 125) this fact was revealed that the person who had been arrested by the name of Sanjay Yadav is in reality the accused Paltan Mallah who is being searched in connection with the murder of labour leader Shanker Guha Niyogi. Only upon this Incharge Police Station, Gorakhpur Cantt., made inquiries from Paltan Mallah about the Niyogi Murder Case and on the basis of information given by him, he wrote the memo statement u/s 27 of the Evidence Act. Hon'ble High Court, Madras, has in the case of Inery Kamakashi Naidu (AIR 1943, Madras 89) held that if an accused is arrested in one case and if he makes a confession about another case, in such a situation where Articles are seized as a result of such confession, such on evidence is admissible u/s 27 of Evidence Act.

89. Similarly, the Hon'ble High Court, Madras has, in another case, Public Prosecutor Vs. Kandikatala Nagbhusanam (AIR 1943 Madras 661) laid down the principle that during investigation if the accused makes confession in some other case, such confession is relevant under section 27 of Evidence Act. It is clear that the procedure adopted by Incharge, Police Station Gorakhpur Cantt., Umesh Chandra Mishra (PWN 125) in respect of recording the memo statement of accused Paltan Mallah and the seizure procedure u/s 27 of Indian Evidence Act is completely legal.

✓90. The learned Counsel for defence Shri Rajendra Singh has argued that in Ex. P. 285 and 286 Umesh Chandra Mishra (PWN 125) has written the whole story of prosecution from which it can be presumed that proceedings conducted by him are fictitious. But this argument cannot be accepted. When any accused gives information about any offence to a Police Officer, it is the bounden duty of the Police Officer to note down the entire statement. It is not discretionary on the part of the police officer as to which portion of the statement has to be accepted or rejected. On the contrary, it is his duty to produce before the Court the entire statement of the accused. Thereafter, it is the duty of the court to adjudge as to which part of the given statement is admissible u/s 27 of Evidence Act and which is inadmissible. Thus, Ex P- 285 and 286 prepared by Umesh Chandra Mishra (PWN 125) cannot be called a fictitious document.

✓ 91. The proceedings conducted by Umesh Chandra Mishra (PWN 125) do not reflect any element of falsehood or fictitiousness.

✓ 92. It is worth mentioning here that he accused Palton Mallah has not cross examined Incharge, Police Station Gorakhpur Cantt., Umesh Chandra Mishra (PWN 125). The cross examination of the said police official done by other accused persons too does not show any element which shows that he was lying. The Defence has also argued that when the earth was dug and a bag recovered at village Nibahi, no mud was found on the bag. In view of the fact that it was in the month of August, which is in the rainy season, therefore, the absence of mud on the bag makes the seizure proceedings doubtful. But there is no evidence to the effect as to how many days prior to the seizure proceedings it rained.

Moreover, there is no evidence to this effect that rain water used to come directly to the seizure spot. Therefore, this defence plea is not worth being accepted.

✓ 93. Dinesh Baloni (PWN 104) is a witness to the memo statement of accused Paltan and the seizure proceedings thereafter (Ex.P. 285 and 286). He imparts practical training to the students of Gorakhpur Engineering College and his designation is Mechanic Grade-A. From Para-9 of his statement, it is revealed that on 24.8.93 a constable came to him and told him that the Incharge, Police Station, is calling him. Before going to the Police Station he sought permission from his Incharge. He reached Gorakhpur Cantt. Police Station at about 10 am. Ram Bihari and accused Paltan Mallah were present there. Incharge Umesh Chandra Mishra (PWN 125) told him that this was accused Paltan Mallah who is a criminal of Niyogi Murder Case. Incharge, Police Station also said that the accused Paltan Mallah desires to give some statement.

94. According to Dinesh Baloni, (PWN 104) Paltan Mallah told that he had kept TVS Suzuki Motor Cycle at the house of Satya Prakash, who is his cousin brother-in-law, at Badhanganj, Police Station, village Chainpur. The accused also said that he had kept the following articles under-ground after digging a hole in the ground in his house in village Nibahi : one country made pistol, 1 foreign revolver, 13 cartridges including 2 LGS and 6 cartridges of .38 bore. All these were packed in plastic bag which he can get seized. The statement given by the accused Paltan Mallah was recorded by Incharge Police Station Umesh Chandra Mishra (PWN 125).

✓ 95. In his statement, Dinesh Baloni, (PWN 104) has told in detail that they, along with the accused Paltan Mallah, first went to village Nibahi in two jeeps. At village Nibahi, the accused Paltan Mallah had dug a hole in a room of his father's house and taken out the articles wrapped in plastic sheet. He clarified that as the accused Paltan was handcuffed at the time, he was not in a position to do the digging work. When he asked the police to open the handcuffs of one hand, the Police opened it. When the plastic sheet which was taken out from the pit by accused Paltan and opened, it contained 1 country made pistol, 1 foreign revolver, 13 cartridges including 2 LGs & 6 bullets of .38 bore. All these 13 cartridges were in a plastic sheet in the cloth belt. Police recorded the seizure on the spot. Accused Paltan Mallah and witnesses signed Ex- 285 at the same time.

96. This witness was shown in the Court (in para-6) 12 cartridges wrapped in a cloth belt (1 cartridge was used for test firing), one country-made pistol, 1 foreign revolver, 6 bullets of .38 bore. This witness said that all these articles had been seized. This witness was shown a polythene in the court and after seeing this the witness confirmed that all these articles had been kept in it. The Court has marked the 12 cartridges wrapped in a cloth belt as X-1, country-made pistol as X-2, foreign revolver as X-3, and bullets of .38 bore as X-4.

✓ 97. Dinesh Baloni, (PWN 104) has further stated that after the above stated proceedings were finished in village Nibahi, they along with the accused Paltan Mallah went to village Chainpur. The distance between village Nibahi and

Chainpur could be about 30 to 40 kilometres. They reached Chainpur at about 5-5.15 pm. On reaching village Chainpur, the accused person Paltan Mallah said that we have reached the house of Satya Prakash (PWN 105) and therefore, he asked to stop the jeeps. The vehicles were stopped. The accused Paltan Mallah started walking ahead and others followed him. The accused Paltan showed the room of Satya Prakash's house where the motor cycle was kept. That room was closed but the witness could not tell whether the room was locked or not. He definitely said that the room was opened. A red coloured Suzuki motor cycle was kept in that room on which there was a lot of dust. There the Incharge Police Station Umesh Chandra Mishra (PWN 125) took the signatures of the witnesses and the accused Paltan Mallah on Ex.P.286. On inspecting the Incharge found that there was no number on the motor cycle. Its chassis number was also erased. After seeing the motor cycle (X-7) produced in the court, this witness confirmed that this was the same motor cycle which was seized from the house of Satya Prakash (PWN 105).

✓ 98. The statement of Dinesh Baloni (PWN 104) has been challenged mainly on the ground that when he came from Uttar Pradesh, to depose he stayed with his friend a CBI Inspector Shri Ashok Tadiyal at Bhilai. But the Court has to evaluate the statement of a witness only on merits not on any technical or irrelevant grounds. Had not Dinesh Baloni (PWN 104) gone to village Nibahi and Chainpur, after the accused Paltan Mallah's memo statement he could not have deposed his statement in such detail and so naturally.

✓ 99. Dinesh Baloni (PWN 104) teaches students in an Engineering College. Looking to the nature of his job, it is not expected of him that he would give a false statement. In his statement, there is sufficient matter to show that he is not a false witness. He has no animosity with Paltan Mallah. Therefore, Dinesh Baloni (PWN 104) cannot be termed as an unreliable witness.

✓ 100. Satya Prakash (PWN 105) is a near relative of the accused Paltan. It was from his house that a red coloured motor cycle with no number was seized on the basis of memo statement of accused Paltan Mallah. On perusal of the statement of the witness, it is clear that once when accused Paltan was going to village Chainpur to meet him on the way, (near Saokhor Crossing), his motor cycle met with an accident. Upon this, this witness took the accused to Badhalganj and got him treated by the doctors there. Accused Paltan Mallah lived for a few days with Shriram Dubey at Badhalganj. Thereafter when the accused Paltan Mallah was planning to leave India and go to Nepal, he left his red coloured motor cycle at his house. This motor cycle had no number. Thus, from the statements of this witness, that of Dinesh Baloni (PWN 104) and of the Incharge Police Station, it is proved beyond doubt that accused Paltan Mallah had given a memo statement in Police Station Gorakhpur Cantt. on 24.8.93 and on the basis of that memo statement one country-made pistol, a foreign revolver, 13 cartridges, which included 2 LG cartridges and six other .38 bore cartridges were seized and from the house of Satyaprakash (PWN 105) at Chainpur, a red coloured Suzuki motor cycle without number was seized whose chassis and engine numbers had been rubbed off.

101. The country-made pistol, a foreign revolver and cartridges had been hidden by the accused Palton Mallah by digging a hole in the house of his father in village Nibahi. This fact was known to the accused Palton Mallah and no other person could have had the knowledge of it. Therefore, the aforesaid seizure is relevant and admissible u/s 27 of Evidence Act.

102. Under the provisions of Evidence Act, confession or information regarding the crime given to any Police Officer by the accused is not relevant u/s 27 of Evidence Act, only that part of the given information is relevant, on the basis of which any article or fact is recovered. The basis of this is that the accused gave information about a fact or article and the information proved to be correct and the fact or article was seized.

✓ 103. On behalf of the Defence this plea has also been advanced that not recording the statements of other witnesses in Ex.P. 285 and 286- Rambihari Singh and Mirza Farooq Baig is fatal for the prosecution. It is necessary to mention here that it is not necessary for the prosecution to examine all its witnesses. If the prosecution gets some witnesses examined and leaves some unexamined, then in that case, the court has to see whether the witnesses who have deposed have proved the facts under question or not. If those facts have been proved, it hardly matters if other witnesses have not been examined on this issue. In this case, the statement of Incharge Police Station Gorakhpur, Cantt. Umesh Chandra Mishra (PWN 125) has been fully corroborated by Dinesh Baloni (PWN 104) and Satya Prakash (PWN 105). Therefore, not getting recorded the statements of Rambihari and Mirza Farooq Baig is not fatal for the prosecution.

104. Hon'ble Supreme Court has, in case of Musamat Dalbir Kaur Vs. State of Punjab (AIR 1977-SC472) while interpreting Section 27 of Evidence Act, held that if on the basis of memo statement of the accused if any article is seized in presence of the a Police Officer and Panch witnesses and if in the court only the statement of the police officer is recorded and that of Panch witnesses is not recorded, it makes no difference to the merits of the case whereas in this case the statement of the Police Officer is corroborated by two independent witnesses. Thus, the memo statement of the accused and the seizure carried out in compliance of it cannot be doubted.

105. Thus it is proved beyond doubt that on the basis of memo statement of the accused Paltan Mallah one countrymade pistol, a foreign revolver, 13 cartridges including 2 LGs and 6 .38 bore cartridges were seized from his house at Nibahi. It is also proved from the memo statement of the accused Paltan Mallah that a red coloured motor cycle was seized from the house of his relative Satya Prakash (PWN 105) in village Chainpur. This motor cycle was without number and its chassis and engine numbers had been erased by rubbing.

106. (2) Report of The Ballistic Expert: Deputy Supdt. of Police of CBI, R.S. Prasad (PWN 192) has in para-14 of his statement stated that after the accused Paltan Mallah was arrested on 24.8.93, he had received from the Incharge P.S. Gorakhpur Cantt. Umesh Chandra Mishra (PWN 125) one 12 bore countrymade pistol, 1 foreign revolver, 13 live cartridges of 12 bore, 6 live cartridges of .38

bore along with the seizure letter. He had received one red coloured Suzuki Motor Cycle, the sample of the seal and photocopy of the Police Diary dated 24.8.93, for which he had prepared a seizure memo which is Ex.P.329. The seizure memos (Pard Baramdgi) prepared by Umesh Chandra Mishra (PWN 125) are Ex.P. 285 and 286. From the statement of R.S. Prasad, (PWN 192) it appears that the country made pistol, foreign revolver and cartridges which he had received from the Incharge Police Station Umesh Chandra Mishra (PWN 125), were sent to ballistic expert of Central Forensic Lab, New Delhi, for examination. The application for the same is Ex.P. 405. Confirming this statement, the ballistic expert of Central Forensic Lab, New Delhi, Roop Singh (PWN 159) has, in para-7 to 11, of statement stated at under:

1. "On 27.8.93, he received from CBI New Delhi a sealed parcel bearing the seal of P.R. Rai. Seals were intact and they matched the sample seal. He marked this parcel as parcel no.5 On opening the parcel, he found the following articles:

(a) One 12 bore country pistol which he marked as W-1.

(b) 13 cartridges of 12 bore which he marked as C-1 to C-13. These were kept in a cloth-belt which contained two LA brand 2 LG cartridges aslo.

(c) One .380 American revolver which he marked as W-2. Its Serial Number appeared to have been rubbed off.

(d) Cartridges of .38 revolver which he marked as C-14 to C-19.

(e) One polythene sheet (piece).

2. One 12 bore LA LG cartridges marked as C-1 and on .38 cartridges marked as C-14 were fired in the laboratory from a 12 bore country made pistol and .380 revolver respectively. The fired empty shells etc. were kept back in the same envelope.

3. After detailed examination in the laboratory he has given the following opinion:

1. The 12 bore countrymade pistol marked as W-1 and .38 revolver marked as W-2 are fire-arms. They are in working condition and they have been fired. No definite time of firing can be stated.

2. The 12 bore pistol marked as W-1 is country made and the .380 revolver marked as W-2 has been made in America.

3. The 13 Cartridges of 12 bore marked as C-1 to C-13 and 6 cartridges of .380 marked as C-14 to C-19 are ammunition and they are live cartridges.

4. The 13 cartridges of 12 bore marked as C-1 to C-13 can be loaded in the country-made 12 bore pistol marked as W-1 and it can be fired.

5. The 6 cartridges of .380 marked as C-14 to C-19 can be loaded in the .380 revolver marked as W-2 and it can be fired.

6. The LG Cartridges of 12 bore can be fired from the country made pistol marked as W-1.

7. Keeping in view the site inspection and the dispersion of the pellets in the body of the deceased and subsequently, on the basis of laboratory examination during which LG cartridges were fired from the 12 bore country made pistol marked W-1 from various distances it can be said that the bullet fired at the deceased would have been from about 2 feet away. This report is Ex. P. 398.

107. During the post-mortem of deceased Shankar Guha Niyogi, three pellets were extracted from the body. These pellets were sent to Forensic Lab, Sagar, and after that they were deposited in the court. Dy. Suptd. of Police CBI R.S. Prasad produced accused Paltan before this court on 7.9.93. The same day CBI submitted an application that these pellets be got examined by Central Forensic Lab, New Delhi. The court accepted this application and on 24.9.93 those 3 pellets were sealed under the seal of the court in a glass bottle which was handed over to Dy. Supdt. of Police, CBI R.S. Prasad (PWN 192). In para 26 of his statement, R.S. Prasad (PWN 192) has deposed that after receiving the aforesaid pellets from the court, he had sent them to the ballistic expert for examination.

108. Ballistic expert Roop Singh (PWN 159) has stated in para-10 (12) of statement that on 27.9.93 he had received a sealed parcel (which was marked as No.6) sealed under the seal of the District and Sessions Judge, Durg, which matched the sample seal. He received this parcel from S.P., CBI, S.I.C.-II in Case R.C.-9 (S)/91-SIU/SIC-2, CBI. On opening parcel no. 6, he found three large deformed lead pellets which he marked as Ex.P.-1 to P.-3. About these pellets, it was said that they have been extracted from the body of deceased Shankar Guha Niyogi. These pellets (Ex. P-1 to 3) were LG pellets and lead slug and were compared to the test fired from the 12 bore country pistol (W-1).

109. Roop Singh (PWN 159) after detailed laboratory tests, test-fire, microscopic examination and comparison, has submitted there port Ex. P-3 399 which is as follows:

1. The three lead pellets marked as P-1 to P-3 must have come from firing of 12 bore LG cartridges.

2. These three lead pellets (P1 to P3) have been fired by 12 bore countrymade pistol marked as W-1.

110. Roop Singh (PWN 159) has stated that his report in Ex. P- 398 and 399 has been prepared on the basis of microscopic examination and comparison. He has certainly taken the photographs of crime pellets Ex. P-1 to P-3 and slug but these photographs are not the basis of his conclusions. Rather the photographs have been taken only as an illustration. This witness also clarified that the photographs have been taken from only one angle whereas under the microscope he has examined them from different angles.

111. Ballistic expert had taken the photographs of pellets P-1, P-2 and P-3 and also that of the test slugs which have been marked as Ex-P-400 to P.402. Ballistic expert had prepared the work- sheet in respect of report Ex- 398 which is Ex.P. 398-A and similarly the worksheet in respect of report Ex- 399 is Ex- 399

A. This witness was shown the article X-2 country made pistol and X-3 .38 American revolver upon which the witness stated that he had marked the country pistol X-2 as W-1 in the report Ex.P.398 and he had marked the American revolver .38 as W-2. This witness also stated that he had received Article X-2 country pistol, American revolver and other cartridges in a sealed conditions. He had used one cartridge for test firing and remaining 12 cartridges are alive.

112. The ballistic expert has in his statement, in para-19 told that the article X-5 is the empty shell from the test conducted in the laboratory. Along with this are the are six pellets and wads from the test. The make of this cartridges LA. (English). In the bottle Article-E are the lead pellets Ex- P-1, 2 and 3 which he has shown in his report P-395. This bottle was sent with the seal of the court. The court seal was stamped on the outer surface and when this seal was broken, it had the seal of Fornesic Lab, Sagar. After examining all the articles, he had retured them after sealing.

113. Roop Singh (PWN 159) has deposed that he is MSc. in Mathematics. He has undergone the training in fire arms at the Police Training College, Pillore (Punjab). In 1970 he obtained the Forensic Training Certificate in fire arms from Delhi University. In 1972 he obtained a National Diploma in Ballistics, from the National Institute of Forensic Criminology, New Delhi. In 1995, he obtained a certificate in Ballistic Wounds from the Royal Military College, Sweden and did a course of one week. The witness has about 35 years experience in examination of fire-arms. He has examined thousands of fire arms and has given evidence in the court in hundreds of cases. At present, he is a Senior Scientific Officer, Grade-I and Head of the Deptt. of Ballistics Department in the Central Forensic Lab. Thus, on the basis of high educational qualification and sufficiently long experience, it can be said with certainty that Roop Singh (PWN 159) is an expert witness.

114. On behalf of the defence, the statement of Roop Singh (PWN 159) has been challenged on the following grounds:

1. CBI has changed the pellets.
2. The report of the expert witness is not based on reason.
3. After taking the pellets from the court, the pellets were sent delayedly to the expert witness.
4. The expert witness has submitted this report under the influence of CBI.

115. It is correct that when the extracted pellets from the body of deceased Shankar Guha Niyogi were initially sent to Forensic Lab, Sagar, JP Nigam (PWN 78) on 14.10.91 found the weight of the three pellets to be 11.661 gm but after two years when those pellets were sent to Central Forensic Lab, New Delhi, their weight was found to be 11.425 gms.

116. This fact can be ascertained judicially that 1 gm. is equivalent to 1000 mg. Thus the difference found between the weights of the three pellets is less than 1/4th of a gram. JP Nigam (PWN 78) has indeed stated that the balance in his laboratory can give the correct weight upto three places of decimal. But it

needs to be mentioned here that the weight of the three pellets written separately in his report Ex.P-395 by the ballistic expert Roop Singh (PWN 159) of the Central Forensic Lab is an estimated weight. It is common experience that there cannot be a guarantee of cent per cent accuracy from every balance. The minute difference in weights of the pellets in these two Forensic Laboratories cannot be said to be materially substantial. It needs to be mentioned here that these pellets were sent in sealed condition by the court and the Central Forensic Lab, New Delhi had received the said pellets in sealed condition itself. Thus, the question of changing the pellets does not at all arise.

117. Roop Singh (PWN 159) has made a comparative picture in Ex-P.399 of the microscopic examination of crime pellets P-1 to P-3 and test slug. The court has also studied this picture. It is clear from this study that there is much similarity between the crime pellets and the mark of the barrel of the pistol on the test slug. It cannot be said that the report of the expert is not based on reason.

118. On 24.9.93 the court had handed over the crime pellets in sealed condition to R.S. Prasad (PWN 192). The said pellets were received by Central Forensic Lab on 27.9.93 in sealed condition. The distance between Durg and New Delhi is not less than 1000 Kilometres. Therefore, the court has to keep in mind how much time it would take to travel from Durg to New Delhi. Therefore, if the officer of CBI obtained the pellets on 24.9.93 from Durg and if he deposits the same on 27.9.93 in the Central Forensic Laboratory, New Delhi it cannot be said that the pellets were reached delayedly.

119. R.S. Prasad, (PWN 192) has in para-62 of his statement said that Central Forensic Laboratory is an independent department. It cannot be presumed that the expert witness would give a wrong report under the influence of the investigating agency. There is no evidence to this effect that Roop Singh (PWN 159) has given a wrong report under the influence of the CBI .

120. Hon'ble Supreme Court has, in the matter of Kalua Vs. State of Uttar Pradesh (A.I.R. 1958 SC 180) held that if the ballistic expert has given the report after necessary examination, there is no cause to reject the report. Similarly, in the case of Birpal Singh Vs. State of Uttar Pradesh (AIR 1977 Supreme Court 2083), the Hon'be Supreme Court has in para 5 clarified that after examining the cartridges the ballistic expert can give a definite opinion as to which gun the shot was fired from.

121. In this case, there was a lengthy cross examination of ballistic expert, Roop Singh (PWN 159) but no such evidence came forth on the basis of which his report could be rejected. Thus, the statement of Roop Singh (PWN 159) is fully reliable that crime pellets Ex P-1, 2 and 3 are the same pellets which were fired by the country made pistol which was seized on the basis of memo statement of the accused Paltan Mallah.

122. J.P. Nigam (PWN 78) had after inspecting the on 4.10.91 site, and perusing the post-mortem report and report of Scientific Officer B.P. Maithil (PWN 84) and photographs of 28.9.91, and after reconstructing the site of the crime MIG-1/55, Bhilai given the opinion that in the murder of deceased Shankar

Guha Niyogi a country-made pistol was used. Thus, the report of the ballistic expert Roop Singh (PWN 159) fully corroborates the opinion of J.P. Nigam (PWN 78). Therefore, the conclusion arrived at on the basis of scientific examination, that the pellets extracted from the body of the deceased were fired from the country made pistol recovered from accused Paltan Mallah is acceptable.

(3) L.G. Cartridges & Opportunity of Procuring Country Made Pistol:

123. According to Arvind Tripathi (PWN 106) his father is a teacher in village Nibahi and they own some land near the house of accused Palton. This is how he knows the accused Palton. This witness says that in the year 1991 he found one country made pistol and 3 cartridges in a field in his village Khorma which he had hidden near a tube-well. He asked his acquaintance Rajkishore Dubey to get his pistol and cartridges sold. Rajkishore Dubey brought accused Paltan. Accused Paltan purchased these for Rs. 350/-. This witness after seeing Article X-2 the country made pistol produced in the court, stated that he had sold this to the accused Paltan but the statement of the witness is not acceptable for the following reasons:

1. It is very difficult to believe that the country made pistol and cartridges could be found lying in a field.
2. This witness's evidence is equivalent to statement of an accomplice which cannot be accepted without confirmation.
3. The statement of Rajkishore Dubey was not recorded.

124. Despite non-acceptance of the statement of Arvind Tripathi (PWN 106), accused Paltan Mallah's memo statement and the seizure carried out on the basis of it remains unaffected.

125. Jakyuddin (PWN 61) and Nuruddin (PWN 66) are father and son. They have an arms shop at Raipur which is known as Badruddin Mulla Shamshuddin. From the statement of both these witnesses it is established that on 14.9.91 B.K. Singh and one other boy had come to their shop. Birendra Kumar expressed his desire to purchase a gun and some cartridges on his licence. For selection of the gun, he had brought with him his acquaintance of Raipur Police Lines Armourer Raj Bahadur. B.K. Singh purchased one single barrel gun and five cartridges on the licence in his name. B.K. Singh had brought with him the licence of Satya Narayan Singh and on the basis of this licence he purchased 3 LG cartridges and 10 shot cartridges.

126. Nuruddin (PWN 66) has in para 3 of his statement stated that the boy who had come along with B.K. Singh to his shop to buy a gun and cartridges was accused Paltan Mallah who is present in the court. It needs to be mentioned here that before recording the statement of B.K. Singh and Satyanarayan Singh they have already passed away.

127. Nuruddin (PWN 66) has, in his lengthy cross-examination, firmly stated that accused Paltan Mallah present in the court was the very person who had come to his shop with B.K. Singh. It is common experience that every person has a different degree of memory. There are some persons who forget people a

few days after meeting them. But there are such people also who if they meet any person, can recognise him even after many years. Recognition by Nuruddin (PWN 66) of accused Paltan Mallah having come along with B.K. Singh appears to be natural due to the following reasons also:

1. B.K. Singh had come to the shop with that armourer of Police Line Raipur who had earlier purchased a gun for himself.

2. The accused Paltan sat at his shop for a considerably long period, as a result of which this witness had sufficient time and opportunity to see and recognise the accused.

3. There is no possibility of this witness implicating accused Paltan falsely.

128. Besides this, Nuruddin (PWN 66) has in para-9 of his cross examination stated that he was shown 2 photographs by the CBI, out of which he could recognise one. In this way, first recognising the photograph and thereafter recognising him in the court proves that Nuruddin (PWN 66) had correctly identified the accused Paltan.

129. On behalf of the accused Paltan, this plea has been advanced that as the identification procedure was not conducted, it cannot be said that Nuruddin (PWN 66) has identified him correctly. Hon'ble Supreme Court has, in the case of Harbhajan Singh Vs. State of J & K (AIR 1975 SC 1814) held that if the investigating officer does not conduct identification procedure even then the prosecution case does not necessarily become suspicious. Similarly in the recent case of State of Karnataka Vs. Deja K. Sethi (1993 SC Cases Supp. 1-page 16) the Hon'ble Supreme Court has held that due to some small discrepancies and not organising the identification parade, the side of the prosecution would not be liable to be unacceptable.

130. In view of the fact that the CBI had got Nuruddin (PWN 66) to identify the accused by showing him more than one photograph and the witness had firmly recognised the accused Paltan Mallah in the court, hence in this situation, even if the identification parade was not organised, the statement of the witness cannot be said to be unreliable.

131. Nuruddin (PWN 66) has, in his cross examination, said with full confidence that, had Birendra Kumar (B.K. Singh) been alive, he would have recognized him also. Similarly, this witness has also said that he can recognise the persons whom he has sold articles on various dates. The court has no reason to disbelieve the memory of this witness. Thus, it is established that when on 14.9.91, B.K. Singh came to the shop of Nuruddin to purchase 3 L.G. Cartridges and 10 shot cartridges on his licence and on that of Satyanarayan accused Paltan was present with him.

132. It is undisputed that the murder of Niyogi took place in the intervening night of 27 and 28.9.91. Bankebihari Yadav (PWN 58) has in his statement, stated that 3 or 4 days after the murder of Niyogi when his duty was at the BEC gate from 1.30 in the afternoon to 9.30 pm., B.K. Singh called him and after handing over 3 LG cartridges said that they should be given to Satyanarayan

Singh. He gave the said three LG cartridges to Satya Narayan Singh. Jai Narayan Tripathi (PWN 72) is the brother-in-law of accused Gyan Prakash Mishra. On 3.10.91, he comes from Bilaspur to the shop of Badruddin Mulla Shamsuddin at Raipur, and on his licence purchases 7 blank and 3 pellet cartridges. This fact is confirmed by the statement of Jakyuddin (PWN 61) and his bill Ex.P-149. In the bill of Ex. P-149 dated 3.10.91, it is mentioned that 3 LG cartridges and 7 blank cartridges have been sold.

133. Jai Narayan Tripathi (PWN 72) has, in his statement recorded u/s. 164 Cr.P.C., certainly stated that on 3.10.91 accused Gyan Prakash Mishra and Abhay Singh came to him at Bilaspur and told him that accused Paltan Mallah has taken 3 LG cartridges from B.K. Singh and with this bullet he has killed Shankar Guha Niyogi. If they return 3 LG cartridges to licence holder B.K. Singh they would be saved. It is for this reason that he came to Raipur and purchased 3 L.G. cartridges and 7 blank cartridges. After taking the three LG cartridges the accused Gyan Prakash Mishra and Abhay Singh disappeared. But this witness has in his statement before the court, contradicted the statement recorded u/s 164 Cr.P.C. Ex- P 171. The statement of Jai Narayan Tripathi (PWN 72) is unreliable for the following reasons:

1. This witness is the real brother-in-law (jija) of accused Gyan Prakash Mishra, and as such, his tendency would be to safeguard his brother-in-law.

2. This witness has been sentenced in a criminal offence by Bilaspur Sessions Court and has been tried in a good number of criminal cases including that of murder.

3. This witness has contradicted the entire statement recorded by the Judicial Magistrate- Class-1 u/s 164 of Cr.P.C.

134. There is no presumption that the judicial magistrate class-1 does not record that statement which a witness gives. On the contrary if the question of presumption arises then it has to be presumed that the judicial magistrate records the very statement which the witness in fact gives. Hon'ble Supreme Court has in case of State of U.P. Vs. Ramesh Prasad Mishra (1996 (10) SC Cases 360), held that in a case based on circumstantial evidence if an important witness does not state the truth, in such an eventuality the court can come to a conclusion on the basis of circumstances keeping in mind human behaviour and possibilities. In view of the above observations, the following circumstances come forth:

1. When about to 14 days before Niyogi's murder, when B.K. Singh purchased 3 LG cartridges on the licence of Satya Narayan Singh, the accused Paltan was present with him.

2. During the night of 27-28.9.91, Niyogi's murder takes place with an LG cartridge.

3. After Niyogi's murder, the brother-in-law of accused Gyan Prakash Mishra, Jai Narayan Tripathi (PWN 72) comes from Bilaspur to Raipur and purchases 3 LG Cartridges.

4. After this, B.K.Singh returns to Satya Narayan Singh his 3 LG cartridges.

5. On the basis of entirety of the above circumstances, this conclusion can be drawn that the accused Paltan Mallah had kept 3 LG Cartridges. After receiving 3 LG cartridges from Jai Narayan Tripathi, B.K. Singh had returned them to Satya Narayan Singh.

135. The murder of Shankar Guha Niyogi was committed with a LG cartridge. When two years after the murder, the accused person Paltan Mallah was caught, then along with other weapons, 2 LG cartridges were also seized from him on the basis of his memo statement. This is how there is a continuous chain of circumstances formed from which it can be inferred only that accused Paltan Mallah had procured 3 cartridges pertaining to the licence of Satya Narayan from B.K. Singh. With one cartridge, he killed Niyogi and rest 2 remained with him which were later seized on the basis of his memo statement. Thus, it is proved that accused Paltan had the opportunity of procuring LG cartridges and he had received 3 LG cartridges from B.K. Singh. But the prosecution has not been able to prove beyond reasonable doubt that the country made pistol used for the crime was purchased by accused Paltan Mallah from Arvind Tripathi (PWN 106).

136. There is sufficient evidence that, and on which basis it has also been established, that in compliance with the memo statement of accused Paltan that very country made pistol was seized by which Niyogi was murdered. Therefore, it is established that the weapon of the crime was in the possession of the accused. It makes no difference as to where the killer weapon was procured from.

(4) Nonjudicial Confession:

✓ 137. Satya Prakash's (PWN 105) elder brother Omprakash is married to the cousin sister Kumari Bai of the accused Paltan Mallah. Satya Prakash (PWN 105) states in his statement that in the first week of October 91 accused Paltan had come to Chainpur to meet him. The distance between the village of the accused Paltan Mallah - Nibahi and that of this witnesses' village-Chainpur should be about 35-40 Kms. When the accused Paltan came to his house, he met him and his cousin Kumari Bai and went away. At that time other members of the family were not present in the house. At that time the accused Paltan had come on red coloured Suzuki motor cycle and after staying for a day or two he returned.

✓ 138. Satya Prakash (PWN 105) further states that in the last week of Nov. 91 a few children came and told him that on Saonkhor Crossing, 3-4 kms. before Chainpur, one of his relatives has met with an accident. On this information, he went to Saonkhor Crossing and found that the accused Paltan had fallen and his motor cycle had also fallen. He brought the accused Paltan and his motor cycle to Badhaiganj town. As the accused had received an injury, he got him treated by Doctor Fayyaj and kept him at the residence of his friend Shriram Dubey. Thereafter he got the accused Paltan treated by Dr. Ansari. Since the accused Paltan was complaining of pain in his stomach, his X- ray was also taken. Since there was a possibility that the treatment of accused Paltan would take about a

month, he started living in the house of Shriram Dubey. Satya Prakash (PWN 105) has also stated that after leaving the accused at Badhalganj, he returned to his village Chainpur and sometimes he used to go to Badhalganj to meet the accused. This witness has clarified that the red coloured motor cycle owned by the accused had no number.

139. Satya Prakash (PWN 105) has in para-6 of his statement stated that when one day he had gone to Badhalganj, the accused Paltan told him that when he had gone to take tea, he has read in a newspaper that in connection with the murder of some leader CBI and Police are searching for him. This witness inquired as to why CBI and Police are chasing you? The accused took him to a secluded place and told him he had together with Gyan Prakash murdered Shankar Guha Niyogi of Bhilai with a country-made Pistol when he was sleeping. He also confessed that besides Gyan Prakash Mishra, Moolchand, Navin Shah and Chandrakant Shah have been collaborating. On hearing this, the witness became stunned. The accused also started saying that now he does not want to remain at Badhalganj. The accused expressed the desire that now he wants to go to his father-in-law's place at Azamgarh. Before telling these things, the accused had on some day left the motor cycle at his house.

140. According to Satya Prakash (PWN 105) he and the accused reached Azamgarh from Badhalganj by a bus. There the accused got a little upset and said that now he would not live at his father-in-law's place. The accused asked the witnesses him to meet him the next morning at Azamgarh Bus-stand. This witness stayed in his father-in-law's place. When he came to the bus stand the next day, the accused told him that in the night there was a news on TV that CBI has declared a reward of one lakh Rs. for arresting him. The accused started insisting that he would not live in India and wants to go to Nepal. When accused Paltan started saying that he should tell him some means of going to Nepal the witness said that he would take him to his brother-in-law Keshnath at Doharia Bazar.

141. Satya Prakash (PWN 105) has further stated tells that he brought the accused to Doharia Bazar. At that time only his sister was in the house and his brother-in-law Keshnath had gone for work. Keshnath returned home at about 8 p.m. This witness introduced the accused Paltan Mallah to his brother-in-law but in the night there was no special talk.

142. From the statement of Satya Prakash (PWN 105) it appears that when the next day his brother-in-law asked the accused Paltan as to why he had come, the accused Paltan repeating the same thing, said that at Bhilai he has murdered Shankar Guha Niyogi and Gyan Prakash Mishra, Navin Shah, Moolchand Shah and Chandrakant Shah have also been collaborating with him. He also said that the CBI and Police are chasing him and therefore he wants to go to Nepal. The accused started asking his (Satya Prakash's) brother-in-law some means of going to Nepal. His brother-in-law said that he cannot hide him (Paltan) Despite this the accused Paltan kept on requesting his brother-in-law that thought he may not hide him, but somehow or the other he should leave

him at Nepal.

✓ 143. Satya Prakash (PWN 105) has in para-10 of his statement stated that in the morning the accused Paltan came to the crossing of Doharia Bazar all alone. They followed the accused Paltan. The accused Paltan called him aside and said that whatever he has told must not be told to anyone else its consequences would be very bad. His brother-in-law brought him and Paltan to his house and served food etc. He left the accused Paltan at his brother-in-law's place and himself left for his home Chainpur by bus.

✓ 144. Satya Prakash (PWN 105) has in para-11 of the statement stated that the motor cycle kept by the accused Paltan in his house remained there. On 22nd August (93) there was a big commotion that accused Paltan has been arrested. On 24.8.93 Gorakhpur Police came and seized the motor cycle. The accused Paltan had also come with the Police. This fact has been proved earlier.

✓ 145. This witness has in para-23 of his cross examination admitted that he did not earlier know Moolchand Shah, Naveen Shah, Chandrakant Shah and Gyan Prakash Mishra, but he has further clarified that since this was a case of a murder, he remembers these names even today. The statement of the witness is not at all unnatural. He also clarified that the accused Paltan had said that those persons have given him the money and he had done this work only for money.

✓ 146. During cross-examination in para no.12, this witness has said that the day Police along with accused Paltan had come to his house to seize the motor cycle, at that time he had not informed that the accused Paltan had confessed and had named the other accused also. It is necessary to mention here that Incharge, Police Station Gorakhpur was not doing any regular investigation. Therefore, there is no question of interrogating and recording the statement of this witness. This witness had further in para-13 told that on 28th or 29th August 1993 a Police Constable came to his house and told him that CBI people have called him to Delhi. Thereafter, he along with his brother-in-law Keshnath went to Delhi on 1.9.93. In para no.13 and 14 this witness has described in detail that how they reached the office of CBI by making inquiries, and gave the statement before the Police Superintendent. Thus, there appears to be no unnaturalness in the statement of this witness.

✓ 147. During cross examination in para-31 this witness had stated that the accused Paltan had come to his house in the 1st week of October 91 whereas this witness had in the statement recorded by CBI (Ex-D-41) stated that the accused Paltan came to his house in the last week of October. This witness has contradicted the said statement. Thus, the contradiction or discrepancy which has emerged in this para cannot be said to be substantially material.

✓ 148. On behalf of the accused the plea has been advanced forth that the statement of Satya Prakash (PWN 105) is not reliable because he did not reveal the confession by the accused Paltan to anyone. It is our common experience that in our society any relative does not disclose the confession of the accused of his own accord. The judicial confession comes to light only during investigation. In September- October'91 the accused Paltan had run away from

Bhilai (District Durg) and was wandering here and there in the rural areas of Uttar Pradesh. During this period he met Satya Prakash (PWN 105). CBI had put up a challan against the accused Paltan in his abscondance. The court had also issued an arrest warrant against the accused Paltan. On 21.8.93 the accused was arrested by the Police Station Gorakhpur Cantt. On the basis of memo statement of the accused on 21.8.93 only the red coloured Suzuki motor cycle was seized from the house of Satya Prakash (PWN 105) at village Chainpur on 24.8.93. Thus, the investigating agency came to know for the first time that Satya Prakash (PWN 105) can be an important witness in connection with this crime. Thereafter, CBI summoned Satya Prakash (PWN 105) to New Delhi and his statement was recorded in the head quarters.

149. Satya Prakash (PWN 105) is a close relative of the accused Paltan. On being threatened by the accused Paltan it was but natural for him to have fear in his mind. The accused Paltan had, before leaving for Nepal, threatened at Doharia Bazar (Dist. Gorakhpur) that he must not tell these things to anyone, else the consequences would not be good. Thus, psychologically, there were two influences on this witness- on the one hand, being a relative from the in-laws side he had sympathy for accused Paltan, and on the other hand due to threatening by the murderer, he had fear in his mind. Under such peculiar circumstances, if Satya Prakash (PWN 105) had not revealed the confession of the accused Paltan to anyone for a long time, to reject the statement of the witness completely merely on this basis would not be justifiable.

150. The court should avoid getting entangled in the mere mirage of law and before reaching any conclusion, it should consider in accordance with its conscience, keeping in mind the reliability, human behaviour and possibilities of a witness. Therefore, even if for a long time, Satya Prakash (PWN 105) did not divulge the confession of the accused his statement cannot be treated as unreliable.

151. Before treating the statement of Satya Prakash (PWN 105) as reliable or unreliable, it is necessary to consider the following circumstances:

1. The accused Paltan is his close relative.

2. When accused Paltan had met with an accident on Saonkhor Crossing, this witness had made arrangements for his stay at Badhalganj.

3. This witness got the accused Paltan treated by two doctors.

4. This witness used to go to Badhalganj to meet the accused Paltan every 2-4 days. Before leaving Badhalganj, the accused Paltan had left the red coloured Suzuki motor cycle, which was being used by him, at the house of this witness.

152. When the accused came to know at Badhalganj that in connection with the Niyogi murder case, the CBI and Police are searching for him, it was but natural for him to be upset. Under these circumstances, Satya Prakash (PWN 105) was the only person who had sympathy for him and could have given him support. Thus, there are sufficient reasons to believe that the accused Paltan had

made a confession before Satya Prakash (No. 105).

153. In connection with the statement of Satya Prakash (PWN 105), it is necessary to consider the following facts:

1. This witness has no animosity with the accused Paltan nor with any other accused person.

2. This witness has studied upto B.A. and is educated unemployed.

3. This witness does the laborious work like cultivation to support himself and his family.

4. This witness is physically disabled in one leg.

5. The red coloured Suzuki Motor Cycle left by the accused Paltan has been seized from his house.

6. At present, the accused Paltan complains of pain in the stomach and kidney trouble.

7. From the statement of Satya Prakash it is clear that when the accused Paltan had fallen from the motor cycle on Saonkhor crossing, there were internal injuries to his stomach. At Badhalganj he got him treated by doctors for the internal injuries of the stomach. Thus, a direct relationship is established between the internal injuries of the accused Paltan during the accident and his stomach pain and kidney trouble at present.

✓ 154. In view of above also, there is so much naturalness in the statement of Satya Prakash (PWN 105), that if it is rejected in haste or on any technical ground, it would defeat the ends of justice.

✕ 155. While giving his statement, Satya Prakash (PWN-105) has, expressing full confidence in the court said that in the court room he has no fear of accused Paltan, although this witness has further admitted that outside the court, there could be persons of the accused Paltan from whom he fears a threat to his life and property. In this manner when a witness despite impending danger to his life expresses full confidence in the court and makes a statement, to call such a witness unreliable would be a shameful thing for the judiciary.

156. Satya Prakash (PWN 105) had come to Durg (Bhilai) area for the first time. He had come here from a village in Uttar Pradesh by travelling thousands of Kilometres. If CBI made arrangements for his stay at Bhilai, they have not made any mistake. On the contrary, had the prosecution or the CBI not made arrangements for the stay of this witness coming from a far away rural area, it would have been a matter of criticism against them.

157. Visambhar Sahani (PWN 124) has studied upto M.A. from Gorakhpur, (U.P.) Afterwards, he did his B.Ed. from Tribhuvan Vishwavidyalaya, Prithwinarayan Campus, Pokhara, (Nepal). He is married to Keshnath's sister. At present, this witness is the Principal of Arunyola School (District Navalparasi, Nepal). It appears from his statement that in December 91, 4 gatte (Nepali date) he had been to Distt. Headquarter Navalparasi for departmental meeting. When

in the evening he returned to his home, his children told him that maternal uncle (Keshnath) has come along with one more person. Keshnath introduced him to the accused Paltan. In the night, there was only normal conversation.

158. Visambhar Sahani (PWN 124) has in his statement further said that in the morning when he asked these persons why they had come, Keshnath said that accused Paltan is his brother-in-law Satya Prakash's (PWN 105) relative. This witness further asked what work is it that you people have come here for. Upon this, Keshanath clarified that he should keep the accused Paltan at any safe place in Nepal. The curiosity of this witness increased and asked the accused Paltan as to why he wants to live in Nepal. Paltan said many things but finally he told that on the instructions of the Simplex Company he had together with Gyan Prakash Mishra murdered Shankar Guha Niyogi. Since this witness is connected with pious work like education, his anger was but natural. He immediately turned the accused Paltan and Keshnath out from his house. This witness has recognised the accused Paltan in the Court and has confirmed that he is the same person who had come to Nepal along with his brother-in-law Keshnath.

159. Visambhar Sahani (PWN 124) remembers well the date of arrival of the accused Paltan in Nepal because on that day, (4 Gatte) he used to have his regular monthly meeting at District Headquarters.

160. Learned counsel for defence, Shri Rajendra Singh has on the following grounds, requested to treat the statement of the witness as unreliable:

1. This witness has said that CBI people came after about two-three months after the departure of accused Paltan Mallah, whereas in reality CBI persons reached this witness after 1.75 years.

2. When CBI recorded the statement of this witness there was no officer of Nepal.

161. The evidence of this witness is so weighty that the statement of this witness cannot be rejected on the basis of the above objections raised by the Defence.

162. It is necessary to mention here that the accused Paltan Mallah did not cross examine Visambhar Sahani (PWN 124). In the statement of this witness there is no such important irrelevantcy, on the basis of which the statement of this witness could be treated as unreliable. Therefore, Visambhar Sahani (PWN 124) is a reliable witness. Therefore, treating the statement of this witness as reliable, it is considered to be established that the accused Paltan had made a confession of murdering Shankar Guha Niyogi and he had told the witness that he had done this along with the persons of Simplex Company and Gyan Prakash Mishra.

163. Learned Counsel for the defence, Shri Rajendra Singh has argued that the statement of Satya Prakash (PWN 105) should not be relied upon because his status is that of an accomplice. Before taking any decision on this subject it is necessary to understand the importance of the statement of an accomplice. The Hon'ble Supreme Court has in case of Joseph Vs. State of Kerala (1993

Suppl. IV SC cases 7) has held that if the statement of the accomplice is confirmed by the witness and other circumstantial evidence like seizure of the weapons and other facts etc. then in that case, the statement of an accomplice should be admitted. Similarly, the Hon'ble Supreme Court has, in the case of Shankar Vs. State of Tamilnadu, (1994 (IV) SC Cases 478) has elucidated in detail the status of statement of an accomplice. It has been held that the statement of accomplice should be corroborated by independent evidence which connects the accused with the offence committed. This corroboration can either be directly or through circumstantial evidence. Finally, it is a question of fact whether the corroboration is sufficient or not, and this depends on the facts and circumstances of the case.

164. In the light of the above judicial citations, it has become necessary to consider whether the statement of Satya Prakash (PWN 105) is corroborated by other evidence or not. On the basis of memo statement of accused Paltan Mallah, the country made pistol with which deceased Shankar Guha Niyogi was murdered, was seized. The accused Paltan Mallah had also made non-judicial confession before Visambhar Sahani (PWN 124). The motor cycle left by the accused Paltan Mallah has been seized from the house of Satya Prakash (PWN 105). Thus, the statement of Satya Prakash (PWN 105) is more than sufficiently confirmed by evidence. Thus, while on the one hand the statement of Satya Prakash (PWN 105) is reliable in itself, on the other hand, his statement is confirmed by sufficient other. Thus, there is no obstacle on the way of the court to admitting the statement of Satya Prakash (PWN 105).

165. At Nepal the accused Paltan Mallah has of his own accord made a confession before Visambhar Sahani (PWN 124). The statement of that witness is confirmed by sufficient other evidence. Therefore, it seems necessary to accept the statement of Visambhar Sahani. On this point, the case Baldeo Raj Vs. State of Haryana (1991 Suppl. I SC cases 14) is worthy of note.

166. On behalf of the accused persons this plea has been put forth that accused Paltan had made a non-judicial confession before three persons, not examining one of them - Keshnath is fatal for the Prosecution. In this case, the prosecution has examined Satya Prakash (PWN 105) and Visambhar Sahani (PWN 124). The statement given by both these witnesses in the court is reliable. Therefore, not getting recorded the statement of Keshnath does not make the prosecution side doubtful. On this subject Narpal Singh Vs. State of Haryana (AIR 1977 SC 1066 para-16) is worthy of note.

167. In view of the reasons stated herein above it is proved beyond reasonable doubt that the accused Paltan had made confession before Satya Prakash (PWN 105) that he had along with the accused Gyan Prakash murdered Niyogi with a country-made pistol while he was sleeping. He had made this confession also that along with the accused Gyan Prakash, accused Moolchand, Navin Shah and Chandrakant Shah were collaborating. He had made this confession also that those persons had given him the money and he had done this work only due to money.

168. Thus, it is proved beyond reasonable doubt, that the accused Paltan Mallah had made a confession before Visambhar Sahani (PWN 124) in Nepal and that on instructions of the persons of Simplex Company he had along with Gyan Prakash Mishra murdered Shankar Guha Niyogi.

(5) After The Murder Abscondence From This Area:

169. Visambhar Das Manikpuri (PWN 121) owns Asian Arts photo studio in front of Purani Bhilai Police Station. He has in his statement stated that on intimation by the Police Station he takes the photo of any person. He keeps the negative of the photo with him and gives the positive to the Police. This witness has stated that in the beginning of 1991, on being asked by the police, he had taken the photographs of accused Paltan. Ex- P 318A is its negative and Ex- P 318 is positive. Later on, he had given the negative and photograph of the accused Paltan to the official of CBI. Seizure memo of the same is Ex- P. 319.

170. During his cross-examination, in para-11, this witness has stated that the switch board of the police station is also visible in this negative. He further says that the place where the lock-up of the Police Station is locked, that particular place can also be seen in this negative. The accused Paltan Mallah has in his accused statement admitted that the said witness had taken his photographs. The accused Paltan has himself produced the certified copy of the criminal case no.230/91 pending before the Magistrate Class-1, Durg. According to which, the accused Paltan was arrested on 21.1.91 under 25 Arms Act by Police Station Purani Bhilai and on 15.3.91, the court had ordered him to be released on bail and personal bond of Rs. 5,000/-. But the further order sheet showing as to when the accused submitted the bail and as to when he was actually has not been produced. The accused has in his accused statement stated that he was released from jail in the 5th month of 1991. Thus, it is clear that the accused Paltan was in Bhilai area in May 1991.

171. Krishna Kumar (PWN 42) has stated in his statement that he had last seen the accused Paltan Mallah in Qtr. No. 6-F, Camp-I Bhilai one or two months before the murder of Niyogi.

172. It has been concluded in para 131 that on 14.9.91, the accused Paltan had gone to Badruddin Mulla Shamsuddin's shop at Raipur along with B.K. Singh. Thus, it is proved that upto 14.9.91 the accused Paltan was present in this area.

173. Undisputedly the murder of Shankar Guha Niyogi took place in the night of 27/28.9.91 night at Bhilai. The childhood friend of the accused Paltan Mallah Suresh Vishwakarma (PWN 97) has stated that at first the accused used to live at Village Nibahi and later on, he came to Bhilai, (District Durg). In October 91, the accused had met him at Khorma crossing (District Devaria). At that time the accused had a red-coloured motor cycle and he had gone along with accused Paltan to the Brick kiln of Ram Pravesh Mai for purchasing the. The accused Paltan Mallah has cross examined this witness but nothing has emerged during cross- examination to treat the statement of this witness as unreliable.

174. D.P.Singh (PWN 126) is a Sub-Inspector and in the year 91 he was posted at Police Station Rudrapur. Village Nibahi falls under his beat. This witness has stated that when he was taking tea at Ram-Lachhan Bazar on 12.10.91, he saw two persons on a red coloured Suzuki motor cycle No.MP-241707. Constable Hinchhalal was with him. He said that the person sitting at the back of the motor cycle is Rishikesh Upadhyaya from whom a weapon can be seized. The accused Paltan Mallah was driving that motor cycle. He searched Rishikesh Upadhyaya but nothing was found. A bag was hanging from that motor cycle. He attempted to search that bag but accused Paltan Mallah fled with the motor cycle.

175. During arguments on behalf of accused Paltan Mallah, it was said that he believes the statement of this Police Officer. On the basis of this statement, the plea was taken that in September' 91 the accused Paltan Mallah was at Nibahi. The basis of this plea on behalf of the accused is para 10 of the statement of this witness which is as follows:

I used to go the house of Gram Pradhan at village Nibahi and the house of accused Paltan is front of his house. For this reason, I know him. Ever since, my posting in that police station I used to go to village Nibahi and used to go to the house of the Gram Pradhan. 8-10 days prior to stopping at the Tigadda, I knew that the house in front of the Gram Pradhan is that of accused Paltan. At that time, I had received the information that the accused Paltan has come from Bhilai and he is getting his house constructed. I had been to village Nibahi 8-10 days before chasing the accused Paltan Mallah chased at the Tigadda (crossing). That day I came to know that the accused Paltan has come from Bhilai 8-10 days earlier and is getting his house constructed and has purchased bullocks.

176. The statement of D.P. Singh (PWN 126) has to be read along with the statement of Suresh Vishwakarma (PWN 97). Suresh Vishwakarma (PWN 97) has clearly stated that he met the accused Paltan Mallah in Oct. 91 and he went with him to the brickkiln of Ram Pravesh Mal for purchasing bricks. Thus, the plea of accused Paltan that he was at village Nibahi in the month of September'91 cannot be accepted.

177. The accused Paltan Mallah had kept Reshami Bai (PWN 51) as his wife without marriage. The Prosecution has after declaring her as hostile, cross-examined this witness. The statement of this witness that the accused Paltan had gone to Bombay 2 months before the incident took place is unreliable.

178. From the statement of Krishna Kumar (PWN 42) it appears that the accused Paltan Mallah had a red coloured motor cycle at Bhilai. On 12.10.91, when D.P. Singh (PWN 126) saw the accused Paltan at Ramlachhan bazar, U.P., at that time he had a red coloured Suzuki Motor cycle bearing the No.MP.24-1707. Later on, when the accused left the red coloured Suzuki motor cycle at the house of Satya Prakash (PWN 105) at village Chainpur, it had no number, its engine and chassis number had been rubbed off.

179. Deepak Surana (PWN 87) is a resident of Padmanabhapur, Durg. He has said in his statement that the number of his Bajaj Scooter was 1707. Thus, the registration number which the accused Paltan Mallah had got written on his red coloured Suzuki motor cycle was fictitious. Later on, for whatever reason, he removed this number and rubbed off the chasis and engine numbers. The object of this appears to be that nobody might be able to locate the registered owner of the vehicle. Thus, it is established by sufficient evidence that the accused Paltan Mallah absconded from this area after the murder of Shankar Guha Niyogi.

180. Around two years after this incident accused Paltan Mallah was caught by an officer of Indian Air Force at Gorakhpur (U.P.). The accused has not given any satisfactory explanation as to why he was absent for so long a duration as two years. This abscondence of the accused may be considered as a link in the evidence implicating him in the crime. On this subject, Amrik Singh Vs. State of Rajasthan (1994-1 SC Cases 563) is worthy of reference.

(6) Where Did The Money Come From:

181. It is undisputed that before this incident the accused Paltan used to live in Bhilai and used to do the work of cycle repairing. It can easily be presumed that very little income can be earned from cycle-repairing. The accused Paltan used to use a red coloured motor cycle before his accident (before this incident). After the incident he kept on moving around on the said motor cycle for two years in different places of U.P. During this period, the accused did not do any work anywhere. Thus, it is clear that for two years, the accused maintained himself for two years without working and kept continuously moving around on the motor cycle.

182. From the statement of Branch Manager Gramin Bank Gorakhpur, Ravindra Kumar Pandey (PWN 94) it is proved that on 9.10.91 accused Paltan's widowed sister Samaridevi had opened a new account in the Bank and deposited Rs. 3500/-. This is the same period when the accused Paltan Mallah was moving around in the rural areas of Uttar Pradesh. But it does not seem proper to put the liability of his sister's bank account on the accused Paltan.

183. From the evidence produced by the prosecution, it is established that in October 91 accused Paltan Mallah had purchased 4000 bricks for construction of a house at Nibahi .

184. On the basis of memo statement of accused Paltan Mallah, a foreign revolver, many cartridges, a country made pistol and a Suzuki motor cycle without number were seized. This fact can be Judicially ascertained that the value of the said articles must be in thousands of rupees.

185. The accused Paltan Mallah has not given any explanation as to from where he kept getting money for such a long period of two years without doing any work. He has also not given any clarification as to where he got money to purchase bricks. He has also not given a clarification as to from what source he procured a foreign revolver, country-made pistol, cartridges and motor cycle. On the basis of circumstances it can be presumed that whichever person had given

him the motor cycle of fictitious number, foreign revolver, country- made pistol and cartridges, the object of such a person was to get the accused to carry out criminal activity as per his wishes. Giving the accused such a costly foreign revolver and motor cycle is sufficient indication that the desired criminal activity was not trivial but was serious and well planned.

186. On evaluating the evidence submitted by the prosecution, the following facts against accused Paltan Mallah are proved beyond, reasonable doubt which in brief are point-wise as follows:

1. The country-made pistol seized on the basis of the memo statement of the accused Paltan Mallah was that from which the pellets extracted out from the dead body of Shankar Guha Niyogi during postmortem had been fired.

2. Thus the country pistol by which Niyogi was murdered was seized from the possession of accused Paltan Mallah.

3. A few days before the murder of Niyogi the accused Paltan Mallah was in this area but thereafter he absconded to Uttar Pradesh.

4. The accused Paltan Mallah had made non judicial confessions before his relatives Satya Prakash (PWN 105) and Visambhar Sahani (PWN 124).

5. After this incident he absconded for two years and maintained himself without any work.

6. On the basis of memo statement of the accused, a costly foreign revolver and motor cycle were seized which indicates his illegal income.

7. Removal of the number plate of the motor cycle, and erasing of the chassis and engine numbers indicates that he did not wish the registered owner of the vehicle to be located.

187. On the basis of the aforesaid confession, seizure of the weapon used in the offence, and on the basis of circumstantial evidence, it can only be concluded that in the night of 27/28.9.91 when Shankar Guha Niyogi was sleeping in his Qtr. No. MIG- 1/55, Hudco, Bhilai, the accused Paltan Mallah fired LG Cartridges from a country made pistol from the window and murdered him.

188. It is also necessary and relevant to mention here that right from the beginning, the accused Paltan Mallah had made all possible attempts to hinder the judicial process. For example, after the murder of Shankar Guha Niyogi, he absconded. When about two year later he was arrested, and produced in the court for the trial, he kept on changing his Advocates. On 2.12.95 he submitted an application that his kidney is to be operated and he is hanging between life and death. In this application he had also written that he does not want to get operated at D.K. Hospital, Raipur, and Delhi because Kailashpati Kedia has contacts there and he can attempt to kill him. He alleged against Moolchand Shah that if he (Paltan) gets operated in Bombay, the accused Moolchand Shah might get him killed by a relative or a doctor. He alleged that the accused Chandrakant Shah and Gyan Prakash Mishra had in the year 1994 attempted to

kill him by slow poisoning. At the end of his application he appended a note that before the operation, he wants to get his statement recorded and wants to reveal on whose instigation Shankar Guha Niyogi was murdered, who is the real criminal and who were the persons who had gone along. He wanted to reveal also the places where meetings used to take place before the murder. He wanted to tell the car by which the murderers had come. The court admitted this application but the accused Paltan Mallah kept on evading deposition time and again, and finally he did not depose. Thus, the accused Paltan Mallah has attempted to create sensation during the trial so as to misguide the direction of the trial.

189. During the trial the accused Paltan Mallah submitted an application that Kailashpati Kedia and Dr. Shivendra Shrivastava should be made accused but his application was dismissed by the court. The accused submitted an application for making Keshnath and Satya Prakash (PWN 105) also accused. This application too was dismissed by the court. On 20.3.96, the accused Paltan Mallah submitted an application that the computer floppy seized by the Income Tax Department in a recent raid from the establishment of Kailashpati Kedia be produced in the court. This application too was dismissed. The Hon'ble High Court had ordered that his kidney be treated at Choithram Hospital, Indore. On 23.3.96 he submitted an application that he neither wants to get operated nor does he want to go to Indore. Later on he consented to going to Indore but submitted an application that his Advocate Shri R.N. Tiwari be sent to Indore along with him at Govt. expense. This application too was dismissed by the court. Once the accused Paltan Mallah even sat on hunger strike and started demanding that he should either be released on bail or this case be transferred to another court.

190. On 27.11.91 the accused Paltan Mallah refused to give accused statement u/s 313 of Cr.P.C. The court had no other alternative but to close the defence of the accused Paltan Mallah but when the accused started feeling that the judicial process was advancing ahead firmly, he expressed his desire to give his statement u/s 313. This application of his was accepted.

191. The accused Paltan Mallah submitted the names of 7 persons in his list of defence witnesses. Out of them, there was one witness who had been examined by the prosecution previously. When one witness after travelling thousands of kilometres presented himself before the court on 27.3.97, the accused gave up the said defence witness Radhe Pandey (Village Pramukh). The remaining five persons whose names were told by the accused were not available at the given addresses and they could not be traced. When the court closed the evidence of the accused, next day he submitted an application that he has not been given sufficient opportunity to defend himself. This court dismissed his application assigning the reasons in detail. Against the said order he approached the Hon'ble High Court for review. The Hon'ble High Court dismissed the review petition of the accused. Thus, the accused Paltan Mallah, as far as possible, attempted to hinder the judicial proceedings and made all efforts to change the direction of the case.

(3-A). Seizures From the Accused Persons:

(i) Search and seizure from the house of accused Chandrakant Shah:

192. Dy. Superintendent of CBI, R.S.Prasad (PWN 192) has in para- 10 of his statement has stated that on 12.11.91 he searched the residential house Anuvilla, 21/24 Nehrunagar (West) of the accused Chandrakant Shah. This witness has in para-17 of the statement further stated that prior to CBI searching the house of accused Chandrakant Shah, the local police administration had already sealed it, and its key was given to Mrs. Renu Shah, wife of the accused. Mrs. Renu Shah first requested the local police and then him that since they are finding it difficult to live, she may be given the possession of the house. Upon this, he decided to conduct search of the house and to give possession of the house to Smt. Renu Shah. Therefore, he searched that house in presence of Smt. Renu Shah and Ramji Shah, father of the accused Chandrakant Shah. This witness has stated that during the search 24 articles were recovered which have been seized. The seizure memo is Ex P- 393 which is in six pages. Jr. Executive of Bhilai Steel Plant, V. Bhaskar Rao (PWN 127) has confirmed the search and seizure. The documents/article procured in the search are as follows:

1. P-393 (1) Bill of Hotel Yellow Pagoda, Nepal.
2. P 393 (2) Bill of Hotel Yellow Pagoda, Nepal.
3. P. 393 (3) Beer bill of Hotel Yellow Pagoda, Nepal.
4. P. 393 (4) Bill of Hotel Yellow Pagoda, Nepal.
5. P. 393 (5) Bill of Hotel Yellow Pagoda, Nepal.
6. P. 393 (6) Bill of Hotel Yellow Pagoda, Nepal.
7. Ex.P. 393 (7) Visitng card of Nisha Trading, which has something written behind it.

8. Ex P. 393 (8) : Bill of Provision Stores, Madhuban, Nepal on the back of which the names of guns and prices have been written which are as follows:

1. 30 Mouser gun 3500/-
2. 32 with Select 40,000/-, U.S.A.
3. 32 Vebalsicat Pistol 2500/-
4. 9 M.M. USA Pistol 30,000/-
9. 393 (9) A letter written by accused Chandrakant Shah to Ramesh Bhai in which it is written that accused Gyan Prakash Mishra be given Rs. 1,000/-
10. 393 (10) : Letter written by the accused Gyan Prakash Mishra to Chandrakant Shah.

11. 393 (11): Letter written by the accused Gyan Prakash Mishra to Ramesh Bhaiya of Oswal Steels which is as follows:

Respected Bhaiyaji,

Namaskar,

Please send Rs. 2,000/- through Awadhesh. Some money has to be given to the Doctor, some is necessary for expenses. Yesterday I have told Chandrakant

Bhaiya. He has said that take it from Ramesh Bhaiya tomorrow.

Thanks,

Your Younger Brother,

Gyan Prakash.

12. P. 393 (12) (13) : Letter written by the accused Gyan Prakash Mishra to accused Chandrakant Shah which shows intimacy between these two and that the accused Gyan Prakash Mishra shall not hesitate to make the biggest sacrifice for the welfare of accused Chandrakant Shah.

13. P. 393 (14) : Bill for Rs. 36,500/- for electronics goods purchased from Roshia Radio Concern, Kathmandu.

14. P. 393 (15) : Newspaper Bhilai Times dt. 10.4.91 on the front page of which - On the call of Niyogi of Chhattisgarh Mukti Morcha all the industries of Chhattisgarh to remain closed tomorrow. Labour movement shall remain alive, it hardly matters whether I die or remain alive - this news is published.

193. Besides this a Nepali Khukhri and a misfired .32 cartridge was recovered from the residential quarter of accused Chandrakant Shah.

194. In addition to this, other documents procured during the search of accused Chandrakant Shah's house are as follows:

1. P-445: Bill of Hotel Yellow Pagoda, Kathmandu, Nepal dated 15.3.91 for Rs. 3906/- and 40 paise.

2. Ex. P. 446: Bill of Hotel Yellow Pagoda, Nepal dated 13.3.91 for Rs. 1983.26.

3. P- 447: The complaint dt. 28.2.89 against City Supdt. of Police, Rama Shankar Singh sent by the elder brother of the accused Gyan Prakash Mishra to the then Chief Minister.

4. P- 448: Order of the Judicial Magistrate Class-I, Durg dated 16.8.88 to register crime on the basis of complaint filed by accused Gyan Prakash Mishra against Police officials R.S. Singh and R.P. Sharma.

5. Ex. 449: The carbon copy of the complaint against City Supdt. of Police, R.S. Singh, made to the then I.G. of Police by Prabhunath Mishra.

6. Ex. P.450: Daily newspaper-Deshbandhu, Raipur edition dt. 2.7.88 in which the news of the notice issued by the Court to the City Supdt. of Police R.S. Singh has been published.

7. P-451: Newspaper Tarun Chhattisgarh, Dt. 23.8.88 in which the news of the demand to take action against R.S. Singh has been published.

8. P- 452: Newspaper Pahat, dt. 26.2.89 in which news has been published against R.S. Singh.

9. P-452: Newspaper Navbharat, Raipur, dt.2.9.88 in which Prabhunath Mishra has demanded action against R.S. Singh.

10. P- 453: An application sent by accused Chandrakant Shah to I.G. of Police requesting that no action be taken against him under TADA.

(11) Search of Oswal Iron & Steel Pvt. Ltd.:

Undisputedly the owner of this factory is the accused Chandrakant Shah. During the search on 12.11.91 the Dy.Suptd. of Police of CBI, R.S. Dhankar (PWN 187) found : Letter Ex. P. 296 dated 24.11.88 written by accused Gyan Prakash Mishra to accused Chandrakant Shah, Registration Certificate of motor cycle No. (Chassis No. MIS-3040) and Regn. Certificate of motor cycle No. MP 24/B-2377. All these were seized. The registered owner of the first motor cycle is accused Chandrakant Shah and the owner of the second motor cycle is his wife Mrs. Renu Shah.

195. Dy. Supdt. of CBI, Rajkumar Shukla, (PWN 191) had seized from Trilokinath Pandit (PWN 176)- employee of the factory of accused Chandrakant Shah- the documents which are Ex P. 373 and Ex. P. 384. The seizure memo is Ex P. 425. Ex. P-373 is the letter of accused Chandrakant Shah authorising his employee K.S. Bhatia (PWN 26) to carry on correspondence with Bhilai Steel Plant. Ex. P 384 is the leave application of driver Shekhar which the accused Chandrakant Shah has endorsed directing Rajesh Bhai that Ramadhar will drive the car instead of Shekhar.

196. In addition to this during the search of the house of the accused Chandrakant Shah the following were found: His Passport Ex. P- 233 (which relates to Switzerland, Germany and Netherlands) and in which the address of Dr. Gaur, Urologist, Bombay Hospital is written; and a slip Ex.P.239 on which the number of vehicle MIR Fiat 227 and Jeep No. 7971 is written. It is necessary to mention here that the registration of the vehicle Fiat No. MIR 227 is in the name of Punyavrata Gun (PWN 60) which was regularly used by the deceased Shankar Guha Niyogi. The registration of Jeep No. MPT- 7971 is in the name of CMM.

197. (II) Recovery from Akash Ganga Complex:

The friend of accused Chandrakant Shah, Surajmal Jain (PWN 92) had initially started the work of property dealing alone in July,90 in Bhilai under the name of Jain and Shah. Since he had other business and the sufficient work, he sought the co-operation of accused Chandrakant Shah. But as time passed the accused Chandrakant Shah started looking after the said work solely by himself.

198. The statement in connection with the search and seizure (Seizure memo Ex.P. 298) of Akash Ganga Complex is contained in paragraphs - 12, 18, 32, 33, 35, 36, 37, 38, 39, 49, 50, 51, 52, 53, 55, 56 and 65 of the statement of Chief Investigating Officer, R.S. Prasad, (PWN 192). According to him, some time before 15.12.91, an officer of CBI had interrogated the accused Chandrakant Shah. It was only after this, that he decided to search the Akash Ganga Complex. On 15.11.91 he called two employees of Bhilai Steel Plant as witnesses. Out of them one is M.Toppo (PWN 113) and the other S.Samuel.

199. R.S.Prasad (PWN 192) has stated that at that time accused Chandrakant Shah was in the custody of Police Station Durg in connection with some other

case. Since the wife and father of the accused were not available, he had called his (accused's) nephew Rajesh Shah before the search.

200. R.S. Prasad (PWN 192) has in para-8 of his statement stated that when they reached Akash Ganga Complex for search, it was locked and the key was not available. He inquired from Rajesh Shah, the nephew of Chandrakant Shah, about the key, but the key was not with him also. He tried to locate the key at Suraj Auto Mobiles but he was not successful. Thereafter, he called Dildad Khan -a man who makes locks- and in presence of Rajesh Shah and other witnesses, opened the lock of that room. Thereafter, they entered for search. After completion of search proceedings, he had handed over the key to Rajesh Shah. All these proceedings are mentioned in Seizure memo- Ex. P. 297.

201. R.S. Prasad, (PWN 192) has in para- 12 of his statement stated that the documents found there have been mentioned in Ex.P. 297. During the search six torn pieces of paper were found which he had pasted. This letter is Ex. P. 298. On each part of this he had taken the signatures of the witnesses. The Constable of the Malkhana of CBI wrote the number of the case in red ink behind this letter. At this stage, it would be relevant to quote in its original Ex.P. 298.

28.9.91

Respected Navin Bhajji,

Pranam.

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

Your Younger Brother,
Gyan Mishra.

202. Subsequent to an application of the accused persons dated 30.8.96, the court has ordered CBI to produce the Malkhana Register kept during the investigation at Bhilai camp. CBI produced this register which has been marked as Ex.P.455. At serial no. 50 there is a mention that on 15.12.91 the torn pieces of Ex.P.298 were seized. Thus Serial No. 50, page No. 23 of the Malkhana Register Ex.P.455 confirms the statement of R.S. Prasad (PWN 192).

203. R.S. Prasad (PWN 192) has clearly stated in cross examination that a copy of seizure memo was given to Rajesh Shah.

204. M. Toppo (PWN 113) is posted as a manager in Bhilai Steel Plant. From the statement of this witness it appears that on 15.11.91 he and one another employee S. Sashmal were called by CBI people at Akash Ganga Complex for the purpose of search. That complex was searched. A man of Oswal Engg. was present there whose name the witness does not remember. Definitely, that man must have been Rajesh Shah. Search was carried out and a list was prepared. Ex.P. 297 is the seizure memo on which he had signed on portion A to A. In that Complex torn pieces of paper were also found which were affixed by gum. Ex.P. 298 is the same piece of the paper which was found there and which was

pasted. This witness has further stated that these pieces were separate pieces. Behind these pieces he and another witness S. Shashmal have signed in portion A to A. This witness was cross-examined for a long time but nothing emerged to show that this witness was making a false statement.

205. In connection with the search of Akash Ganga Complex and Ex.P.298 the following objections have been raised on behalf of the defence:

1. As to why accused Chandrakant Shah was not taken to Akash Ganga Complex for seizure?
2. As to why wife or father of the accused were not called?
3. As to why Rajesh Shah was taken?
4. As to why the signature of Rajesh Shah was not obtained behind Ex.P. 298?
5. M. Toppo is not an independent witness.
6. As to why neighbours were not called as witnesses.
7. As to why Ex.P. 298 has been written behind the seizure memo and 4th number.
8. As to why the newspaper (Pieces of paper) in which Ex.P.298 was wrapped has not been produced in the Court.
9. Because of regular cleaning of the complex Ex. P. 298 could not have been found there.

206. Above objections raised by the defence are being considered point-wise. On 15.12.91 the accused Chandrakant Shah was in the Custody of Durg Police. Thus there was no question of the CBI taking the accused in its custody and bringing him to Akash Ganga Complex.

207. R.S. Prasad (PWN 192) in para-35 of his cross-examination has clearly stated that he had found out about the father and wife of accused Chandrakant Shah but they were not available and thus he took Rajesh Shah with him for the search. It is necessary to mention here that Rajesh Shah is the nephew of accused Chandrakant Shah. He has worked in as responsible a post as Manager in Oswal Iron and Steel Engineering- the firm of the accused. The Bank Account of accused Chandrakant Shah is jointly with the wife of Rajesh Shah, Prafulla. Therefore, the decision taken by the CBI to take Rajesh Shah for the search of Akash Ganga Complex is completely in good faith and legally tenable.

208. In all the seizures carried out by the CBI the signatures of the house-owner/proprietor have been taken only on the seizure memos. The signatures of house-owner/ proprietor have not been taken on the seized articles. On seized articles the signatures of witnesses and the investigator have been taken. Therefore, if Rajesh Shah has not signed on Ex.P. 298 it does not create any doubt. Rajesh Shah's signatures are there on the seizure letter.

209. In para-37 of his cross-examination R.S. Prasad (PWN 192) has clearly stated that on reaching Akash Ganga Complex he had called the persons of

Suraj Auto Mobiles and the neighbouring shops to be witness, but none came forward to be witness. M.Toppo (PWN 113) was a responsible officer working as manager in the Bhilai Steel Plant. This witness has during cross examination, admitted that he had gone for 10-12 searches done by CBI. This is common experience that during investigation of this case, we find that neighbours are not ready to be witnesses. If in many cases CBI make the officers of public sector as witnesses, it cannot be called illegal. Hon'ble Supreme Court has in Durand Deedidhar Vs. Chief Secretary, (1990 (1) SC cases 95) held that even if the witnesses of seizure do not belong to that area they cannot adversely affect the evidence of seizure.

210. R.S. Prasad (PWN 192) in paragraph- 36 of his statement has stated that he had attempted to find out which paper it was in which the torn pages were wrapped. That newspaper had no date. This witness has said that so far as he remembers it might have been a piece of Punjab Kesari Newspaper in Hindi. But, further this witness said that he does not remember whether it was the piece of Punjab Kesari. The defence has pleaded that newspaper Punjab Kesari is published at Delhi, therefore there is no question of this newspaper coming to this area. But this plea cannot be accepted. Firstly, it is not definite as to which newspaper it was and even it is assumed that it was a newspaper published from Delhi, even in that case, it is common experience that a good number of newspapers published in Delhi are distributed in this area. Not to produce the piece of that newspaper is not fatal for the Prosecution.

211. A seized document has to be written at some serial number or the other. If Ex.P. 298 has been written behind the seizure memo and at the fourth place, there is no cause for any doubt.

212. On 28.9.91 when Chandrakant Shah reached Akash Ganga Complex in the morning and opened his office, at that time, the news of the murder of Niyogi had spread over the entire area like a jungle fire. The accused Chandrakant Shah got disturbed. Surajmal Jain (PWN 92) advised all traders including accused Chandrakant Shah that they may open the shutter of the shop but they should not take out the goods. In view of the tension, after the murder of Niyogi, there was a probability that all shops would have to be closed. After this, there is no evidence that accused Chandrakant Shah came to his office at Akash Ganga Complex again, on the contrary, the evidence is that accused Chandrakant Shah had stopped coming to his factory. Trilokinath Pandit (PWN 176) in para-7 of his statement has clearly stated that $1 \frac{1}{2}$ months before 27.10.91 accused Chandrakant Shah did not used to come to the factory. There is also sufficient evidence that within a week of the murder of Niyogi, Chandrakant Shah, all of a sudden and in haste, absconded from Bhilai and kept on staying in different provinces under different names.

213. On 15.12.91 when the officer of CBI, R.S. Prasad (PWN 192) and M. Toppo (PWN 113) reached Akash Ganga Complex for search, it was locked and the key was not available. M. Toppo (PWN 113) has not clearly described getting the key made by the lock maker but he stated that it was locked and they had to

stay outside for a long time. Why they had to stay outside for such a long time is a fact which should be looked at in the context of the statement of R.S. Prasad (PWN 192). Thus the statement of M.Toppo (PWN 113) confirms in intent the statement of R.S. Prasad (PWN 192). Thus, from the circumstances, it is fully established that the office of the accused in Akash Ganga Complex was locked from 28.9.91 to 15.12.91.

214. In para-12 and 13 of the cross-examination of Ramesh Bhasin (PWN 142), his statement that during Diwali Akash Ganga Complex was cleaned is not reliable. Had there been cleaning, the piece of paper, Ex.P. 298 would not have been found there. But it has been proved beyond reasonable doubt that on 15.12.91 the piece of Ex.P. 298 were found in that complex. During cross-examination witnesses do say such things which may benefit the accused. The court has to consider whether the evidence of such a witness is true or not, and whether it is liable to be admitted, on the basis of the entirety of circumstances. If the circumstances are more forceful and seem to be more true than the oral statement of a person, it is the duty of the court to give more weightage to such forceful and true circumstances as compared to a oral statement. In the instant case, we definitely have before us such circumstances which must be given more importance than oral evidence.

215. The Hon'ble Supreme Court, has in case of State of U.P. Vs. Ramesh Prasad Mishra (1996 (10) SC Cases 360) held that if witnesses are anxious to give false statements, then it is the duty of the court to draw conclusions on the basis of human behaviour, probabilities and circumstances. On the basis of aforesaid evaluation, it can be concluded that on 15.12.91, the document Ex.P-298 was recovered in a torn condition from the office of the accused Chandrakant Shah, situated in Akash Ganga Complex.

216. On behalf of the accused, the plea has been taken that Inspector of CBI, N.K. Pathak (PWN 181) had got Ex.P.298 written by the accused Gyan Prakash Mishra and later on it was dropped in Akash Ganga Complex by CBI Official R.S. Prasad (PWN 192). This plea has been taken on the basis of para-11 of the cross examination of N.K. Pathak (PWN 181). During the lengthy cross-examination of N.K. Pathak (PWN 181) he had said that it is possible that he might have been dictated Ex.P.298. It is necessary to mention here that N.K. Pathak had taken the sample writing and signature of the accused Gyan Prakash Mishra and other accused persons on 25.11.96 and 26.11.96 at Vishakhapatnam Hostel Bhilai. The defence has pleaded that the writing of Gyan Prakash had been taken on foolscap paper and after tearing it from below, it was dropped in Akash Ganga Complex. The other papers bearing the sample writing and signatures of the accused Gyan Prakash Mishra were studied. Above all the sample writings 4-5 lines are recorded as titles in English. There appears to be no possibility that the sample writing could be cut in such a way that it take the form of Ex.P. 298. As Ex.P.298 was in the writing of Gyan Prakash Mishra, and N.K. Pathak (PWN 181) was not understanding the deep rooted mystery of the cross examination, he said that it was possible that he might have got it written. But for the court to reach to a conclusion on the basis of a one line statement of any witness, is not

justified. The Hon'ble Supreme Court has, in case of Dilawar Hussain Vs. State of Gujrat, (1991 (I) SC Cases 253 para-7) in connection with the evaluation of evidence held that, to draw a conclusion on the basis of a one line statement of any witness is contrary to the principles of law. Hon'ble Supreme Court has also said that the entire statement of any witness should be read, and it should be looked at in the context of statements of other witnesses.

217. While in law there is an assumption that the accused is innocent, there is no assumption that CBI fabricates false evidence. Therefore, on the basis of N.K. Pathak's (PWN 181) solitary statement it cannot be inferred that he had taken the sample writing on foolscap paper, which is Ex.P. 298, and R.S. Prasad (PWN 192) tore it in half from below and after tearing it he dropped it in Akash Ganga Complex.

218. If CBI had to fabricate false evidence, they could have made the search immediately on any day after 25.11.91 or 29.11.91 but CBI did not do so. Rather when the accused Chandrakant Shah was interrogated and there was some probability of getting evidence in connection with the offence, only then Akash Ganga Complex was searched by the CBI on 15.12.91. Thus, carrying out the search on 15.12.91 shows the naturalness of the actions of CBI.

219. For the reasons stated hereinabove, it is concluded that N.K. Pathak (PWN 181) did not dictate Ex.P.298 as the sample writing of the accused Gyan Prakash Mishra, rather based on the statements of R.S. Prasad (PWN 192) and M.Toppo (PWN 113), forceful circumstances and discretion, it can be said that Ex.P.298 was found in a torn condition at Akash Ganga Complex.

(3) Search and Seizure At The House Of The Accused Moolchand Shah:

From the statement of R.S. Prasad (PWN 192) and H.C.Kapoor (PWN 155) of Life Insurance Corporation, it is clearly proved that on 18.11.91 the following documents were recovered from the residential house (Simplex Colony, G.E. Road, Durg) of the accused Moolchand Shah . Seizure memo of same is Ex.P.281.

1. Ex.P.261: This is a confidential note which has been prepared in connection with Shankar Guha Niyogi. In this note, the following have been pointed out:

- (i) Niyogi has been named as Naxalite and there is description of his origin.
- (ii) The working style of Niyogi.
- (iii) Niyogi's entry into other areas.
- (iv) Niyogi's increasing influence due to failure of the district administration in dealing with him.
- v) Property of Niyogi.
- vi) Niyogi's influence is only to contract labour system.
- vii) To minimise the influence of Niyogi workers should be given sufficient wages.
- viii) For dealing with Niyogi there should not be any hasty action.
- ix) Rival trade union's should be given more importance.

- x) The shortcomings of Niyogi should be published daily in the newspapers.
- xi) The sub-ordinate Police Officers who give information to Niyogi and sympathise with him should be got transferred.
- xii) There are criminal cases pending against Niyogi at Balod, Durg, Rajnandgaon and Bilaspur in which there are arrest warrants against him. In collaboration with the police, action be taken with regard to these so that Niyogi shall be required to be present in all cases and in that case he shall have no time to strengthen his position.
- xiii) In order to combat the attacking device of Niyogi there should be contacts with the political parties and these should be published.
- xiv) There are a sufficient number of educated and politically conscious people in Bhilai. If contacts are made with them and the shortcomings of Niyogi are exposed, then they will not agree with the working style of Niyogi.
- xv) The labourers of Bhilai are not accustomed to give more subscription to their organisation. This fact can be utilised well against CMM.
- xvi) If the financial source of Niyogi at Rajhara is sealed, then he would come to a situation of starvation.
- xvii) In order to minimise the image of Niyogi, it is necessary to find out his relation with foreign organisations and it should be published in newspapers.
- xviii) District Administration should deal with Niyogi cunningly and should stop giving importance to him.
- (2) Ex.P.262: is the list of 32 criminal cases against Shankar Guha Niyogi and office bearers of CMM.
- (3) Ex.P.263, 265 and 266 - A pamphlet in which it is written "Saviour of Workers Shankar Guha Niyogi Long Live, But a few Questions".
- (4) Ex.P.264 in which it is printed that there are some questions connected with the murder of Shri Guha Niyogi whose solution is absolutely necessary. It is necessary for N.K.Singh, Bhopal correspondent India Today, and Mr. Sail PUCL and patron of Christian Mission, Raipur, to answer these questions.
- (5) Ex.P.267 to 273 : Cyclostyled: Dhiresk Kumar alias Shankar Guha Niyogi is the biggest exploiter of workers and Chhattisgarhi feelings.
- (6) Ex.P.-274: "Amrit Sandesh", Raipur dt. 17.10.91 in which it is published that the industries of Bhilai remained close for the second day also.
- (7) Ex.P.275 : Newspaper "Amrit Sandesh", Raipur, dated 15.10.91 in which in following news had been published: Police in search of main conspirator Chandrakant Shah; Two out of five accused arrested; Mystery of the murder case solved; and Paltan fired from a country made pistol. In the front page of this newspaper, along with the news, photograph of deceased Shankar Guha Niyogi and accused Chandrakant Shah has been published.
8. Ex.P.281-1 : Newspaper "Amrit Sandesh" in which the Home Minister has claimed that they have found concrete facts in connection with the Niyogi murder case.
9. Ex.P.281 -3: Cutting of an English newspaper in which the news of search of industrialists by the Police has been published.
10. Ex.P.281-4: Newspaper "Samvet Shikhar", Raipur dated 13.10.91 in which

news connected with Niyogi's murder has been published.

11. Ex.P.281-5: Newspaper "Deshbandhu", Raipur dated 16.10.91 in which the Minister Incharge has praised the police staff who have revealed the conspiracy of the Niyogi murder case. In the same newspaper the news that accused Chandrakant Shah, accused Paltan and Abhay Singh are absconding has also been published .

12. Ex.P.281-6: One newspaper in which Shankar Guha Niyogi has been described as the "Jan-Nayak" of Chhattisgarh.

13. Ex.P.277: Weekly newspaper "Jandharma", Bhopal, dated 14-20.10.91 in which the news of brutal murder of Shankar Guha Niyogi has been published.

14. Ex.P.281-7: Newspaper "Amrit Sandesh", dated 16.10.91 in which Govt. has also been held responsible for Niyogi's murder.

15. Ex.P.281-8: Newspaper "Deshbandhu", Raipur dated 15.10.91 in which the news of Search of industrialist Chandrakant Shah and Arrest of two has been published.

16. Ex.P.281-9: Newspaper "Nav-Bharat" dated 14.10.91 in which it is published that The mystery of Niyogi murder solved.

17. Ex.P.281-10: A newspaper in which it is published that Govt. cannot avoid responsibility in the Niyogi murder case.

18. Ex.P.281-11: Newspaper "Amrit Sandesh" dated 16.10.91 in which Chhattisgarh Mukti Morcha has expressed disagreement with the police investigation and this is published that simply catching the tail will not do, the real murderers should be arrested.

19. Ex.P.281-12 Newspaper "Deshbandhu" in which the statement of S.P. Durg has been published that no clue has been found in the Niyogi Murder Case.

20. Ex.P.281-13: One newspaper in which it is published that the accused of Niyogi murder case are remanded to police custody for ten days.

21. Ex.P.281-14: One newspaper in which the Home Minister has replied to the allegations of V.P., Jogi and others in connection with Niyogi murder.

22. Ex.P.281-15: One newspaper in which it is published that Neither whereabouts of Paltan nor of his vehicle are known.

23. Ex.P.281-16: One newspaper in which it is published that Mukti Morcha arranged a big rally to pay tributes to Niyogi.

24. Ex.P.281-17: English newspaper "Times of India" in which the news has been published that capitalists of Bhilai have murdered Niyogi in an organised way.

25. Ex.P.281-18: One newspaper in which news in connection with Niyogi murder has been published.

26. Ex.P.281-19: One newspaper in which the Home Minister has claimed to have found concrete facts in connection with Niyogi murder.

27. Ex.P.281-20: One newspaper in which CMM has welcomed the arrest of murderers of Niyogi.

28. Ex.P.281-21: One newspaper in which it is published that Shah of Simplex also involved murder conspiracy.

29. Ex.P.281-22: One newspaper in which it is published that Chandrakant Shah has gone to Germany.

30. Ex.P. 281-23: Newspaper "Navbharat" dated 13.10.91 in which it is published that Patwa is protecting the murderers of Niyogi.

31. Ex.P.281-24: A newspaper in which it is published that the man who gave cartridges to the murderer of Niyogi arrested.

32. Ex.P.-281-25: A newspaper dt. 13.10.91 in which Member of Parliament Ajit Jogi says that when Congress-I (I) comes to power, it will prosecute Sunderlal Patwa.

33. Ex.P. 281-26: "Samvet Shikhar" dated 13.10.91 in which it is published that two persons have been taken into custody in connection with Niyogi's murder.

34. Ex.P. 281-27: Newspaper "Deshbandhu" dated 16.10.91 in which the arrest in Niyogi murder case has been welcomed.

35. Exh.P.281-28: "Samvet Shikhar" dated 13.10.91 in which the statement of former General Secretary, Janata Dal is published that monied people can kill a person but not the movement.

36. Ex.P-281-29: "Samvet Shikhar" dated 15.10.91 in which it is published that two accused of Niyogi murder have been arrested.

37. Ex.P.281-30: The cutting of a newspaper in which the news that the workers took out a procession after Niyogi murder is published.

38. Ex.P.281-31: Newspaper "Deshbandhu" dated 15.10.91 in which it is published that two persons have been arrested in Niyogi murder case, and search is on for one industrialist.

220. On behalf of accused Moolchand Shah the plea has been taken that the seized working plan Ex.P. 261 is not concerned with him. Ketan Shah (PWN 98) son of accused Moolchand Shah has stated in his statement that Ex.P.261 has been seized from his bed-room. He also stated that this document (P-261) was prepared on his instructions. He also said that this confidential note is not at all concerned with his father, the accused Moolchand Shah.

221. It is undisputed that the accused Moolchand Shah is the owner of Simplex Group of Industries. It is undisputed that the owner of the house at Malviya Nagar, where the search was carried out and Ex.P.261 was seized, is accused Moolchand Shah. Now, here the reliability of the statement of Ketan Shah (PWN 98) is to be examined whether the note of Ex.P.261 is not at all concerned with accused Moolchand Shah? The agitation of deceased Shankar Guha Niyogi was against Simplex Industries. Ketan Shah (PWN 98) had started working in Simplex Industries only a month before the murder of Shankar Guha Niyogi. Besides Ex.P. 261, there were many documents seized from the house of accused Moolchand Shah, and which are connected with Shankar Guha Niyogi. Therefore, it can be easily inferred that Ketan Shah, with a view to save his father accused Moolchand Shah, has said that Ex.P.261 is not at all concerned with the accused Moolchand Shah. Any person with discretion can very easily say, on the basis of circumstances and other seizures that Ex.P.261 is

related to accused Moolchand Shah.

222. The confidential working plan in Ex.P.261 against Shankar Guha Niyogi can only be prepared by the owner of the industry. It cannot be prepared by a person who had joined the industry less than a month before.

(4) Search and seizure from the office of accused Moolchand Shah:

223. R.P. Litoria (PWN 185) was Deputy Supdt. of Police, CBI. On 19.11.91 he searched the Simplex Engg. & Foundry works, Industrial Estate, Bhilai owned by the accused Moolchand Shah. Seizure memo of the documents seized during the search is Ex.P.299. The manager D.R. Gourkar (PWN 114) of Bhilai Steel Plant has completely confirmed the seizure. The seized documents are as follows:

1. Ex.P.300: Challan of criminal case pending against deceased Shankar Guha Niyogi at Rajnandgaon.
2. Ex.P. 301: Second Challan of criminal case pending against Shankar Guha Niyogi at Rajnandgaon Court.
3. Ex.P. 302: Pamplet of CMM.
4. Ex.P.116: A half written letter to the Home Minister against Niyogi in the handwriting of Moolchand Shah.
5. Ex.P.282: The permanent and present addresses of Uma Shankar Rai and Bharat Bhushan Pandey.

224. Manager (Personnel) of Simplex Industry, Yogesh Mukund Dubey (PWN 99) has in his statement, said that the writing in Ex.P.282 is his. He said that in this document there are addresses of Uma Shankar Rai and Bharat Bhushan Pandey. He further says that P.A. to accused Moolchand Shah, Bhattacharya, had demanded the addresses of these two persons. He clarifies that Bhattacharya had said that police is demanding information about these two workers.

225. On behalf of the accused Moolchand Shah this plea has been taken that he had asked for the addresses of Uma Shankar Rai and Bharat Bhushan Pandey to give them to the police because crimes were registered against both these persons. There is no evidence to the fact that any crime was registered against Uma Shankar Rai and Bharat Bhushan Pandey. Had the accused Moolchand Shah sent for the addresses to be given to the police, he ought to have given Ex.P. 282 to the police. Because these addresses were not given to the police, it is to be assumed that the accused Moolchand Shah had not obtained the addresses to be given to the police but for some other purpose.

226. It is necessary to mention here that Uma Shankar Rai and Bharat Bhushan Pandey were important office bearers of CMM. During labour agitation, Uma Shankar Rai had been fatally attacked. From the statement of Bharat Bhushan Pandey (PWN 57) it appears that he came to know that the owners of Simplex have given his photos to Gundas. He got frightened and reported the matter at Police Station Jamul. This report is Ex.P.48 which was received in the Police Station on 1.9.91.

227. Yogesh Mukund Dave, (PWN 59) is an employee of Moolchand Shah. Therefore, he will certainly have the tendency to lie to save his employer. Whenever it appears to the court that some witness is telling an untruth, the court can draw a logical conclusion based upon human behaviour, probabilities, and circumstances. Therefore, the statement of Yogesh Mukund Dave (PWN 99) that the P.A. to Moolchand Shah, Bhattacharya, had sent for the addresses of Uma Shankar Rai and Bharat Bhushan Pandey to be given to the police is not reliable. Rather it would be a more commonsensical conclusion that the accused Moolchand Shah had asked for the addresses of the two worker to suppress them.

(5) Search of the house of accused Gyan Prakash Mishra and seizure there from.

228. From the statement Dy.S.P.CBI R.S. Prasad (PWN 192) and Manager B.S.P.M. Toppo (PWN 113) it is established beyond doubt that on 11.11.91 a search was conducted at the house of Gyan Prakash Mishra at Camp-1, Bhilai. At that time the accused Gyan Prakash Mishra was not in the house. At the time of search, the father of the accused and the other members of the family were present. Seizure memo is Ex.P.293. The following documents were recovered from the house of Gyan Prakash Mishra:-

(1) Ex.P.294 An application by the accused Chandra Kant Shah dated 3.7.88 to I.G. Police (Terrorist Activities) to free him from charges.

(2) Ex-P.295 certified Copy of the order TADA Court dated 11.8.88 releasing the accused Gyan Prakash Mishra, Satyendra Singh and Janardhan Shukla on bail.

(3) Ex-P.161-169 These are the coloured photographs of the occasion of marriage of Prabhu Nath Mishra, elder brother of accused Gyan Prakash Mishra. The accused Awdhesh and witness Jai Narayan Tripathi can be seen.

229. In Para 4 of the evidence of Jai Narayan Tripathi (PWN 72) objection was raised on behalf of the accused persons against production of the said photograph as evidence. For the convenience of the evidence, these photographs had been exhibited temporarily. Since CBI had seized these in the same form, hence even in absence of the negatives the photographs can be exhibited in evidence and can be proved.

(6) Search in the house of accused Abhay Singh and seizure:-

230. Sub-Inspector S.K.A. Nakavi (PWN 163) has stated in his statement that on 13.10.91 he had searched the house of the accused Abhay Singh in Camp no.1 in presence of witnesses. At the time of search the brother of the accused of Abhay Singh, Arun Singh was present and he has signed the seizure memo Ex-P.385. According to the seizure memo the following documents have been seized:-

(1) One Bhilai Times paper dated 30.4.91 on which Simplex Castings Engg.

Works, Light Industrial Area, Bhilai (MP) has been hand-written with blue ink. 15 paise ticket has been affixed on the paper and there is an illegible seal of the post office. This document has been marked as Ex-P.126.

231. From the joint persual of the statements of the Post Master Radhakrishnan (PWN 34), K.J. Pathak (PWN 35), Mrs. Cristina Kumar (PWN- 36) and Asit Bose (PWN 37) read together, it can be concluded that Ex-P.126 Bhilai Times news paper had been sent to the address of Simplex Castings and Engg. This paper dated 30.4.91. The news paper was found in the house of accused Abhay Singh.

232. In para 8 of his statement R.S. Prasad (PWN 192) has stated that on 10.11.91 he had searched Qr.No. 7-G, Camp-1, the house of accused Abhay Singh. The seizure memo is Ex.P. 69. The documents seized are as follows:-

1. Ex-P.70 is a note book in which besides other things, names of the accused Gyan Prakash Mishra and Hitesh Bhasin (PWN 50) have been written.

2. Ex.P.77 is an Executive Diary of 1988 in which Niyogi's jeep No. MBR. 1438 is also written.

(4) Where did the accused Paltan reside and totality of his personality.

233. Krishna Kumar (PWN 42) is an operator in Bhilai Steel Plant and resides in Qr.No.7-C, Camp-1 allotted by Bhilai Steel Plant. Since accused Abhay Singh is also a crane operator in Bhilai Steel Plant, he knows him very well. This witness has stated that if he stands at his quarter, the quarter of accused Abhay Singh is on the right side, which is the fourth quarter after leaving the three quarters. He further tells that in Sept. 91 prior to murder of Niyogi, he had seen accused Paltan Mallah living in quarter No.6 F. In para 8 of the cross examinations he has clarified that about a month or two prior to the murder of Niyogi, he had seen accused Paltan living in Qr.No. 6 F. In the statement of this witness, there is nothing by which his statement may appear to be doubtful.

234. Accused Paltan Mallah has not produced any evidence to the effect as to where he used to live two months prior to the murder of Niyogi. Accused Paltan has neither got recorded the statement of any house owner nor has he submitted any document by which he himself could be called the owner of the house.

235. This is undisputed that the quarter no. F6 Camp 1 Bhilai is the quarter of Bhilai Steel Plant. P.B. Nair (PWN 10) has in his statement told that quarter No. F 6 was allotted to Central Industrial Security Force. Central Industrial Security Force was given the possession of this quarter on 28.1.91. The Inspector Morghade (PWN 23) of CISF has told that Qr.No. 6 F was allotted to Constable Rama Reddy but Rama Reddy never took the occupation of Qr.No. F 6. Key to this quarter was with him only. In 1991 this quarter was not allotted to any one. In 1993 this quarter was allotted to Constable Raju Sharma. From the statement of D.N. Sahu (PWN 24) it appears that the services of Rama Reddy were terminated

on 17.9.91. Thus it is clear that sometime before the murder of the Niyogi nobody resided in Qr.No. F 6 officially. Therefore the statement of Krishna Kumar (PWN 42) is fully reliable that accused Paltan used to live there. Under these circumstances it can be assumed that the accused Paltan had forcibly occupied Qr.No. F6.

236. Accused Paltan was the permanent resident of village Nibahi, Dist. Devaria (U.P.) and since last few years he had been living in Industrial city Bhilai (Dist. Durg, M.P.). He used to do the work of the repairing cycles. He had kept a divorced lady Reshami Bai (PWN 51) atleast 10 years elder to him, as his kept and used to live in her house only.

237. Accused Paltan had been tried for various offences U/S 457, 380, 379, 394 under IPC and 25/27 of Arms Act and for various offences U/S 353, 307, 397, 341, 294, 506 (B) and 323 and under 25 and 27 of Arms Act. He was not untouched by preventive actions and had gone to jail a number of times.

238. He used to reside in Qr.No. 6 F camp 1 of Bhilai Steel Plant by occupying it unauthorisedly. In his non-judicial confession he has accepted the committance of the crime for the sake of money. In view of the above background, it can easily be assumed that he is such a person who is capable of committing any crime for the sake of money.

239. This is a case of criminal conspiracy. Here the behaviour accused Paltan cannot be proved by setting aside the relevant facts. Under such circumstances, accused Paltan's bad character becomes relevant. Besides this, looking to the facts and circumstances of this case, the bad character of accused Paltan is a controversial fact in itself. Therefore the bad character of Paltan is relevant U/S 8 and clarification (1) in section 54 of the Indian Evidence Act.

240. There were so may criminal cases pending against accused Paltan that he had become habitual of committing crimes. Committing crimes had become part and parcel of his behaviour and lifestyle. Transformation of such an accustomed criminal into professional criminal can take place without any difficulty.

(5) Mutual relations of the accused persons:

Relation of accused Paltan and accused Gyan Prakash Mishra:-

241. Assistant Jailor S.P. Singh (PWN 63) told the Court that accused Gyan Prakash Mishra, Paltan Mallah and Avdresh Rai had remained in District Jail, Durg as various time from 1985 to 1988 as under trial prisoners. His statement is confirmed by the Ex-P 155-A. On behalf of the accused persons it has been pleaded that in jail there are many block and barracks. The prisoners of one block cannot meet the prisoners of other blocks. It was also been pleaded that accused Gyan Prakash Mishra was for the whole time in a cell (Guna Khana) and therefore he was not in a position to meet the other prisoners. In support of his statement accused Gyan Prakash Mishra has got retired head Constable Shyam

Krishan Tiwari (DWN 3) examined.

242. Shyam Krishan Tiwari (DWN 3) has told in his statement the prisoners of TADA are kept in Cell (Gunahkhana). In para 4 of his statement this witness has told that as per his information, whenever accused Gyan Prakash Mishra had been in Durg Jail he stayed in the Cell but from the perusal of Ex.P.155-A it is clear that in between 85 to 91, whenever accused Gyan Prakash Mishra was imprisoned in Durg Jail no case under TADA has been registered against him. Thus, the statement of Shyam Krishna Tiwari (DWN-3) is unreliable that the accused Gyan Prakash Mishra used to remain in Cell.

243. Many a times departmental action has been taken against Shyam Krishna Tiwari (DWN-3). His statement is contrary to the records (Ex.P-155-A). Therefore, he is an unreliable witness.

244. Although, there is no clear evidence as to which blocks and barracks of Durg Jail the accused Paltan Mallah and Gyan Prakash Mishra used to stay but due to the fact that they have stayed for such a long period in the same jail, it can be assumed easily that these two accused have the acquaintance.

245. William Hilican's statement is illustrated in a book "Principles of Criminology" (Apradh Shastra Ke Sidhanta) (Kamal Prakashan 1st edition 1991 Indore), which is as follows.

When the common unit of the selection is based on execution of crime, the assembly of criminals under one roof creates an environment. Naturally, the main interest of the members of this environment, their common relations, their first and the last subject of talks would be crime. Here, there is such an environment where crime is praised. Such an environment makes previously acquired criminal behaviour more solid.

246. Besides, accused Gyan Prakash Mishra used to live in Camp-1, Bhilai. In the same Camp No.1 area in the neighbourhood of his friend accused Abhay Singh, accused Paltan Mallah used to live in Qr.No. 6-F unauthorisedly. On the basis of above evidence it can be concluded that there was a relationship between accused Paltan and Gyan Prakash Mishra.

Relations Between Accused Gyan Prakash Mishra & Accused Chandrakant Shah:

247. Manubhai Boda (PWN-17) works as junior executive in Simplex Company. He has in para 6 of his statement told that when the scrapped material, used to be transported back to his factory from Oswal (owner, Chandrakant Shah), some times accused Gyan Prakash Mishra used to come to Simplex Caustings, along with transported material. According to Atul Chandia Pal (PWN 31) accused Chandrakant Shah had purchased brick klin in Sonapur in his name. Accused Gyan Prakash Mishra used to do the work of supplying coal etc.

248. From the statement of Surajmal Jain (PWN-92) in para 10 it appears, that

when two days after Niyogi's murder, he had gone to accused Chandrakant Shah's house for inviting him to the birth day of his daughter, accused Gyan Prakash Mishra was sitting there.

249. According to Ravindra Kumar Mende, (PWN 91). When in March 1991 he had taken accused Chandrakant Shah, Abhay Singh and Awadesh Rai to Nepal in Tempo-Track, accused Gyan Prakash had met him. Accused Chandrakant Shan and Gyan Prakash Mishra had stayed in one room.

250. Ramesh Bhasin (PWN-142) has in para 6 of his statement told that accused Gyan Prakash Mishra used to frequent the factory of accused Chandrakant Shah. If accused Chandrakant Shah would have given the letter to accused Gyan Prakash Mishra for giving money then he might have given the money to him.

251. During the search of Gyan Prakash Mishra's house, the letter written by Chandrakant Shah dated 3.7.88 has been recovered (Ex.P.294).

252. The documents recovered from the house of accused Chandrakant Shah, (Ex.P.393 (9), 393 (10), 393 (11), 393 (12) and 393 (13); Ex.P-447, 448, 449 to 453 show that there was an intimate relation between accused Gyan Prakash Mishra and Chandrakant Shah.

Relationship Between Accused Gyan Prakash Mishra And Accused Abhay Singh:

253. From the statement of P.K.Vijay Kumar (PWN 119) it appears that on the recommendation of elder brother Prabhunath Mishra (of accused Gyan Prakash Mishra), the contract of Cycle Stand of a Tailkies was given to Awadhesh Rai in September 91. For taking the contract Abhay Singh had also come along with Awadhesh Rai. The money of the Cycle stand, used to be deposited in the account of accused Gyan Prakash Mishra in the Syndicate Bank.

254. From the statement of hotel owner Rajkumar Pandey (PWN-48) it appears that the Accused Gyan Prakash Mishra, Awadhesh Rai and Abhay Singh some times used to come to his hotel for taking food.

255. The accused Gyan Prakash Mishra and Abhay Singh used to live in the same locality, Camp-1.

256. About a week after the murder of Shanker Guha Niyogi, accused Gyan Prakash Mishra and Abhay Singh together left for Pachmadhi from Bhilai in the night. Thus, the relationship between these two accused is established.

The Relation Between Accused Gyan Prakash Mishra & Accused Awadhesh Rai:

257. Earlier accused Awadhesh Rai also used to live in Camp No.1, where the house of Gyan Prakash Mishra is there.

258. Accused Gyan Prakash Mishra and Awadesh Rai used to go together to

take food at Rajkumar Pandey's Hotel (PWN-48).

259. In the marriage of Prabhunath Mishra, elder brother of accused Gyan Prakash Mishra, Awadhesh Rai had actively participated which is clear from the photographs Ex.P.161 to 169.

260. The accused Gyan Prakash Mishra and Awadhesh Rai stayed together in Durg Jail

261. On the recommendation of Prabhu Nath Mishra, elder brother of accused Gyan Prakash Mishra, the the contract for the cycle stand at Mourya Talkies was taken by Awadesh Rai income of which used to be deposited in Syndicate Bank in the account of accused Gyan Prakash Mishra.

262. The relationship between accused Gyan Prakash Mishra and Awadhesh Rai is also established.

Relationship Between The Accused Gyan Prakash Mishra And Chandrabax And Baldeo:

263. The accused Chandrabax and Baldeo were attached to the activities of that cycle stand, the income of which was being deposited in the Synidcate Bank in the account of Gyan Prakash Mishra.

Relationship Between Accused Gyan Prakash Mishra And Accused Moolchand Shah and Navin Shah:

264. Accused Navin Shah and Moolchand Shah are among the owners of Simplex Industries Group. The material after being scrapped at Oswal Industries (Owner Chandrakant Shah) was transported to Simplex Industries, along with those trucks accused Gyan Prakash Mishra used to come.

265. During the movement of Niyogi accused Gyan Prakash Mishra used to be present at the Gate of Simplex although he was not an employee of Simplex Industries.

266. Accused Moolchand Shah and Navin Shah are the elder brother of accused Chandrakant Shah, an intemate friend of accused Gyan Prakash Mishra.

267. A letter Ex.P.298 dated 28.9.91 was written by accused Gyan Prakash Mishra to accused Navin Shah. This is how the relationship between all these three accused is also established.

268. On behalf of prosecuion, it has been pleaded that accused Gyan Prakash Mishra funtioned as an axis between accused persons connected with Simplex Group and the other accused persons.

269. From the aforesaid relationship of accused Gyan Prakash Mishra and other accused persons, it is proved that accused Gyan Prakash Mishra was performing the vital function of an axis between accused persons connected with Simplex Industries and the other accused persons, and the entire sequence of

the events was taking such a shape by which it can be easily inferred that in this case accused Gyan Prakash Mishra was the centre point of criminal activities of the accused persons.

6. Writings of The Accused Persons:

270. B.S.Kanwar (PWN 183) S.P. of CBI has in para 7 of the statement told that on 16.12.91, he had taken the sample writing of accused Chandrakant Shah (S-13 to S-24) which is Ex.P.259. During cross examination, he has further told that investigation officer. R.S. Prasad had told him only on 16.12.91 that he should go to police station Nevai to take the sample writing of accused Chandrakant Shah. This witness has in para 15 of the cross- examination clarifies that at that time accused Chandrakant Shah was on police remand under Police Station, Durg.

271. Bharat Lal Dewangan (PWN 96) is an employee of Bhilai Steel Plant. According to him CBI people came to his office and told their officer B. Mamtani that they needed two employees. B. Mamtani instructed him and P.R. Dewangan to assist CBI officers. When he came to police station Nevai, he saw accused Chandrakant Shah sitting in a chair at ease in the Police Station. The officer of the CBI used to speak very slowly which the accused used to write. Accused Chandrakant Shah had written the sample writing (S-13 to S-24) in his presence which is Ex. B-25. Accused Chandrakant Shah took about an hour to write the sample writing. Thus, the evidence produced by the prosecution clearly proves that the sample writing of Chandrakant Shah was taken. Chandrakant Shah gave the sample writing at an ease.

272. Inspector N.K. Pathak, (PWN - 181) has stated in his statement that on 25.11.91 and 29.11.91 the sample writing of accused Gyan Prakash Mishra was taken at Vishakhapatnam Hostel, Bhilai. The sample writing taken by him on 25.11.91 (S-25 to S- 78) is Ex.P.341 and the sample writing taken on 29.11.91 (S-82 to S-87) is Ex.P.379. Janardan Pandey (PWN-148) has confirmed that the sample writing Ex.P. 379 is that of accused Gyan Prakash Mishra. Indra Kumar (PWN-128), has confirmed that Ex.P.341 is the sample writing of accused Gyan Prakash Mishra.

273. Here only those documents about hand-writing are being considered which are necessary for solution. Handwriting Expert Mr. A.C. Mittal has after examining accused Chandrakant Shah's admitted hand-writing, sample hand-writing and disputed hand-writing, submitted the report (Ex P-259) that the writer of these writings is the same person.

274. Similarly, the hand-writing expert has after examining accused Gyan Prakash Mishra's admitted hand-writing, sample hand-writing and disputed hand-writing (Ex.P.298 and Ex. p. 291 (8) given the opinion that these writings are of one and the same person. Report of the writing expert is Ex.P.409.

275. It is necessary to mention here that Ex.P.239 is slip of paper in which the number of fiat car MIR- 227 and Jeep No. MP T-7971 is written. The registration

of Fiat No. MIR- 227 is in the name of Dr. Punyawrat Gun (PWN-16). From 1987 when Shankar Guha Niyogi's leg was fractured upto the last days of his life he has been regularly using this car. That fact is established by the statements of Sudha Bharadwaj (PWN-15) and Punyawrat Gun (PWN-116). Registration of jeep No. MP T- 7971 is in the name of CMM.

276. Slip Ex.P.298 is that piece of torn paper which was recovered on 15.12.91 from the office of Akash Ganga Parisar of accused Chandrakant Shah. This letter was written by accused Gyan Prakash Mishra to accused Navin Shah.

277. The chit of Ex.P. 239 and Ex.P.393 (8) was found during the search of accused Chandrakant Shah. Ex.P.393 (8) is the bill of a Provision Store, Madhuban, in Kathmandu, Nepal behind which the names of the arms and their prices had been written. According to hand writing expert the writing of Ex.P.393 (8) is that of accused Gyan Prakash Mishra.

278. In the cross examination of the hand-writing expert done by the accused persons nothing has emerged out so as to doubt his report, on the contrary, in paras 13, 14 and 15 the hand writing expert has given definite opinion.

279. Hand-writing expert A.C.Mittal (PWN 160) has obtained doctorate in Chemistry and from Delhi University he has obtained one year Diploma in Forensic Science. He has obtained six month diploma in Puper Technology from F.I.R. Dehradun. He is with Central Forensic Lab since 1970. He has done 2 years working training (Examination of disputed documents) in his lab. From 1978 to date he has examined the documents and has given his opinion on 1800 cases as an expert. He has given statement in the court and departmental enquiries in the above 70 cases. Thus, Dr.A.C. Mittal (PWN 160) has high educational qualification in handwriting science and has a long experience of examination of documents. Dr. Mittal (PWN 160) is an expert witness and his opinion help the court reach a correct conclusion.

280. On behalf of accused Gyan Prakash Mishra, Inspector K. Bhattacharya (PWN 169) of CBI. was cross examined on the point that the writing of Ex.P.393 (8) is his writing. The witness has contradicted this suggestion. After this an application was moved on behalf of accused Gyan Prakash Mishra that the sample writing of that witness be taken. The court accepted his application and the sample writing of that witness was taken (Ex.D.-50 A.B. and C) but the accd. Gyan Prakash Mishra did not send the sample writing of this witness to hand writing expert for examination. Therefore, it cannot be accepted that Ex.P. 393 (8) writing is that of K. Bhattacharya (PWN 169).

281. There is no dispute on the point that the writing in English in Ex.P.116 is that of accused Mulchand Shah.

7. Niyogi's Diary and Cassettes:

282. According to G.M. Ansar (PWN-55) he passed his M.A. in English in the year 1983. In the year 1974 he came from West Bengal to Rajahara (Dist. Durg) to teach the tuition to the children. In the year 1977 he was acquainted with Shankar Guha Niyogi. Niyogi ji appointed him to teach the children of the

workers. Thereafter influenced by him, he appointed him as the editor of magazine "Mitan" published by CMM. In the year 1983 he went back to West Bengal from Rajahara and whenever Niyogi ji used to write him a letter, he used to come once or twice a year to Rajahara. This is how this witness was well acquainted with the writing of Shankar Guha Niyogi.

283. In para 9 of his cross examination this witness has told that Niyogiji used to write poems and give him which he used to publish. He did not use to copy it from the diary of Niyogi ji and publish them. Niyogi used to write poems, sometime in diary and sometime in a page and used to say that "copy it out". Niyogi ji in his diary used to write poems and used to write about the organisation. From the para 10 of statement of the daughter of Shanker Guha Niyogi, Kranti Niyogi (PWN-67) it appears that her father used to write diary. Sudha Bharadwaj (PWN-15) also tells that Niyogi had told them that while in Jail he got a novel to read and from that novel he had written some quotable quotes in his diary. Thus, from the statement of all these three witnesses, this is established beyond doubt that during his life time Shankar Guha Niyogi used to write diary.

284. From the statement of G.M. Ansar (PWN-55) it appears that he came to know about the murder of Shanker Guha Niyogi through newspapers of West Bengal. After a few days he came to Rajahara and met the wife of deceased, his daughter and members of CMM and found out about the diary of Niyogi. He came to know that a diary of Niyogi is at Bhilai and that is with Sudha Bharadwaj (PWN-15). He came to Bhilai but he could not locate it, then he went to Raipur and he obtained that diary from Sudha Bharadwaj (PWN-15). In this diary few poems were written and in English it was written "Some one has collected fire on to kill Niyogi. He showed this diary to Dr. Gun (PWN-16) and Dr. Jana (PWN-39). At that time police people were investigating. He showed this diary to police. Police seized this diary from him. The seizure- memo of it is Ex.P.105. when that diary (Ex.P.93) was produced in the court, on seeing that this witness said that this is the same diary which Niyogiji used to write. This witness told that the writing from page no. 19 to 26 was said to be that of Niyogiji. Similarly, from page no. 27 to 33 poems have was said to have been written by Niyogiji. This witness certifies the writing from page no. 169 to 174 to be of Niyogi. This witness told that in page No. 172 the names of accd. Gyan Prakash Mishra, Santosh, Awadhesh, Abhay Singh, Omprakash Mishra, Bijju, Ramkumar Pandey and Dilip Pandey to have written on page no. 172.

285. In para 35 of his statement Dr. Punyavrat Gun has said that 3-4 day before his murder, deceased Shankar Guha Niyogi had sent a letter in his own hand-writing (Ex.P.72) and had said that Niranjan Yadav has to be paid 1,500/- ruppies per month. Thus, (Ex.P.72) is Niyogi's admitted hand-writing. Basant Sahu (PWN 14) has also in para 24 of his statment told that in the documents from Ex.P.72 to P.92 writing encircled by blue ink is written in late Shanker Guha Niyogi's hand, excepting the marking A1 to A21. Similarly this witness also told that in diary Ex.P. 93 writing from Q.2 to Q.7, which are encircled by red pencil, apart from the marked portion of Q.2 to Q.7, rest is the writing of Shankar Guha

Niyogi which has been marked as Ex.P.94 to P.99. The relevant entries have also been corroborated in the statement of hand-writing expert A.C.Mittal (PWN 160).

286. Thus, the entries made in connection with the present accused by late Shankar Guha Niyogi in his diary in Ex.P.93 during his life time are as follows:-

1. Page No. 32 Industrialists like Simplex- Kedia have in collaboration with the higher officials of Durg formed a fascist gang. It is an unfortunate think that the judiciary of Durg and Rajnandgaon districts have also joined this gang.

2. Page No. 169- is in English and is a complex sentence which be translated in Hindi can as follows:- From the persons arrested by the police in Bomb explosion case, information has been gathered been that Gyanu has collected Rs. 5 lacs from Simplex for collecting fire arms. Pradeep Singh Sector- 2, has got a man from Siwan district to kill Niyogi.

3. Page No. 172-1.Gyan Prakash Mishra, 2. Awadhesh - now Sector-4, Abhay Singh, Awadhesh (Sector-4), left hand of Gyanu.

4. page No. 174 Gyanu-Chandrakant.

287. Thus, it is established that late Shanker Guha Niyogi used to write in a diary and entries made in connection with the present accused persons are in the hand-writing of late Shankar Guha Niyogi.

288. In paragraph 3 of her statement Kranti Guha Niyogi (PWN-67) daughter of late Shankar Guha Niyogi has stated that one day when she was playing in the courtyard inside her house, her father was taping his talks on the other side of a cassette with songs. At that time she did not pay attention as to what her father was recording. The wife of the deceased. Asha Guha Niyoti (PWN-68) has stated that around 2 months before going to Delhi, Niyogiji had given her a cassette. She kept that cassette and forgot about it. Dr. Punyawrat Gun (PWN-16) has in para 7 of his statement stated that he would give a representation to the highest authority of the country (President) and if no solution emerges agitation would be accelerated. About himself, Niyogiji had said that he can be attacked at any time. Niyogiji had said that he had recorded the names of Industrialists in a cassette and in case he dies, in that case, listen to that cassette and play it to the members of the union. In para no.13 this witness has further said that this was told to him a month and a half prior to his death but he thought that Niyogiji was joking.

289. Dr. Punyavrat Gun (PWN 16) has stated that after the death of Shankar Guha Niyogi when the investigation officers were making enquiries from Kranti Guha Niyogi (PWN 67) she mentioned about the cassette. He came to CMM office and searched the cassette. He got two cassettes. He heard both the cassettes but there was nothing pertaining to the murder of Niyogi. There upon, he asked the wife of deceased Asha Guha Niyogi (PWN-68) if there was any such cassette. Then Asha Guha Niyogi took out a cassette from her box and gave him. They all heard the cassette along with the office bearers of the Union. They dubbed the cassette into another cassette. Sudha Bharadwaj (PWN 15) did the transcription of this cassette. Thereafter he handed over this cassette to the

police which was seized by the police. The seizure-memo is Ex.P.106. Deputy Superintendent of Police M.G. Agrawal (PWN 182) has in para 6 of his statement stated that he seized a micro-cassette on being handed over by Dr. Gun (PWN 16) the seizure-memo of this is Ex.P.106. The Panchnama of dubbing the micro cassette is Ex.P.107. He dubbed the voice of micro cassette into a big cassette and the micro-cassette was sealed. From the statement of Kranti Guha Niyogi (PWN 67) and Asha Guha Niyogi (PWN-68) it is clear that after the murder of Shanker Guha Niyogi they had taken out the cassette and given it to Dr. Gun (PWN 16).

290. Sudha Bharadwaj (PWN-15) has in para 8 of her statement said that on 5th Oct. 1991 Dr. Gun had, after hearing the cassette told her to transcript it. She heard the cassette. This cassette was in the voice of Shankar Guha Niyogi. This witness has told that she had heard Shankar Guha Niyogi speaking many times and also had heard his voice on telephone. That is why she recognized the voice of Niyogiji. After hearing the cassette, she did its transcription which is Ex.P.101. It will be relevant to quote this transcription:-

The way the capitalists of Bhilai are running a regime of untruth and fraud, the way they are pressurising the district administration, the way they are instigating the goondas to fatally attack the supporters of the union are union leaders, ~~from this~~ it is becoming clear that in the near future some such wrong action would be organised there by; to shatter, to finish it last attempt through a brutal attack on the workers movement so as to attempt to end and crush it.

But the working class know that the capitalists, howsoever powerful they may be, we have to confront them. If we do not resist them in the correct manner, if we do not muster all our strength against these ferocious masters, goondaism of a few such capitalists would continue all the time and these ferocious beasts would keep on attacking the movements of democratic process as always. Therefore there is need to confront them and we have got to confront them.

I know that this people are after my life. I know this very well that it is possible that during this movement, they shall kill me. Death will come to all, it will come to me also. If not today then tomorrow, or after a year, or the next day. I know that this world is very beautiful. I sincerely wish to established such an order in this world where there would be no exploitation, where toiling workers and peasants would lead a peaceful life. But everything is not going to happen because I wish it. I have to live my life. I certainly love this beautiful world, but my duty, my work is dearest to me. The responsibility which I have taken up, that responsibility I have got to fulfill, and these persons would kill me. Despite this I know that by killing me, no one can finish our movement. I, after my death, it is definite that the questions would certainly arise "WHO KILLED ME", and who are those behind who are responsible for my death.

The way the people of Simplex are playing mischief, specially Moolchand, the way he is collecting, criminals, there is Prabhunath Mishra who is a friend of Shantilal Jain also. He, the way his brother is also a goonda, is making full efforts to create some untowards incident here. Kedia is a very cunning man. Because

of this, it is my belief that Moolchand and Kedia these two persons only, who, today at this time, are behind all the conspiracies. By apprehension, I am understanding continuously that these two persons in collaboration with I.G. of Police Mr. Singh are involved in a big conspiracy. And therefore I am getting this fact my heart-felt feelings taped, recorded, my sentiments because perhaps very soon something is going to happen. Therefore this record would help my comrades to understand all the things.

After my death, we have to keep such a leadership alive, which must have faith that we shall take this movement in the right direction. In our movement struggle and creation are the two most important ingredients. Meaningful constructive work has to be done and struggle against exploitation - every exploitation, the oppression shall have to be continued. Anup Singh is a good person, a young man but he also has some problems. If Ganesh, Anoop, Janak, Dr. Gun, Dr. Jana together with Neel Ratan these people together in a proper way, through a democratic process take any right decision, that decision would be the correct decision. We will have to make efforts that 2-4 new comrades of Bhilai from Simplex who are emerging - in these all - Casting, Udyog and Engg. in these three departments and those, working in Uria, those working in Tedesara those new comrades emerging amongst them. By taking these people beginning of a good organisation can be made. Beside these, the singers who have emerged during this movement along with Phaguram, if these people also take some responsibility then in our decision making, decisions which are to be taken tomorrow, in that we should also include them.

Politically nearest to us are People's War Group and I.P.F. We are also opposed a little to People's War Group -- they want to form the organisation only on the point of gun. To that, I do not agree. We should by accalating the democratic movement and organised the masses and then if it becomes necessary or at the call of the hour, we must not be afraid of the armed struggle and we should also be prepared for armed struggle but in the beginning undemocratic method of struggle will not be proper. Firstly, they must make all efforts to pour our entire strength for democratic acts. People must feel that nothing is being achieved by the democratic methods at that time if we do armed struggle to end this system that path would be a correct one. From IPF my only difference is that people of IPF are saying all this but their leadership has taken some steps of retreating back, which we do not like. Their view about perestroika or glasnost are not correct. The present leadership of soviet union can not be called revolutionary leadership. I can visualise, a day would also come when in India there would be a Marxist-Lenin Party of correct manner. The day a Marxist Party is formed I request my revolutionary comrades that they should by been together with Marxist-Lenin Party march forward giving cooperation to all in making new order of the society and the world.

Regarding the theoretical matter we must continuously discuss with Com. Dr. Vinayak Sen.

Bhimrao Bagde should be included in the central decision making committee

and Sheikh Ansar is a brilliant chap. He should also be included in the decision making body Atul and Somdutt should be encouraged to develop in our future programme.

Anjor Singh must be included as the Vice President in CMM. We have much hopes from him. I am confident that under the leadership of Anjor Singh such a force would emerge in tribal areas in the time of bringing in revolutionary changes in the area, the large contingent would be formed, he would be lead them.

291. On behalf of the accused this plea has been given that there were a good nos of cassettes in the voice of Niyogi and the micro- cassette in question is not in the voice of Niyogi. It is correct that from the statement of Sudha Bharadwaj (PWN 15) and Dr. Punyavrat Gun (PWN 16) it appears that during his lifetime decd. Shanker Guha Niyogi had recorded many of his sppedhes in the cassettes and those cassettes were heard in the office of CMM. There is nothing unnatural in this. Shankar Guha Niyogi was a labour leader and therefore for him it was natural and was to some extent necessary to relay his thoughts to workers and ordinary public. No man can repeat a thing times and again, therefore, the person records his good thoughts or working patters which he considers good. Such records are permanent assets which can benefit those who listen to it. Besides, labour leader, many politicians and spiritual persons also get the cassettes of their speeches and thoughts recorded and give them to their followers to listen, therefore if Shankar Guha Niyogi had, in his lifetime, got his speeches recorded in cassettes, it does'nt lead to a state of suspicion.

292. The court has also to consider the issue whether the voice in micro cassette is that of Shankar Guha Niyogi or hasn't any other person copied his voice (mimic). It is clear from para 8 & 9 of the statement of Sudha Bharadwaj (PWN-15) that after hearing the micro cassette in the court, she has said that this is the voice of Niyogiji. As has been told previously, this witness had prepared the transcription of the cassette Ex.P.101. This witness told the court that in Ex.P.101 where in the 1st line "capitalists" has been written, that ought to have been industrialists. In this way there have been extremely small mistakes in the transcription. This witness told that she is capable of recognizing the voice not only of Shanker Guha Niyogi but even that of her wife Mrs. Asha Guha Niyogi (PWN-68). Similarly, Dr. Punyawrat Gun (PWN-16) also after hearing the micro-cassette (article C) in the court, told that it is the voice of deceased Shanker Guha Niyogi.

293. Asha Guha Niyogi (PWN 68) wife of deceased Shankar Guha Niyogi in para 4 of her statement has claimed after hearing the micro-cassette that it is the voice of her husband. Kranti Guha Niyogi (PWN 67) daughter of the deceased has also told after hearing the cassette twice told that it's voice is that of her father's voice.

294. The learned counsel for defence Shri Rajendra Singh has pleaded that the voice (Cassette) of deceased Shankar Guha Niyogi should be got identified by an independent witness, not by an interested witness. This is a matter of common experience that the voice of a man can be identified either by the

members of his family or by such a person with whom there has been continuous conversation. Any strange man cannot recognise the voice of the deceased.

295. When in the court micro cassette Article-C was operated, wife of the deceased Asha Guha Niyogi (PWN 68) started weeping on hearing the voice. Similarly, Kranti Guha Niyogi started weeping after hearing the cassette, after seeing the writing in diary Ex.P.93 and after seeing the clothes of the deceased. Thus, after hearing that voice where wife and daughter created a sentimental environment that voice must necessarily be of her husband/father. Had the voice been mimicry, there was no reason as to why the members of his family could not recognise it. There is no evidence to the effect that micro cassette Article-C is not of the deceased but it is a mimicry.

296. On the basis of the statement of Dr. Punyawrat Gun (PWN-16) Sudha Bharadwaj, (PWN 15), Kranti Guha Niyogi (PWN-67) and Asha Guha Niyogi (PWN-68) and in the context of micro cassette Article-C, this can be said definitely that the voice in the said micro cassette is that of deceased Shankar Guha Niyogi only.

297. The consideration has to be made with regards to page no. 169 (Ex.P.83) of the diary of the deceased should be considered in context of the evidence. Ajay Kumar Singh (PWN-156) Manager Hotel Banjara, Sivan (Bihar) has in his statement told that on 14.11.90 accused Gyan Prakash Mishra came to his Hotel from Bhilai and stayed there upto 19.11.90. On 19.11.90 after leaving the Hotel, accused Gyan Prakash Mishra again came back to the Hotel along with another man and stayed up to 23.11.90. On 22.11.90 Awadhesh Camp-1, Bhilai, came to his hotel with another man and stayed upto 23.11.90. On 23.11.90 the accused Gyan Prakash Mishra along with 2 persons came to his Hotel and stayed upto 1.12.90. The accused Gyan Prakash Mishra came to his Hotel on 9.12.90 and stayed upto 13.12.90. This witness recognized accused Gyan Prakash Mishra in the court. Since the accused Gyan Prakash has stayed in his hotel, a number of times and for a long duration, recognition by this witness of accused Gyan Prakash Mishra can not be said to be unnatural. Accused Gyan Prakash Mishra has in his accused's statement admitted that he had been staying at Hotel Banjara Sivan Bihar as stated herein above. Accused Gyan Prakash Mishra has stated in his accused statement that he used to go to Sivan to meet his friend Shahabuddin (Ex.M.L.A and present Member of Parliament) but this statement is not acceptable. If accused Gyan Prakash Mishra had gone to meet his friend, he would stay at his house and not in Hotel like this. Accused Gyan Prakash Mishra has not submitted any evidence to the effect that he used to go to meet his friend.

298. the accused Awadhesh Rai has in the accused statement refused to have stayed at Hotel Banjara, Sivan (Bihar) but from Ex.P.307 Traveller's Register, this fact is confirmed that Awadhesh Rai had stayed from 22.11.90 to 23.11.90 in the said Hotel.

299. The person who has murdered the deceased, he is not a resident of district Sivan. In page 169 of the diary Ex.P.93 the kind of complex and

complicated sentence the deceased Shankar Guha Niyogi has written it would not be proper from which by mutilating it to arrive at a conclusion that the accused Gyan Prakash Mishra had procured a man from district Sivan to kill Niyogi but what meaning can be derived is that Gyanu (Gyan Prakash Mishra), on receiving Rs.5 lakhs from Simplex did collect the fire arms.

300. At this stage the question arises, was the deceased Niyogi a person who could make a false statement in his diary (Ex.P.93) and micro-cassette (Article-C)? In order to know whether a person can make a false statement or not it is relevant to look into the person's earlier behaviour and background. From the statement of G.M. Ansar (PWN 55) it is clear that when he had met deceased Shankar Guha Niyogi the latter had appointed him to teach the workers' children. Deceased Shankar Guha Niyogi had appointed Dr. Punyavrata Gun in Shaheed Hospital - the hospital established by CMM. In the interest of the workers the deceased had carried out agitation first in Rajhara, then in ACC Jamul and after that from 1990 in Bhilai. Those workers who were dismissed during the movement Niyogi used to get them paid Rs.1500 every month through the organisation.

301. After the death of the deceased his wife and children still reside in a two room house in Bhagolipara, Rajhara. The expense of the childrens' education is borne by the CMM. For maintenance of the wife and children of the deceased they are given Rs.1500 per month by the CMM. This is the same amount which is given per month to the retrenched workers through the organisation by deceased Shankar Guha Niyogi during his lifetime. From this it is clear that despite the organisation (CMM) having sufficient resource of income its chief (Shankar Guha Niyogi) did not amass personal wealth. On the contrary on observing the living standard of the deceased's wife and minor children any person with common sense can say that Shankar Guha Niyogi was an honest person who had not made accumulation of personal property his aim.

302. A person who was struggling for the education, health and social welfare of the workers and their children, who was honest in his life, can he make a false statement? This question can be answered simply in that Shankar Guha Niyogi was a truthful person who could not make a false statement in his diary and cassette. The manner in which the deceased has written the names of the accused in his diary is also corroborated by the evidence. For instance Gyanu-Chandrakant on Page no.174, Awadesh - Gyanu's left hand on Page no. 172.

303. The intimate relation between the above accused has already been established by the evidence.

304. When the statement of the deceased (the diary and the cassette) is true, then to consider its relevance and to link his murder with the accused persons involved is a task like Sagar Manthan (churning of the ocean).

305. The learned defence counsel Shri Rajendra Singh has argued that the entries in the diary and the statement recorded in the cassette do not fall within the scope of Section 32 (1) of the Indian Evidence Act on the following grounds:

1. The entries in the diary and the statement in the cassette of the deceased are not related to the death of the deceased .

2. There is no evidence as to when the entries were made in the diary and when the cassette was recorded.

3. The entries in the diary of the deceased and the statement in the cassette can date much before the incident and hence they have no proximate relation with the death of the deceased.

306. The learned defence counsel Shri Rajendra Singh has also argued that for a statement to be relevant under Section 32 (1) of the Evidence Act it should be proven by the proximity test.

307. This fact is undisputed that the context in which the deceased has mentioned the names of the accused in his diary and cassette is in relation to the subject of the evidence; his death. Deceased Shankar Guha Niyogi had come to Bhillai and started an agitation against the industrialists only in 1990 and his death occurred in 1991. Thus it can be said about the entries in the diary that these were made within an year of his death. Deceased Shankar Guha Niyogi was in Durg jail between 4-2-91 and 3-4-91. The entries made by the deceased on page 169 of the diary Ex.P.93 show that they are entries made in the duration of his jail term. In September 1991 the deceased was murdered. Thus the entry on page 169 would have been made 5-6 months prior to the death of the deceased.

308. The wife of the deceased Asha Guha Niyogi (PWN 68) has in para 2 of her statement said that Niyogiji had given her the cassette around 2 months before going to Delhi. Shankar Guha Niyogi went to Delhi only in September 1991. In para 13 of his statement Dr. Punyavrata Gun has stated that around a month or month and a half before his death the deceased had mentioned this cassette and said that any time there might be an attack on him. Niyogiji had told him that he had recorded the names of industrialists and if he died then, listen to the cassette and play it to the members of the union also. Thus if the statements of the deceased's wife and Dr.Punyavrata Gun (PWN16) are read together it can be said that the deceased had recorded his voice in the microcassette Article C within 2 or 3 months of his death.

309. The learned defence counsel Shri Rajendra Singh has relied upon the decision of the Division Bench in Onkar Ganesh Vs State of MP (1974 MPLJ-429). In this judgement the Hon'ble High Court had laid down that under Section 32 (1) of the Indian Evidence Act that circumstances of the transaction should be directly connected with the death. If the deceased has made a statement which suggests a motive much before the incident, it is not admissible.

310. The Hon'ble Supreme Court in the matter of Sharad Birdichand Sharda Vs State of Maharashtra (LIR - 1984 Supreme Court - 1622 para 21) has laid down that test of proximity can not be interpreted in a literal or narrow sense. How proximate the time is; depends on the particular circumstances of the case.

when a death takes place after a long-drawn dramatic process and if the statement of the deceased corresponds with every stage of the drama then also it is an admissible evidence.

311. Recently in the matter of Ratan Singh Vs State of Himachal Pradesh (1997 CLJ -833 Para 15) it is not necessary that the circumstances are proximate, instead even if the circumstances are distant the evidence is admissible provided that it is related to the transactions as a consequence of which death has taken place. For the above reason the entries made by the deceased in his diary and the statement recorded by him in his cassette is *relevant and admissible under Section 32(1) of the Evidence Act.*

312. In para 12 of the above cited judgement it is also stated that a statement under Section 32 (1) of the Evidence Act is substantial evidence and action can be taken upon it without corroboration. However looking into the circumstances and complexity of this case it seems necessary for the court to corroborate the participation in the crime of those accused mentioned in the diary and cassette of the deceased through other evidence.

(8) Niyogi's movement and the motive of the crime.

1. Losses to the Simplex Group of industries.
2. Retrenchment of the workers of Simplex Industry.
3. Attacks on the workers of CMM.

313. Sub-Inspector PC Tiwari (PW no.3) was stationed on the post of Town Inspector in Police Station Lalbagh, district Rajnandgaon in 1990. There were three factories of the Simplex Group of Industries under the jurisdiction of the said police station. On 5-5-91 the General Manager of Simplex Engineering and Foundry Works Limited, unit Rajnandgaon had sent a complaint (Exhibit P- 29) to the Superintendent of Police Rajnandgaon that the workers were carrying out an agitation. Along with this complaint a photocopy of the slogans of CMM Exhibit P-28 had also been sent. It is clear from the statement of Sub-Inspector Suresh Sen, Police Station Jamul Bhillai (PW No.6) that the owner of Simplex Unit 1 and 2 is accused Moolchand Shah and owner of Simplex Casting is accused Naveen Shah. When on 1-1-91 the witness was on duty near Simplex Unit No 2 the workers of CMM were shouting slogans and their numbers were continuously increasing. On that day deceased Shankar Guha Niyogi came at around 1.30 in the afternoon and addressed the workers. The workers were shouting slogans against the industrialists.

314. The then Town Inspector SL Salam (PW No. 7) has stated in para 7 of his statement that on 17-9-90 a procession was taken out by CMM and Ch. Shramik Sangh. There were about 1000-1200 workers in the procession. The gate of the Simplex Company was shut and accused Gyan Prakash Mishra was standing inside the gate with some workers. Shankar Guha Niyogi had addressed the procession as chief guest, among the other speakers were Janaklal Thakur and Hari Singh Thakur. In his speech Shankar Guha Niyogi had stressed on taking back the dismissed workers and regularising the contractual workers.

315. The Town Inspector further stated that on 14-11-90, Section 144 Cr.PC had been promulgated around the gates of Bhilai Engineering Corporation, Simplex Udyog, Simplex Casting and Simplex Engineering. and Shankar Guha Niyogi and his associates had been prohibited from entering the area.

316. On 23-1-91 CMM and Chattisgarh Shramik Sangh took out a rally in Kailash Nagar which was addressed by Shankar Guha Niyogi. Shankar Guha Niyogi had delivered a provocative speech and a possibility of breach of peace had arisen. Shankar Guha Niyogi had stated that he has never learnt to lose and the victory has always been his. He also said that he would rest only when the demands are fulfilled otherwise his dead body will lie before the Simplex gate. Shankar Guha Niyogi had said that he would not rest till he had forced accused Moolchand Shah, Naveen Shah and Arvind Shah to their knees. The Town Inspector had returned to the police station and made an entry of this in the Rojnamcha Sanha. (Exhibit P-7).

317. On 15-11-90 Section 144 had been promulgated and a chalk line had been drawn to prohibit the workers from going near the industries. This meeting was addressed by deceased Shankar Guha Niyogi. Those workers who defied Section 144 were arrested owing to which workers were also agitated.

318. Town Inspector SL Salam (PW no.7) has stated in para 17 of his statement that in his speech of 15-11-90 Shankar Guha Niyogi had said that accused Moolchand Shah and Naveen Shah have put up a pandal and they have drawn a chalk line. This chalk line had been drawn to safe-guard the factories of Simplex Group. The deceased Shankar Guha Niyogi had addressed the chalk line drawn by the administration as Laxman Rekha and addressed the Simplex Group of Industries as Sita. but he had said that he did not want to kidnap these Sitas. SL Salam (PW No.7) has also stated further that Shankar Guha Niyogi had said that he has not come to Bhilai to spread terror rather the industrialists and administration are maligning him. He had also said that if the industrialists and administration do not want unrest they should come and discuss with him. The deceased had further stated that those who are avoiding discussions now, one day they will come on their knees and ask for a settlement. In para 18 of his statement SL Salam (PW no. 7) had stated that Shankar Guha Niyogi had said that his fight is against the owners of Simplex and not against the smaller industries. He had also said that accused Moolchand Shah and Naveen Shah should think and then come and talk to him. He had given 5 days time to the accused that they should come and talk to him otherwise the factories would be closed. He also said that those who are sitting pretty as industrialists today will have to return becoming small fry. The witness had entered the speech delivered by Niyogi on 15-11-90 in the Sanha Exhibit P-9.

319. On 25-6-91 and 26-6-91 also, CMM had taken out processions and meetings in Ghasidas Nagar in which it was said that the Town Inspector and other Police Officials are servants of the industrialists.

320. Town Inspector Salam (PW No. 7) has stated in para 20 of his statement

that on 4-7-91 deceased Shankar Guha Niyogi had delivered a provocative speech against Simplex Casting industry and other Industries in Ghasidas Nagar. The mention of this has been made in the Sanha Exhibit P-10.

321. On 7-8-91 CMM had organised a massive meeting in Ghasidas Nagar in which the externment procedure against Niyogi was criticised. On 26-8-91 also there was a meeting of CMM in which a decision was taken to observe Adhikar Diwas and a call was issued for a three day bandh.

322. According to S.L. Salam (PW No-7) a massive procession was taken out in front of the Simplex gate on 15-8-91 and these people sat in Dharna. Addressing this meeting Shankar Guha Niyogi said "44 years have passed since independence, but workers have not got independence. Unless the industrialists are taught a lesson the workers cannot be independent. Giving the example of the revolutionary step of Subhash Chandra Bose it was said that workers observe Independence day in their own way. Giving the example of Punjab, Kashmir and LTTE in the present he said that the Govt. is not able to control the terrorists in these states, it wants to suppress us workers at the behest of the capitalists. We will also have to adopt the attitude of these terrorists". In this way Niyogi had given a provocative speech to the workers.

323. On 28-8-91 CMM observed Dhikkar Diwas (Condemnation Day) and took out a massive procession. This procession was against accused Moolchand Shah and Kailashpati Kedia. Shankar Guha Niyogi, Janaklal Thakur and N.R. Ghoshal were present in this procession .

324. In this procession Shankar Guha Niyogi had said that the industrialists are not accepting the workers demands for eleven months, hence he is condemning the administration, industrialists and Patwa Govt. Niyogi also said that he would not allow politicians to enter this area.

325. On 4-9-91 there was a meeting of CMM and Chattisgarh Shramik Sangh in Kailash Nagar Ground. Addressing this meeting deceased Shankar Guha Niyogi had said that the Police Administration, Patwa Govt. and district Collector are sold out to the industrialists. He condemned them for trying to break the workers' movement by using knives and swords. Shankar Guha Niyogi held Moolchand Shah, Kedia and B.R. Jain from among the industrialists were primarily responsible for this situation. Niyogi also mentioned that on the 9th workers from Bilaspur, Raipur, Bhilai & Rajnandgaon would go to Delhi to give a memorandum to the President. Niyogi also said that that he is going to complain against the industrialists to the Labour Minister, Prime Minister and President. He also said that a procession is to be taken out in Delhi with full enthusiasm. Despite this if the demands of the workers are not fulfilled he will make Bhilai into Punjab. He will adopt the path of revolution, play Holi in blood and this will be his final battle. The Town Inspector entered this speech in the Sanha of the Police Station Exhibit P - 20.

326. Sub Inspector Parmeshwar (PW No.8) of Police Chowki Urla, District Raipur has said that the biggest factory under the jurisdiction of his chowki is Simplex Casting. On 17-4-91 he got a report regarding the agitation of workers in

that factory. Subsequently on 20-4-91 the General Manager of Simplex Casting D.V. Singh (PW NO. 147) submitted the report Exhibit P. 51. From the statement of D.V. Singh (PW No. 147) appears that CMM people had set up a tent in front of his factory and whichever employee came out; they illtreated him. This witness also stated that the agitation in the Urla Factory started from the time CMM began its agitation in Bhilai in 1991.

327. Even in Urla Shankar Guha Niyogi was leading the strike in and he used to give provocative speeches. On the request of Simplex Casting a Police Guard had been posted at the factory.

328. Sub Inspector Vishram Prasad Banjare (PW No. 9) has also said in his statement that CMM has taken out a procession in Bhilai against Simplex Engineering and Simplex Casting. The procession taken out by CMM on 13-8-91 went towards Simplex Casting. On 20-8-91 the CMM workers shouted slogans in front of the Simplex gate as they used to do daily and prevented workers from going to work.

329. On 20-8-91 around 40 workers were shouting slogans in front of Simplex Udyog Gate. They had organised this meeting in protest against the beating up of Uma Shankar Rai. An ultimatum was also issued that the criminals who had assaulted Uma Shankar Rai be arrested within 1 week otherwise the entire industrial institutions would be closed for three days. On 22-8-91 the CMM workers demanded that the criminals involved in the beating up of Uma Shankar Rai be arrested and action be taken against the management of Simplex and Kedia. On 26-8-91 a worker named Pawan Kumar came and told the witness that CMM people are stopping the workers from going into the first and second shifts in the Simplex Companies. He recorded this report in the Sanha which is Exhibit P - 45.

330. Sudha Bharadwaj (PW No. 15) has in para 4 of her statement said that Shankar Guha Niyogi had carried out agitation against ACC in July 89 and after that came from Rajhara to Bhilai. Shankar Guha Niyogi had given demand letters to five industries but his movement was in particular against Simplex group of Industries.

331. Dr. Punyabrata Gun. (PW No. 16) has in para 5 of his statement said that Shankar Guha Niyogi had started agitation in Bhilai under the leadership of CMM. His demands were to make workers permanent, pay a living wage and the right to form organisation. Industrialists and journalists tried to paint this movement of Niyogiji in terrorist form. In para 17 of his statement this witness said that Simplex Industry was most affected by the agitation of CMM.

332. Sudama Prasad (PW No. 54) has said in his statement that when he went with demand letter to accused Moolchand Shah and Arvind Shah those persons refused to accept the demand letter. He was not even allowed inside the factory. They said whatever you want to speak, speak verbally, dont speak through papers. After this he went back with the workers and sent the demand letters by registered post. He was also removed from his job. This witness also stated that accused Moolchand shah had said that those person who will not be

involved with CMM can sign and come back to work and those who will be involved with the said organisation will not be taken back to work.

333. Sudama Prasad in para 3 of his statement has said that a worker named Ram Asre had introduced him to accused Gyan Prakash Mishra and had told him that the accused frequents the Simplex Company. Ram Asre had warned the witness that the accused Gyan Prasad Mishra is of criminal nature and is in league with owner so he should beware of him.

334. The Assistant Labour Commissioner R.G. Pandey (PW No. 65) has stated that he had received the demand letters of CMM. After this demand letter there was an industrial unrest in Simplex Casting and Bhilai Wires. Owing to this he had summoned the industrialists and workers for meetings. Meetings were fixed for 31-10-90, 8-11-90, 14-11-90, 27-11-90 and 10-12-90. In all these five meetings representatives of the workers used to come but the industrialists remained absent.

335. In para 5 of his statement the Assistant Labour Commissioner R.G. Pandey (PW No. 65) has said that 32 inspections were carried out in the Simplex Group of Industries arising from which 27 cases were filed in the court. 9 cases were filed with respect to Simplex Group under the Contract Labour Act.

336. It is seen from the statement of the Assistant Labour Commissioner R. G. Pandey (PW No. 65) that despite the agitation the owners of Simplex and other industries were being adamant. In all the meetings summoned by the Assistant Labour Commissioner the representative of the workers' organisations kept coming but the industrialists boycotted the said meetings. It appears from this that dialogue was closed between the workers' organisation and the management and a deadlock had been created.

337. In para 5 of his statement Rajendra Sail also (PW No. 70) has stated that Niyogiji had declared that the workers should become strong, their demands be fulfilled and the organisation would grow and develop. His main demand was the regularisation of the workers. He had also said that if the industrialists do not fulfill the demands, strike would be declared. Shankar Guha Niyogi had called for strike, staged demonstrations and taken out processions in many factories.

338. An ex-official of Simplex Casting Praeep Kumar Sural (PW NO. 133) has said in his statement that CMM workers had gone on strike, CMM leaders Janak Lal Thakur and Shankar Guha Niyogi used to come to the Simplex gate to give speeches.

339. In para 30 of his statement S.L. Salam (PW No. 7) has stated that under the jurisdiction of his Police Station Jamul Simplex Group of industries is the biggest industry after A.C.C. He also stated that in his knowledge the largest number of workers were also retrenched by the Simplex Group. In para 6 of his statement Basant Kumar Sahu (PW No. 14) has stated that owing to the retrenchment of workers by the Simplex Industry agitation had been carried out to take back the workers and for minimum wages. Among the various industries

in Bhilai, the maximum number of workers were removed from the Simplex Industry. This witness in para 20 to 22 of his statement further stated that the number of removed workers was as follows.

1. From Simplex Casting -----414
2. From Simplex Casting, Urla ----313
3. From Simplex Unit No. II ----- 204
4. From Simplex Metals, Tedesara ---- 12
5. From Simplex Forgnigs, Tedesara --- 31
6. From Simplex Engineering & Foundry Works Unit No. I --- 208

340. In paras 13 and 14 of his statement Ganesh Ram Choudhary (PW No. 22) has stated that the maximum number of workers were retrenched by the Simplex Group. The greatest efforts of the workers agitation was against Simplex. The workers voluntarily did not go to work, hence there had been a drop in production.

341. On the basis of the statements of the above witnesses it can be concluded that in the agitation by CMM in 1990-91 against the industries in Bhilai lead by deceased Shankar Guha Niyogi, the most affected was the Simplex Group of Industries. There is also sufficient evidence to show that the Simplex Group of industries had also retrenched the maximum number of workers.

342. The Prosecution has examined a Reader of the court Vishnu Prasad Soni, (PW no. 4). This witness testified to the civil suits no. 1A/91 & 2A/91 filed by Simplex Engg. and Foundry Works Limited, Bhilai. Simplex Engg. and Foundry Works had also applied for temporary injunctions against the respondents. Deceased Shanker Guha Niyogi and post bearers of CMM had been impleaded as respondents. In both these suits it was stated by the Simplex Engg. and Foundry Works that owing to the illegal activities of the respondents they were undergoing lakhs of rupees of losses. There was almost no cross examination of the said witness on behalf of the accused persons.

343. From the circumstances constructed out of the above evidence it is clearly established that the Simplex Group of Industries was the most adversely affected by the workers' agitation in Bhilai carried out by Shanker Guha Niyogi. The Simplex Group of Industries had also retrenched the maximum number of workers and all this ultimately had to affect production. When production drops it is natural that profits also decline and there is a high chance of loss. Hence in the two civil cases filed by the Simplex Engg. & Foundry works the company had to naturally state that the said industry was facing lakhs of rupees of losses owing to the agitation. Hence it is established that in the agitaion carried out by Shankar Guha Niyogi the maximum loss was faced by Simplex Group of Industries.

344. The learned defence counsel Sh. Ashok Yadav has argued that it can be concluded from the perusal of deceased Shankar Guha Niyogi's admitted hand-writing Exhibit P-76 to P-80 that Kedia distillery had a production of at least 80,000 litres per day and owing to CMM production in Kedia industry had been

most adversely affected. But this argument is not admissible. It is true that from the writing in Exhibit P-76 to P-80 it can be inferred that this pertains to the process of liquor manufacture. However, on the basis of these documents the production of Kedia distillery or Chhattisgarh distillery can not be calculated. Thus the argument of Shri Ashok Yadav, Advocate, that on the basis of these documents that Kedia distillery or Chhattisgarh distillery were most adversely affected by Niyogi's movement, can not be admitted.

345. Surya Dev Verma (PW No. 10) has in his statement said that on 17-9-90, the day of Vishwakarma Pooja (17.9.90), he had participated in the CMM procession. When he reached near Simplex Engg. some unknown persons had attacked him. He was not able to see who had attacked him.

346. In para 13 of his statement S.L.Salaam (PW No. 7) has said that on 22-2-90 Shanti Lal Shrivastava had given a written report in the police-station that when he was returning from Hudco at about 9.00 P.M. some persons had got down from car no. CIR 12 and threatening to attack him, had told him to take back the report he had filed against Moolchand Shah. The copy of this report is Exhibit P-5. He had handed over the said report for investigation to the Assistant sub- Inspector.

347. During the workers' agitation a murderous assault had taken place on a post-bearer of CMM Uma Shanker Rai. When another post-bearer Bharat Bhushan Pandey (PW no. 57) came to know that Moolchand Shah of Simplex Udyog had given his photograph and 50,000 rupees to goondas to suppress him, he had lodged a report (Exhibit P-48) in Police-Station, Jamul on 1-9-91.

348. Swami Agnivesh (PW no. 13) has stated that when Shanker Guha Niyogi went to Delhi to meet the President, he had told him that he is carrying on a peaceful movement for the welfare of the workers but goondas of the industrialists were making murderous assaults on the workers. Niyogiji had also said that now his life is also in danger.

349. In para 7 of his statement Basant Kumar Sahu, (PW no. 14) has said that in 1991 Niyogiji had started receiving threats from employers and their goondas. In para 31 of her statement Sudha Bharadwaj (PW no. 15) said that one or two months before September 91, Niyogiji had said Anoop Singh's life is also in danger. Niyogiji used to be concerned about his worker comrades.

350. In his statement Punyabrata Gun (PW no.16) has said that Niyogiji had told him that any time he can be attacked. Niyogiji was facing a threat to his life from the industrialists. In para 20 of his statement Ganesh Ram Chaudhary (PW no.22) stated that Niyogiji had said that efforts are being made to remove him from Bhilai.

351. In para 7 of his statement Rajendra Sail (PW no. 70) has stated that on 24th Aug. 1991, workers who were sitting on dharna at the Simplex factory, Urla, were assaulted with swords, rods and lathis. On hearing of this incident, he had taken the workers and got them admitted in the hospital. He had taken their photographs and informed the higher authorities by telephone of the incident.

352. When Narendra Kumar Singh (PW no. 71) met Shanker Guha Niyogi in the

afternoon of 27-9-91, the latter had while describing his agitation told him that the owners of the factories are together creating a lot of trouble. He also said that the industrialists are regularly intimidating and getting the workers beaten up. The industrialists have formed their own private armies and use their goondas to crush the workers' agitation. Niyogi also said that the Shah's of Simplex and Kedia wanted to get him killed.

353. Thus, the industrialists were not prepared to give their workers a place of equality and a situation of class struggle had been created. That the difference between employer and worker should be done away with in the society does not mean that employers will not be able to use their intellect. He, who is owner, will also be worker; and he, who is worker, will also be owner. Some of the workers will be owner oriented, who while working with their hands will give prominence to the intellect and some owners should be worker oriented, who while working with the intellect, should give prominence to the hands. The social system should be of intellectuals who perform labour and labourers who perform intellectual work. If God did not wish this he would have given some people only hands and other people only brains. He would have made everyone incomplete like Rahu & Ketu, but he has made everyone complete so that everyone can live a complete life.

354. The learned defence counsel Sh. Rajender Singh has put forward the argument that in this case, apart from the owners of the Simplex Group of Industries, owners of Kedia and other industries also could have a motive in the crime. When more than one persons are shown to have a motive in the crime, none of them can be considered guilty. In support of his argument he has cited the cases of Paramhans Yadav and Sadananda Tripathi vs State of Bihar (A. I. R. 1987 S.C. 955)

355. Where the matter is based on circumstantial evidence the motive has special significance. However neither can an accused be proven guilty merely on the basis of motive; nor can he be acquitted in absence of a motive if there is sufficient evidence against him involving him in the crime. In this case also it is to be considered that apart from motive, what other evidence is available implicating the accused in the crime.

(9) The beginning of the conspiracy and apprehension of the conspiracy.

356. Shankar Guha Niyogi was imprisoned in Durg Jail between 4-2- 91 and 3-4-91. It appears from his diary that he had got wind of the conspiracy to murder him. When he was released from the jail, he received an inland letter in Dalli-Rajhara on 29-4-91 (Exhibit P-103). Shankar Guha Niyogi gave this letter to K.S. Sahu (PW no. 46) and told him to photocopy it and lodge a report in the police station. The same day K. S. Sahu (PW no. 46) sent a photocopy of the said inland letter (Exhibit P-50) along with a covering letter (Exhibit P-49) to the Police Station Rajhara. The inland letter (Exhibit P-103) received by Shankar Guha Niyogi is as follows :

Sir

By means of this letter I want to warn you that after making full preparations to get you murdered Chandrakant Shah of Simplex Group has left on a foreign trip. You had in the past expressed an apprehension of the same in an interview with a daily published from Raipur. So Simplex has organised a foreign trip for Chandrakant, since it is through Chandrakant alone that Simplex has handed over this job has been handed to some people Chandrakant had taken them to Nepal and modern weapons have also been bought some days ago. And they have been instructed to attack you in Chandrakant's absence. The matter of transaction with these people has also been fixed through Chandrakant. If I receive any information regarding any other preparation by these people I will inform you by letter.

A well wisher

357. It appears that no investigation was carried out on the basis of this report during the life-time of Shanker Guha Niyogi. After the death of Shankar Guha Niyogi Superintendent of Police of Durg gave the photocopy of two inland letters to Dy. Superintendent M.G. Aggrawal (PW no. 182) and told him that the originals of these must be in Rajhara. He sent Sub-Inspector R.N. Singh to Rajhara and R.N. Singh seized the letter Exhibit P- 103 from Dr. Gun (PW no. 16) and brought it.

358. In para 9 of his statement Dr. Punyabrata Gun (PW no. 16) stated that seizure memo of the anonymous letter Exhibit P-103 which had been seized from him by the police is Exhibit P-104. This witness further stated that photocopy of the inland letter P-103 had been sent by the office secretary (PW no. 46) to the police station Rajhara. In para 37 of his cross examination Dr. Gun (PW no. 16) admitted that in the seizure memo Exhibit P-104 the police had seized two letters from him. It is undisputed that the other letter has not been produced in the court by the investigation agency. The defence counsel has argued that Exhibit D-10 is the same letter which was seized by the police from Dr. Gun and which was subsequently published in a newspaper also. However Dr. Gun (PW no. 16) in para 38 of his cross examination and K.S. Sahu (PW no. 46) in para 7 of his cross examination stated that without seeing the original letter they cannot say whether the letter Exhibit D-10 published in the newspaper is the same which was seized by the police vide seizure memo Exhibit P- 104 or not. Thus the evidence which has come before the court in respect of Exhibit D-10 is hearsay evidence.

359. Thus Shankar Guha Niyogi got a premonition of the conspiracy to murder him in Jail and also after his release by receiving the inland letter Exhibit P-103.

(10) The purpose of the Nepal visit :

Ravindra Kumar Mende alias Ravi (PW no. 91) was a driver of Surajmal Jain (PW no. 92). In March 1991 after the Holi festival accused Chandrakant Shah made a programme of going from Bhilai to Nepal in his Tempo Trax No. MP24 B 6622. Accused Chandrakant Shah asked his friend Surajmal Jain (PW no. 92) for

a driver. Surajmal Jain (PW no. 92) made driver Ravindra Kumar Mende (PW no. 91) available in order that accused Chandrakant Shah could go to Nepal.

360. Ravindra Kumar Mende (PW no. 91) has in his statement stated that he left Bhilai for Nepal in the Tempo Trax taking accused Chandrakant Shah, Abhay Singh and Awadesh Rai. These people went via Raipur, Bilaspur and Ambikapur to Benaras. From Benaras they went to accused Abhay Singhs' house at Khalispur. They stayed the night at Khalispur, the next morning they left Khalispur and reached Siwan. After taking tea and snacks in Siwan these people left Siwan and reached Birganj (Nepal) in the afternoon where they stayed at Hotel Kailash. Accused Gyanprakash Mishra met them there. They stayed at Hotel Kailash for 2 days.

361. Prosecution has argued on the basis of the statement of the Indian Airlines official T. K. Sengupta (PW no. 135) that accused Gyanprakash Mishra had flown from Calcutta to Kathmandu on 26-2-91. This witness has proved the flight coupon Exhibit P-363 in which the name of the passenger has been entered as G. Mishra. Apart from this no other description of the passenger has been provided. Only on the basis of G. Mishra and in absence of other evidence it cannot be said that the person who travelled from Calcutta to Kathmandu on 26-2-91 was accused Gyanprakash Mishra.

362. After 5-6 hours of journey from Birganj the accused persons reached Kathmandu where they hired two rooms in Hotel Janak and stayed there. Accused Chandrakant Shah and Gyanprakash Mishra stayed in one room and the other 2 accused and the driver stayed in the other room. They stayed 2-3 days in Kathmandu. The accused visited the Pashupati Temple and accused Chandrakant Shah met some of his acquaintances.

363. Driver Ravi Kumar Mende (PW no. 91) has further stated in his statement that they returned to Bhilai via Riva, Maihar and Jabalpur. He dropped accused Chandrakant Shah at his house and gave the vehicle for servicing in Project Automobiles.

364. In para 4 of his statement driver Ravi Kumar Mende (PW no. 91) has stated that no gun, cartridges, tape recorder or tyres were placed in his Tempo Trax at Raksaul. However in his statement given under section 164 Cr PC (Exhibit P-230) this witness had stated in portion E to E that, "after this they went to Raksaul. There Chandrakant Shah put a tape recorder, JPC Tyres, a gun and some cartridges in a bag/packet into the car". Similarly in his statement under section 164 Cr PC (Exhibit P-230) the witness had stated in portion B to B that, "from there we left for Betia. I had stopped the car a little before Betia. A man was sitting in my car from Raksaul whom I did not know. Chandrakant Shah gave him two pistols. That person was sent back by Chandrakant Shah. After going a little further Chandrakant Shah again stopped the car", the witness had stated. The clarification rendered by this witness is that he had given the above statement because he was made to memorise and give such a statement before the magistrate by the police.

365. A first class judicial magistrate records the statement of a witness under

Sec 164 Cr PC, as he gives it. The first class magistrate had recorded the statement of this witness as he had stated it. This witness did not make a complaint before the first class Magistrate that he was giving the statement under duress as tutored by the police. Thus the first class Magistrate will definitely assume that the witness is giving the statement voluntarily and there is no pressure upon him.

366. The statement given by a witness under section 164 Cr PC is used to corroborate or rebutt the statement given by him in court. Here a situation has been created wherein the said witness has stated in court that weapons were not brought from Nepal, but he admits that he had stated under the provisions of Sec 164 that weapons had been brought. Even then it cannot be said that the statement under Sec 164 corroborates the statement in Court. Giving the accused the benefit of doubt it cannot be concluded on the basis of oral evidence that weapons were brought from Nepal.

367. Now the question arises that if a witness does not give a true statement and if in the opinion of the court a fact seems to be established on the basis of circumstances then what is to be done in such a situation. The Hon'ble Supreme Court in the matter of State of UP vs Ramesh Prasad Mishra (1996 (10) SC Cases - 360) has laid down that "If an important witness does not give a true statement and after examiming the circumstances and on the basis of common human behaviour and possibilities, the existence of a fact is established, then the court should consider it to be established. proem.

368. Here it is to be seen what is the circumstantial evidence which shows that the accused had collected weapons during their Nepal trip ?

369. When the Central Bureau of Investigation made a search of the residence of accused Chandrakant Shah - Anuvilla 21/24 Nehru Nagar Bhilai on 12-11-91, a bill of a provision store Madhuban in Nepal Exhibit P-393(8) was recovered behind which the names and prices of some English (foreign) firearms were written. It has been proven that this handwriting is of accused Gyanprakash Mishra. Neither accused Chandrakant Shah nor Gyanprakash or any of the accused who travelled to Nepal have given any clarification as to why the names and prices of the weapons were written behind the bill of a provision store. From this it can only be assumed that during their Nepal trip the accused obtained foregin weapons. Apart from this, in the search of Chandrakant Shah's house a Nepali Khukhri and a .32 misfire cartridge were also recovered.

370. The timing of the Nepal trip undertaken by the accused is also important. At that time Shankar Guha Niyogi's movement in Bhilai was growig rapidly. Two of the persons with whom accused Chandrakant Shah undertook this trip have a background of cases like murder etc against them, and one person is a crane operator in the Bhilai Steel Plant. If indeed the sole aim of accused Chandrakant Shah was pilgrimage and darshan of Lord Pashupati, then he would have undertaken this trip with his wife, children or with members of his family. However, for whatever circumstances, accused Chandrakant Shah undertook this trip not with members of his family but with his friends whose back-ground

has been described above.

371. After his release from jail when Shankar Guha Niyogi reached Rajhara, an anonymous person warned him by sending him an inland letter Exhibit P-103. In this inland letter information regarding the Nepal-trip of Chandrakant Shah, collecting ultra-modern weapons, going abroad and transactions with the accused was given. If this inland letter Exhibit P-103 is seen in the light of the evidence it seems to be factually true to a large extent since during the search of accused Chandrakant Shah's house, his passport Exhibit P-235 had also been recovered which is related with his visits to Switzerland, Germany and Neitherland.

372. Since in Exhibit P-393 (8) the names and prices of foreign weapons are written, therefore it is to be assumed that these weapons were in fact obtained. It is a matter of common experience, that no proper bill can be available for the purchase and sale of illegal weapons.

373. The court concludes that driver Ravinder Kumar Mende (PW no. 91) is hiding the fact of the accused obtaining weapons during their Nepal trip, where as it can be seen on the bases of circumstantial evidence availalbe on record that the accused had obtained foreiign weapons during the Nepal trip.

374. It is true that the accused visited the temple of Lord Pashupati in Nepal and they had darshan there but this was not the sole or the main aim of the trip of the accused. On the contrary, the aim of their trip was to collect weapons and darshan of the Lord was only incidental.

375. Since the accused troubelled to Nepal and collected and brought illegal arms during the agitation of Shankar Guha Niyogi it can be inferred that the purpose of the Nepal trip was the beginning of a criminal conspiracy.

11. Niyogi's Apprehension.

- 1) The persons whom he infromed
- 2) Memorandum to the President
- 3) Events of 27-9-91.

376. After starting the agitation in Bhilai, Shankar Guha Niyogi had told his daughter Kranti Guha Niyogi (PW No. 67) to ride her cycle cautiously and to be careful when any car come or goes. He had also mentioned to his wife Asha Guha Niyogi (PW No. 68) the names of some industrialists and told her that industrialists and goondas are after him from he whom was apprehending some danger. Dr. Gun (PW no. 16) has stated that one and a half months prior to his death Niyogiji had told him that he might he attacked any time so he has recorded the names of the industrialists. If he dieds then the witness should hear the cassette and play it to the members of the organisation.

377. It can be seen from the statement of Dr. Saibal Jana (PW no. 39) that in 1991 during the Bhilai movement Shankar Guha Niyogi had said that his life was in danger. He had also said that the industrialists against whom he is agitating

are crooks and they are trying to kill him. One day when Niyogi was sitting in his quarter MIG 1/55 he had told the CMM activists that anyone can shoot him from the window. This witness had advised Shankar Guha Niyogi that he should put a netting or a grill in the window, then nobody can shoot him.

378. Anjori Ram (PW no. 44) is a carpenter. On 24-9-91 he had taken measurements of the windows and doors of Niyogiji's house in order to put a grill. Niyogiji had said that quarrels and riots keep taking place here so latches and grill had to be put in the window. This witness had taken measurements of the window and door in order to put a grill, but before the grill and latch could be fixed this incident took place. Babulal (PW no. 45) is an electrician. On 23-9-91 he had come from Rajhara to Niyogiji's quarter because the electric fan there was not working. Niyogiji had told this electrician also that he apprehends danger to his life from the industrialists of Bhilai.

379. Thus during the agitation in Bhilai Shankar Guha Niyogi apprehended threat to his life from the industrialists and whichever person he come into contact with, he informed them of this fact.

380. During the agitation when Niyogiji felt that the industrialists were getting the workers attacked and no proper action was being taken against the assailants he decided to give a memorandum to the President. For example it appears that no action was taken on the reports lodged by Bharat Bhushan Pandey, Suryadev and Shanti Lal Shrivastava.

381. In para 8 of his statement Basant Kumar Sahu (PW no. 14) has stated that on 9th September 91 Niyogiji left for Delhi with a memorandum signed by 50,000 workers. 300 to 400 person of CMM had gone with Niyogiji. In para 6 of her statement Sudha Bharadwaj (PW no. 15) has said that Niyogiji had come to Delhi with 250 to 300 workers of CMM. She had arranged for their stay in a Dharamshala at Lajpat Nagar Delhi. Niyogiji had met the President, Prime minister, V.P. Singh and other important persons. Dr. Punyabrata Gun (PW no. 16) had also gone to Delhi with Niyogiji and handed over the memorandum (Exhibit P-62) to the President on 12-9-91. In para 6 of his statement Rajendra Sail (PW no 70) has stated that when Niyogiji was released from jail, workers agitation had become even stronger. Meanwhile, attacks by goondas on workers and workers-leaders started taking place. He had himself spoken to the workers at many places and sent a report to the higher officials of P.U.C.L. Following this, Niyogiji was served a notice for externment from the district. Niyogiji expressed that industrialist, who want to remove him some how or the other from there, are behind this. On 9th Aug. 91, the Hon'ble High Court gave an ex-parte order staying the externment proceedings. After this he asked Niyogi, what will those persons who want to remove you do now ? Niyogi said now they have no other option but to shoot me. Niyogiji also said that he would take this issue in a democratic manner to the President and ask for the Right to Life of the workers. He had also said that the memorandum he would submit would be signed by 50,000 workers.

382. On the basis of sufficient evidence available on record it is established

that on 11th or 12th Sept. Shankar Guha Niyogi had submitted a memorandum exhibit P-62 to the President.

Ex. P. 62 is being reproduced:-

To,
The President of India,
Rashtrapati Bhawan,
New Delhi.

Sub: For resolving the longstanding problems of workers and their.

- (i) Right to life and Body security as per Section 21 of Constitution.
- (ii) Right to form Trade Union as per Section 19 (1) (a) (b) & (c) are protected.

Sir,

It is with great pain that we inform you that 4-5 neo-rich industrialists of Raipur. Rajandgaon, Durg, Bhilai belst have been exploiting their workers working in Engineering and Foundry industry or in chemical industries such as Liquour manufacturing. They have not accepted that the workers have right to form Union in their factories. By bribing the Union Leader or by a threat on their lives and when that too did not work then by unleashing physical violence upon workers with the aid of police these employees have crushed all the previous attempts of the workers to form Trade Union.

Last year the workers of these industries have organised once again and have raised chiefly two demands:-

- (i) The workers be regularised when the work is of permanent nature in the industry (as per the section 10 (a) of Contract Labour Regulation and Abolition Act.
- (ii) A living wage be decided for the workmen basing upon the consideration of Industry and Region.

Most of the employers refused to even accept the demand letters. Yet these demand letters were submitted to the Asstt. Labour Commission so that the workers' right to form Trade Union and their just demands are fulfilled. Industrialists tried their utmost to break workers organisation. In failing to do so they resorted to physical violence upon workers and have gone to the extent of physically eliminating the workers. Keso Rao of Chhatisgarh Distilleries Ltd. and Mani Ram of Simplex Group were murdered at the instructions of their employers. Apart from that there had been attempts on the lives many workers including Shri Ravindra Shukla, Shri Jagdish Verma, Shri Purshottam who sustained knife injuries. More gently, police acting on the behest of the Industrialists, resorted to a barbarous lathi charge on the workers. During this lathi charge the workers' leaders were pointedly tortured inhumanely. When all these attempts have failed now the employers are bent upon creating a large scale bloodshed whereby there is a danger to the lives and bodies of the workers and workers' leaders. On August 19th Shri Uma Shanker Ray, Vice President, Pragatisheel Engineering

Shrimik Sangh (Bhilai) was surrounded by the hired Gundas of the employers who assaulted him with knife and iron rods and left him on the road thinking him to be dead. Shri S.K. Singh Vice President PESS (Urta) Shri Haldhar Secretary and Sri Sukhlal, Treasurer were assaulted with swords and iron roads on 24th August while they were asleep.

Throughout the Police is giving protection to the criminals. Not only that the Bhilai Police has yet to arrest a single culprit, they have in fact, acted to protect them.

In this situation there is a danger in the security of lives and bodies of workers and their leaders.

Hence, His Majesty, is requested to bring in check on these acts of violence by the Industrialists and to order a C.B.I. inquiry so that the workers are not denied of their Constitutional Rights.

Here we are:-

the workers of Bhilai, Dalli Rajhara, Rajnandgaon, Urta, Tedesara, Balod Bazar, Hirri and citizens of Chhattisgarh.⁽¹²⁸⁾

383. A correspondent of the prestigious news magazine 'India Today' Narender Kumar Singh (PW no. 71) was on a tour of this area in Sept. 91 to prepare a report on the cases of land grabbing in Bastar district of M.P. and on pollution from distilleries. Narender Kumar Singh (PW no. 71) knew Shankar Guha Niyogi since 1977. When he reached Durg in the afternoon of 27-9-91 he telephoned Niyogiji in the office of Chhattisgarh Mines Sharamik Sangh, Niyogi called him for discussions in his office. N. K. Singh (PW no. 71) went to the office of Niyogiji along with press photographer Prashant Panjar. Niyogiji's movement was going on for about an year and he appeared to be quite worried. He was particularly concerned about the way violence was being innleashed in respect of the movement. Niyogiji told him that the owners of the factories are creating a lot of disturbance. They are regularly beating up and intimidating the workers. Niyogiji also said that the industrialists have organised their private armies and they use their goondas to suppress the workers agitation. Niyogiji also told him that he has heard that the industrialists have hired some goondas to get him killed. When this witness wanted more information, Niyogiji told him that the Shahs of Simplex and Kedia want to get him killed.

384. In para 10 of his cross examination this witness said that he could not remember whether Niyogiji had told him the name of any Shah or not but he had definitely said that Shahs want to get him killed.

385. At arround 7-7.30 P.M. on 27-9-91 Shankar Guha Niyogi went to Raipur and he telephoned Rajendra Sail (PW no. 70) to come and meet him in Baur Bungalow. Baur Bungalow is the office of Rajendra Sail (PW no. 70). A little while latter Rajendra Sail got a telephone call from N. K. Singh (PW no. 71) and he said that he was putting up at Picadilly Hotel in Raipur. Rajendra Sail (PW no. 70) told N.K. Singh (PW no. 71) that Niyogiji had telephoned and he had come to Raipur. Upon this N.K. Singh told Rajender Sail to bring Niyogiji to Picadilly

Hotel where they would all eat together.

386. Rajendra Sail (PW no. 70) first went to Baur Bungalow where he had a talk with Niyogiji till around 8.30 at night. Since this was the first meeting after returning from Delhi of Shankar Guha Niyogi and Rajender Sail, the talk must have been on various subjects. Niyogiji wished to observe 2nd Oct. programme (Gandhi Jayanti) in Raipur, hence he mainly talked on this subject. Niyogiji was not assured about the demands of workers in spite of giving memorandum to the President. Niyogiji said that the manner in which the industrialist had attacked workers in the past few days, similar kind of attacks could take place even today. When Rajender Sail (PW no. 70) told Niyogiji that N.K. Singh (PW no. 71) is putting up at Picadilly Hotel and is remembering you, Niyogiji got ready to go to Picadilly Hotel.

387. Rajender Sail (PW no. 70) and Shankar Guha Niyogi came to Picadilly Hotel. There Niyogiji said that the private goondas of industrialists are carrying out attacks on workers and a murderous assault can take place on him also. Niyogiji said that he faces maximum danger from Moolchand Shah of Simplex and his partner and private army. He said that he is also threatened by Kedia. He also said that attacks on workers are carried out by Gyanprakash Mishra of Private army also that in Simplex the task of dirty wing is looked after by Moolchand Shah and Chandrakant Shah.

388. N.K. Singh (PW no. 71) has also stated in para 7 of his statement that in the night in Picadilly Hotel. Niyogiji was again and again bringing up the topic of workers movement. He described what kind of goondaism is going on to suppress the movement. He also told how the industrialists are conspiring to kill him. Thus it is clear from the statements of this witness and of Rajender Sail (PW no. 70) that on the day of the incident Shankar Guha Niyogi had expressed threat to his life from accused Moolchand Shah, Chandrakant Shah and Kedia.

389. The learned counsel for defence Shri Ashok Yadav has argued that Rajendra Sail (PW no 70) in his statement under Sec 161 Cr PC has not named accused Gyanprakash Mishra, so it should not be presumed that accused Gyan Prakash Mishra was chief of private army of Simplex.

390. The Hon'ble Supreme Court in the matter of Ratan Singh Vs State of Himachal Pradesh (1977 833 para 9) has laid down that if there is a lacuna in the statement of a witness, then it should be seen in the light of other evidence whether such a lacuna exists or not. It is necessary to note that during the workers movement of Shankar Guha Niyogi accused Gyan Prakash Mishra used to stand at the Simplex gate. In para 3 of the statement of Sudama Prasad (PW no. 54) also it is shown that Ram Asre had described accused Gyan Prakash Mishra to the witness as a man of antisocial elements who frequents Simplex company. He was told that accused Gyan Prakash Mishra is of criminal nature and is in league with the owner so beware of him. Thus in the context of the above evidence it can be said that the lacuna of accused Gyan Prakash Mishra's name which appears in the statement of Rajender Sail (PW no. 70) is not very elemental.

391. Around 11-11.30 at night Shankar Guha Niyogi came from Picadilly Hotel with Rajender Sail (PW no. 70) first to Baur Bungalow and then set out for Bhilai in his car. Rajender Sail (PW no. 70) went back to his home. At around 4 4-30 at night Basant (PW no. 14) phoned up Rajender Sail and gave the information that somebody had shot Niyogiji he should come soon. Some time later another activist of CMM N L Yadav telephoned to say that Niyogiji had died. On hearing the news of Niyogi's murder Rajendra Sail (PW no. 70) started crying. He gave this tragic news to N.K. Singh (PW no. 71), then they both left Raipur for Bhilai. Niyogiji's body had been kept in the mortuary.

392. It is been argued by the accused on the basis of the statement of Neelratan Ghoshal (PW no. 62) that Rajender Sail (PW no. 70) is not a reliable witness and his role is very suspicious. The relevant statement of Neelratan Ghoshal (PW no. 62) in para no. 11 is as follows:

"Niyogiji had said that any untoward incident may take place on him or on the leaders of the organisation. Niyogiji had also said that he is also stuck and the organisation is also stuck, we have made a very big mistake. When I asked him what mistake have we made, then he said that in their organisation some such person have entered who are of foreign organisation and who wish to push the movement backward rather than taking the agitation forward to its success. He said that Rajendra Sail is such a person who has entered amongst them as a friend and well-wisher and slowly he is weakening the organisation. Rajender Sail is national secretary of the P.U.C.L."

393. Here it is also necessary to know of the mutual relationship between Shankar Guha Niyogi and Rajender Sail (PW no. 70) In August 91 Shankar Guha Niyogi went with her daughter Kranti Guha Niyogi (PW no. 67) to the house of Rajender Sails (PW no. 70) in Raipur. Shankar Guha Niyogi had shown Rajender Sail (PW no. 70) the letter of Ex.P.103 and had said that he would give this letter to the police. On 27-9-91 after reaching Raipur Shankar Guha Niyogi had himself telephoned Rajender Sail (PW no. 70) and called him. Shankar Guha Niyogi had invited Rajendra Sail (PW no.70) for the planned programme of meeting the President also. In this manner it is clear that Shankar Guha Niyogi had an intimate relation with Rajendra Sail (PW no. 70) It is very difficult to believe that Shankar Guha Niyogi would have been suspicious of Rajendra Sail (PW no. 70) It appears that Neel Rattan Ghoshal (PW no. 62) is blowing out of proportion whatever Shankar Guha Niyogi had said about Rajendra Sail (PW no. 70).

394. If Shankar Guha Niyogi had doubts about Rajendra Sail (PW no. 70) why would he taking his daughter to the latter's house. On the day of the incident Shankar Guha Niyogi's phoning up and calling Rajendra Sail, talking to him for hours, eating food with him and telling him the names of the persons from whom he feared danger, shows that there was a good relation between the two.

395. P.K. Vijay Kumar (PW No. 119) is posted as manager of Maurya Talkies Bhilai. He has stated that on 30-9-91 accused Awadesh Rai had executed the tender of contract for cycle-stand. In para-11 of his cross-examination the witness has stated that within 2 or 3 days of this accused Awadesh Rai running

the cycle stand, the police had picked him up where as Deputy Superintendent of Police M.G. Agrawal (PWN182) in para 8 of his statement has stated, that he had arrested accused Awadesh Rai on suspicion on 13-10-91. In para 32 of his cross examination this witness has rebutted the contention of the accused that on 3-10-91 Police- Inspector Nakvi had picked up accused Awadesh Rai along with his luna. Awadesh Rai has stated U/s 313 Cr. PC that the police had detained him from 3-10-91 itself. Had accused Awadesh Rai not been in police custody, he would have definitely been looking after his cycle stand, but he was not available at the cycle- stand. Thus on the basis of entirety of the evidence it can be concluded that though the police formally arrested accused Awadesh Rai on 13-10-91, he was under police observation and custody from 3-10-91 itself.

396. Rajkumar Harmukh alias Bantu (PW no. 90) has said in his statement that his uncle Kaushal Deshmukh had a Maruti van MP 24 A 8256 which Teekam Das Sahu (PW no. 88) used to drive. One night in Oct. 91 Gyanu came to him and said that he needed the vehicle to go to Pachmarhi. He knows Gyanu because Gyanu is a frequent visitor of Devendra Patni (PW No. 158). Devendra Patni has an old car which the witness used to repair. This witness further stated that accused Gyan Prakash Mishra present in the court is the same Gyanu.

397. Rajkumar Harmukh (PW No. 90) further stated that he went at about 10 P.M. to the house of Tikam Sahu (PW No. 88) and called him. Accused Gyanu Prakash himself filled petrol in the vehicle Tikamdas Sahu (PW No. 88) left taking accused Gyan Prakash Mishra. From the statement of this witness it is clear that the Maruti Van left its garage on 4th October. Tikamdas Sahu (PW No. 88) took the van and returned on 6th October 91.

398. According to Tikam Sahu (PW No. 88) Bantu Mistri (PW no. 90) and Devendra Patni (PW no. 158) came to his house in the night of 4.10.91 and said that he has to take the Maruti Van MP 24 A-8256 to Pachmarhi for 4-5 days. Since this witness was to have an interview in Bhilai Steel Plant on 9-10-91 he refused to go. After this Bantu Mistri (PWN 90) and Devendra Patni (PW No. 158) came again and told him that he need not stay in Pachmarhi till the 9th, he could leave the passengers in Pachmarhi and come back the next day. On this condition he got ready to go to Pachmachi.

399. It appears from the statement of Tikam Sahu (PWN 88) that he took accused Gyan Prakash Mishra and Abhay Singh to Pachmarhi and after leaving them there returned back to Durg.

400. Mahendra Singh Patel (PWN 122) is a receptionist of Nilamber Hotel in Pachmarhi. This hotel is run by the development Authority (SADA) of the state govt. This witness stated that on 5-10-91 there is mention of an Abhay Kumar Singh coming to his hotel. They were totally 3 persons and they hired two rooms. Room No. 3 & 4 were allotted to them. All the three said travellers vacated the two rooms on 6-10-91 and subsequently on the same day two of them hired only one room (Room No. 3) and they remained in the room till 11 am on 9-10-91. Thus it is clear that when Tikamdas Sahu (PWN-88) returned after leaving the accused in Pachmarhi, they no longer required two rooms and

they stayed in only one room. Accused Gyan Prakash Mishra and Abhay Singh have admitted in there accused statement that they left for Pachmarhi in the night of 4-10-91 and stayed there till 9-10-91.

401. Accused Gyan Prakash Mishra has taken the plea that he had gone to Pachmarhi for sightseeing, whereas accused Abhay Singh has taken the plea that he had got news from Uttar Pradesh that his wife was ill, so he had gone with accused Gyan Prakash Mishra to Pachmarhi, and from there he had left for Uttar Pradesh.

402. It does not seem from the statements of Tikamdas Sahu (PWN 88) and Rajkumar Harmukh (PWN 90) that accused Gyan Prakash Mishra went to Pachmarhi for sight seeing. If accused Abhay Singh's wife had actually been ill, he would have gone directly to Uttar Pradesh rather than first go to Pachmarhi with accused Gyan Prakash Mishra Here it is necessary to note that the route to Uttar Pradesh and Pachmarhi are in absolutely opposite directions.

403. In para 17 of his statement Devendra Patni (PWN 158) has denied that he had spoken to Bantu Mistri (PWN 90) and got a Maruti van arranged to take accused Gyan Prakash Mishra and Abhay Singh to Pachmarhi Prosecution has also declared this witness hostile and conducted his cross examination. This witness is a friend of accused Gyan Prakash Mishra and it seems that the witness has tended to give a false statement in order to save him.

404. It has been established from the statements of Tikamdas Sahu (PWN 88) and Rajkumar Harmukh (PWN 90) that it was Devendra Patni (PWN 158) who arranged to send accused Gyan Prakash Mishra and Abhay Singh to Pachmarhi. Here it is necessary to note that on 9-10-91 the accused persons made a telephone call from Pachmarhi to Durg Telephone No. 3854. In para 7 of his statement Devendra Patni (PWN 158) has admitted that the telephone number of his residence is 3854. From this it is clear that after reaching Pachmarhi the accused persons were in contact with Devendra Patni (PW No. 158).

405. It appears that the background to absconding of accused Gyan Prakash Mishra & Abhay Singh from Durg on 4-10-91 is that their companion of Nepal trip accused Awadesh Rai had come under police observation. Thus based on the entirety of circumstances it is concluded that accused Gyan Prakash Mishra and Abhay Singh absconded from this area on 4-10-91.

406. The absconding of accused Abhay Singh is also corroborated by the fact that on 3-10-91 he had given Darshanand Tiwari (PWN-52) a leave application (Ex.P.144) but he came to work. On being asked by Darshanand Tiwari (PWN 52) accused Abhay Singh said that money could not be arranged so I will go tomorrow or a day after. When accused Abhay Singh did not come to work on 5-10-91 Darshanand Tiwari (PWN 52) changed the date of the said application from 3rd to 5th and left it in the office. On the basis of records the personnel officer of Bhilai Steel Plant Jacob Kurien (PWN 53) has established that accused Abhay Singh had absented himself on 5-10-91 and subsequently he did not come back to work. When accused Abhay Singh did not come back to work his service were terminated on 23-1-92. Accused Abhay Singh has not

given any clarification as to why he absented himself from his job without any application or sufficient reason. Thus there is sufficient evidence that with a week of Niyogi's murder accused Abhay Singh and Gyan Prakash Mishra had absconded from this area.

Accused Chandrakant Shah:

407. Koduram (PWN-103) does various domestic jobs like bringing milk, taking the dog out for a walk etc. in accused Chandrakant Shah's house. He said in his statement 8-10 days after the murder of Shankar Guha Niyogi accused Chandrakant Shah told him to tell driver Mahadev that the green coloured larger vehicle that has arrived should be kept in Suraj Seth's field. Mahadev driver kept the green coloured larger vehicle in Suraj Seth's field and left. Later on Imamuddin said that accused Chandrakant Shah has gone away with the larger vehicle and he has asked the small one to be kept in the garage.

408. The Assistant Regional Transport Officer S.N. Singh (PWN-123) stated in his statement that Tempo Trax No.MP24B-6622 was registered on 5-3-91 in the name of Oswal Iron and Steel Private Ltd. The undisputed owner of this firm is accused Chandrakant Shah. In para 5 of his cross examination the witness stated that the said Tempo Trax was of green colour. Thus, when the statements of Koduram (PWN 103) and S.N. Singh (PW No. 123) are read together it becomes clear that 8-10 days after the murder of Shankar Guha Niyogi, accused Chandrakant Shah left Bhilai in a green coloured Tempo Trax MP 24 B 6622.

409. The General Manager of Hotel Grant, Nagpur Vijay Bajaj (PWN 130) has said in his statement that on 5-10-91 a traveller named Hemant Singh came at 12.00 and stayed in his hotel till 8.30 pm on 8-10-91. The register of the hotel is Ex.P.348. After comparing accused Chandrakant Shah's admitted hand-writing, sample hand-writing and disputed hand-writing Q-80/ Ex.P.348, the hand-writing expert Dr.S.C. Mittal (PWN 160) has submitted that Q-80. Ex.P.348 in accused Chandrakant Shah's hand-writing.

410. The receptionist of Hotel Sona, Nagpur Ananata Ramesh Rao Pimpalvar (PWN 134) has in his statement stated that on 8-10-91 a traveller named C.K. Shah came to his Hotel at 9.30 pm and the said traveller left the Hotel on 9-10-91. There was a lady also with the traveller. The traveller has written his name and address as 34 Civic Centre, Bhilai in the register himself. The hotel register is Ex.P.361 and the bill of the hotel is Ex.P. 360. In his accused statement accused Chandrakant Shah has admitted staying in Hotel Sona, Nagpur on 8-10-91 and 9-10-91.

411. The accountant K.S.Bhasyam (PWN-172) of Hotel President Madras after seeing the arrival form Ex.P.419, receipt P-420 and Board & Apartment bill 421 has stated that from 15-10-91 to 18-10-91 Shah Chandra, a resident of Bhilai, Durg (M.P.) stayed in the said hotel. This witness was not cross examined. Based on the name and address entered by the traveller in Hotel President, Madras it can be legally assumed that the traveller was accused Chandrakant Shah.

412. D. Sundarpal (PWN 117) was posted as Assistant Executive Engg. at

Gudor, District Nellore (AP) in 1991. He appeared in court with the certified copy of the register of the toll tax barrier (Ex.P.311). This witness stated that on 13-10-91 at serial no.2 there is an entry of vehicle no. MP 24 B 6622 crossing barrier. Pollaiya (PWN 118) is posted as working inspector of that barrier. It is established from his statement and the receipt Ex.P.313 that the vehicle No. MP 24 B 6622 had crossed the Manobelu toll tax barrier. From this it appears that prior to reaching Hotel President, Madras accused Chandrakant Shah had crossed the Manoret toll tax barrier.

413. Shekhar (PWN 137), the Manager of Hotel Godavari, Bhadrachalam (A.P.) said in his statement that on 11-10-91 a traveller named C.K. Shah had come who was allotted room no.205. The traveller had signed in the Hotel register Ex.P.247. It is clear from the perusal of Exhibit P-247 that the traveller's name is written as C.K. Shah and address as 34 Civic Centre, Bhilai. The handwriting expert Dr. S.C. Mittal (PWN 160) has marked the entry in this hotel register as Q-47. The hand-writing expert has concluded that accused Chandrakant Shah's admitted hand-writing, sample hand writing and the disputed handwriting (Q-47/Ex.P.247) have been written by the same person. From this it is evident that accused Chandrakant Shah had stayed in Hotel Godavari, Bhadrachalam, A.P.

414. Manohar Vasudev Rao Pohekar (PWN-166) was posted as manager of the Tourist Lodge (Navegaon Bandh) Maharashtra Govt. in 1991. Based on the register of the said forest lodge Ex.P.417 this witness has established that a tourist C.R. Shah, 34 Civic Centre, Bhilai (Durg) (Madhya Pradesh) had stayed in the said lodge from 12.00 noon of 3-11-91 to 8 a.m. on 5-11-91. This lodge is run by the state govt. hence it can be presumed that the entries would be correct ones. This witness was not cross examined by the accused. Hence on the basis of name and address of the tourist entered in the register Ex.P.417 it can be said that the tourist was accused Chandrakant Shah.

415. Bhagwati Prasad Tiwari (PWN 127) has been working as a receptionist in Hotel Surya, Nagapur for the past 7-8 years. He has state that in the hotel register Ex.P.330 there is an entry of traveller Ram Singh resident of 52 Civic Centre , Jabalpur. This traveller had come to his hotel as 9 pm on 5-11-91 and left it at 7 pm on 8-11-91. The traveller had made the entry himself and signed it. The hand-writing expert Dr. S.C. Mittal (PWN 160) has marked the entry at serial No. 3326 in the register of Hotel Surya, Napgur (Ex.P.330) as Q-78. After examining the accused Chandrakant Shah's admitted hand-writing, sample hand-writing and disputed hand-writing (Q-78/P-330) the hand-writing expert has opined that the said that three hand-writings are of one and the same person. It is thus established that accused Chandrakant Shah stayed in Hotel Surya, Nagpur from 5-11-91 to 8-11-91 under the name of Ram Singh.

416. Rajesh Dua (PWN 131) is the owner of Hotel Continental, Nagpur. He states that the Centreal Bureau of Investigation had seized the original page of his hotel register Ex.P.356 and hotel bill Ex.P.357. Its seizure-memo is Ex.P. 355. The bill of Ex.P.357 has been made out in the name of a traveller R.K. Singh.

This traveller had stayed in the said hotel on 11-11-91 under the name of R.K. Singh, 34 Civic Centre, Jabalpur. After examining the admitted hand- writing of accused Chandrakant Shah, sample hand-writing and the disputed hand- writing (Q-79/Ex.P-356) the hand-writing expert Dr. S. C. Mittal (PWN 160) has opined that all the said three hand-writings are of the same person. It is thus established that accused Chandrakant Shah stayed in Hotel Continental, Nagpur on 11-11-91 under the name of R. K. Singh.

417. In 1991 Kingshuk Chakravarty (PWN 139) was working as a receptionist in Hotel Central Point, Jamshedpur. He has stated that in the guest registration form of the hotel Ex.P.370 the traveller has written his name, address and date and has signed it. According to the guest register form the name of the traveller is H.K. Shah and his permanent address is 34 Civic Centre Bhilai. The traveller stayed in the said hotel from 23-11-91 to 25-11-91. The senior receptionist of the hotel R. Rizvi (PWN 140) has made out a bill (Ex.P.371) of Rs.1348 and 40 paise. After examining the accused Chandrakant Shah's admitted hand-writing, sample hand- writing and disputed hand-writing, (guest register form Q-46/Ex.P.370) the hand-writing expert has opined that all the said three hand-writings are of one person. Thus it is clear that accused Chandrakant Shah had stayed in Hotel Central Point, Jamshedpur from 23-11-91 to 25-11-91 under the name of H.K. Shah, 34 Civic Centre, Bhilai. The documents Ex.P.370 & P.371 had been seized by R.S.Prasad (PWN 192) vide seizure memo Ex.P. 372.

418. C.A. Shivkumar (PWN 141) is a taxi driver. He states that his employer (Radhe Bihari Tours & Travels, Nagpur) told him that a phone call has come from Hotel Surya to take a traveller in his taxi car MS-31/2052 to his destination. When he reached Hotel Surya at around 3 p.m. in the afternoon on 7-11- 91 he met that traveller. He left the traveller in front of the Navegaon Bandh (tourist lodge of Maharashtra govt.). The distance between Hotel Surya & Navegaon Bandh is around 140 K.m. A Tempo Trax vehicle was parked there. That traveller went towards Nagpur road driving the Tempo Trax. Here it is necessary to note that accused Chandrakant Shah stayed in Hotel Surya between 5-11-91 and 8-11-91 under the name of Ram Singh. Prior to this accused Chandrakant Shah had stayed in Navegaon Bandh tourist lodge from 3- 11-91 and 8 a.m. on 5-11-91. From this it appears that while staying at the Navegaon Bandh First lodge and prior to staying in Hotel Surya, Nagpur accused Chandrakant Shah had left the Tempo Trax in front of the Navegaon forest lodge.

419. About 8-10 days after Niyogi's murder accused Chandrakant Shah suddenly left Bhilai in his Tempo Trax No. MP 24 B 6622 and kept staying in various Hotels in Nagpur in Navegaon forest lodge, in Hotel Central Point Jamshedpur, in Hotel Godavri Bhadrachalam, in Hotel President Madras. Accused Chandrakant Shah had stayed in Hotel Grant Nagpur, from 5-10-91 to 8-10-91 under the fake name (Hemant Singh) similarly he had stayed in Hotel Surya, Nagpur from 5-11-91 to 8-11-91 under a fake name (Ram Singh). Similarly accused Chandrakant Shah stayed in Hotel Continental, Nagpur on 11-11-91 under a fake name. (R.K.Singh). Similarly accused Chandrakant Shah had stayed in Hotel Central Point, Jamshedpur from 23-11-91 to 25-11-91 under a fake name

(H.K.Shah)

420. Accused Chandrakant Shah has taken the plea that actually he was not absconding, rather he had applied to the Hon'ble High Court for anticipatory bail. When the Hon'ble High Court granted him ex-parte anticipatory bail he had presented himself before the Central Bureau of Investigation, camp Bhilai. But this plea is not acceptable. Around a week after Shankar Guha Niyogi's murder accused Chandrakant Shah suddenly left from Bhilai in his Tempo Trax and had been staying in various hotels in Nagpur and other cities under fake names. Accused Chandrakant Shah is an important industrialist. What was the need for him to abscond and stay up in various hotels under fake names. From this it is clear that accused Chandrakant Shah absconded from Bhilai one week after the murder of Shankar Guha Niyogi and with the intention of keeping himself hidden. He was staying in various hotels under fake names.

421. The Hon'ble Supreme Court in the matter of Kundla Balasubramaniam Vs State of Andhra Pradesh (1993) (2) (Supreme Court Cases.- 684) has laid down that the mere absconding of an accused is not a positive evidence in itself for proving guilt, because sometimes innocent persons run away in fear fearing being falsely implicated. However if there is other evidence against the accused involving him in the crime, then the absconding of the accused becomes an important link.

422. Just two days after Shankar Guha Niyogi's murder accused Awadesh Rai had taken up contracts of the cycle stand of Maurya Talkies. He had barely run the cycle stand for 2-3 days that he came under police observation. It appears that the police had taken accused Awadesh Rai in its custody from 3-10-91 itself though he was formally arrested on 13-10-91. The very next day, i.e. in the night of 4-10-91 accused Gyan Prakash Mishra and Abhay Singh absconded from Bhilai and went to Pachmarhi. When accused Gyan Prakash Mishra returned to Bhilai some day before 13-10-91 he was then arrested by the police. Accused Abhay Singh neither returned to Bhilai nor did he join his duty in the Bhilai Steel Plant. Under the Guidance of Superintendent of Police, CBI Mithilesh Kumar Jha (PWN 184) accused Abhay Singh was arrested in Gazipur on 17-11-91.

423. Accused Chandrakant Shah also absconded from Bhilai in his Tempo Trax MP 24 B 6622 on 4-10-91 and kept staying in hotels of Nagpur and other cities under fake names. In this manner all the three above accused absconded from this area after accused Awadesh Rai was taken into police custody. It is necessary to note here that in March 91 accused Chandrakant Shah, Gyan Prakash Mishra, Abhay Singh and Awadesh Rai had journeyed from Bhilai to Nepal in Tempo Trax No. MP 24 B 6622. It has also been established above that the purpose of this trip was to collect arms.

424. Mahngu Lal Panchbudh (PWN 143) is patel of village, Nagra. He states that on 7-11-91 he had seen a green coloured Tempo Trax on the Balaghat Road half a furlong away from his village. He does not remember the number of that Tempo Trax. That Tempo Trax was closed and there was nobody inside or

around it. On 9-11-91 he saw the Tempo Trax standing in the same place. He suspected how the vehicle was standing in this condition for two days. He was not feeling very well so he could not go to the police station immediately to report this. On 11-11-91 he went to police station Gondia (rural) and told the Inspector Kumbhalkar (PWN 145) of the Police Station that a Tempo Trax is standing near his village. Kumbhalkar (PWN 145) told him to lodge a report with Singh Saheb. He lodged a report with Singh Saheb and returned. On 13-11-91 the Deputy Superintendent of Police Sandeep Vishnoi came to his village and posted a police guard near the Tempo Trax. On 18-11-91 he came to know that the Tempo Trax had been taken away.

425. Police Inspector Sahasram Kurnbhalkar (PWN 145) has stated that after receiving the information on 11-11-91 that Tempo Trax MP 24 B 6622 was standing he went with Sub-Inspector Singh and the village Patel to village Nagara. He saw that the vehicle was locked and vehicle was also in gear. He wrote and asked the Regional Transport officer, Durg who the owner of the said motor vehicle was. In the meanwhile a telegram was received from Ramji Shah (father of accused Chandrakant Shah) that his son is being harassed by the police and it was also written that his son is being harassed near Nagra where the vehicle was standing. The witness sent a letter to Ramji Shah at his Jabalpur address to come to the police station and give necessary information. Subsequently one more letter arrived from Ramji Shah in which it was written that he has received information from some Nair from Bhilai that his son is being harassed.

426. Police Inspector Saharam Kumbhalkar (PWN 145) has said in his statement that on 18-11-91 Police Superintendent of Central Bureau of Investigation B.S.Kanwar (PWN 183) came to Police Station Gondia (rural) Upon this his Police Superintendent directed him that assistance be rendered to the Central Bureau of Investigation in their investigation. From Gondia he took a person who opens locks of vehicles, a photographer and a finger print man along with him to Nagpur. This witness further stated that the lock-opener opened the lock of vehicle and the photographer took photographs of the vehicle and the articles found inside it. The registration and insurance papers of the vehicle were also found inside the vehicle. Some cassettes chappal, towel, some books, clothes, a woolen cap and matting etc were found inside the vehicle which were seized. This witness also stated that blood-stains were found on the mat on the towel and on the woolen cap.

427. Superintendent of Police of Central Bureau of Investigation B.S. Kanwar (PW NO. 183) has stated that all the articles and documents found inside the Tempo Trax standing on the Gondia-Balaghat Road were seized vide seizure memo Ex.P.376. This witness further stated that blood stains were found on the white towel and rubber mat found in the Tempo Trax. A card board (Ex.P.237) was also found in the Tempo Trax on which Chandrakant Shah, some phone numbers were written. A Diwali greeting card (Ex.P.243), greeting card (-244), envelope (P-246), original bill of Hotel Godavari (P-377), photocopy of the registration papers of the vehicle (P-326), photocopy of the insurance paper of

the vehicle (P-433), envelope of Hotel Golkunda (P-434), Diwali greeting card (P-410), one envelope (P-411) Road Atlas of Asia (P-412), a packet of cigarette, video cassette, a comb, a box of matches, 2 packets of incense sticks, one hawai chappal, one pair of shoes and socks, one pullover, one sheet, one hockey stick, one umbrella, one shirt, one scale, one bullworker, one bag full of cloths, one plastic bag of a laundry and one mirror were also found in the vehicle which were also seized by him.

428. The said seizure has been corroborated by a farmer of village Nagra Balkrishna (PWN-144).

429. The towel, cap and rubber mat found by the Central Bureau of Investigation in Tempo Trax MP 24 B 6622 were sent for investigation to the forensic laboratory. Secologist C M Patel (PW No. 152) has stated in his statement that human blood was found on the seized towel, cap and rubber mat which was of group 'O'.

430. Dr Dilip Bhalchandravalkar (PWN 120, is a pathologist) who does the work of collection of blood in Nagpur. Any person who comes to get blood from him, he is given blood only after matching the blood group. If someone comes from the outside the town and asks for blood of a particular group, blood is given to him without matching on the condition that matching will be the responsibilities of the purchaser or the patient. He maintains a register of the blood he sells. Dr. Dilip Bhalchandravalkar (PWN 120) further states that on 7-11-91 a person had come to him and told him that a relative of his required O-positive group blood. He told that person that the blood should be transfused to the patient only after matching the blood group. Dr. Dilip Bhalchandravalkar (PWN 120) has made an entry of having sold O-positive group blood to one Mr. Singh in the blood information record (Ex.P.316). In Ex.P.316 the very same facts are written which the witness has stated in his statement in the court.

431. Here it is necessary to mention that accused Chandrakant Shah had stayed in Hotel Surya Nagpur from 5-11-91 to 8-11-91 under fake name (Ram Singh). On 7-11-91 a person named Singh bought O-positive blood for a patient from a pathologist of Nagpur Dr. Dilip Bhalchandravalkar (PWN 120). The mat cap and towel found in accused Chandrakant Shah's Tempo Trax no. MP 24 B-6622 which was parked near village Nagra were blood stained. The blood found on these articles was also of O-positive group. On the basis of these circumstances it can be presumed that it was the accused Chandrakant Shah who under the name of Singh bought O-positive group blood from Dr. Dilip Bhalchandravalkar (PWN 120) and applied that blood on the towel, cap and mat of the vehicle. Even if it is assumed that accused Chandrakant Shah did not purchase O-positive group blood from the pathologist (PWN 120), it makes no difference to the situation. Since the Tempo Trax belonged to accused Chandrakant Shah, hence the burden is upon him to clarify as to what were the circumstances under which the articles inside his vehicle were found stained with O-positive blood. But the accused has not clarified under what circumstances the articles found in his Tempo Trax were stained with blood.

432. It appears that the intention of accused Chandrakant Shah in abandoning his Tempo Trax in village Nagra and applying blood to the articles in it can be to mislead the investigation of Central Bureau of Investigation. It also appears that accused Chandrakant Shah wanted to create a sensational situation so that the investigating agency would stray from the correct line and not proceed towards its goal. A person with common sense can draw no other inference.

433. From the statement of photographer Baban Rao Nevare (PWN 146) and also by the photographs taken by him, it is established that a green coloured vehicle MP 24 B 6622 was standing at village Nagra. The photographer has taken photographs of the said vehicle from various angles which are Ex.P.377 (1) to (7) Thus the statement of the investigating officer is corroborated by photographs.

(13) to (15) Niyogi's diary and cassette

and its evidential significance:

434. On page 32 of deceased Shankar Guha Niyogi's diary Ex.P.93 it is written "Industrialist like Simplex-Kedia have got together the higher officials of Durg district and formed a fascist gang. What is sad is that the judiciary of Durg & Rajnandagaon districts have also joined in this gang."

On page 159 he has written "Gyanu has got 5 lakh rupees from Simplex and collected fire arms."

435. Rajkumar Harmukh (PWN 90) has said in his statement that Gyanu is accused Gyan Prakash.

436. On page 172 of the diary the names of accused Gyan Prakash, Awadesh Rai and Abhay Singh are written. Further it is also written that Awadesh (Sector 4) - is left hand of Gyanu.

437. On page 174 it is written Gyanu- Chandrakant the relevant person of

438. The statement of deceased Shankar Guha Niyogi recorded before his death in a micro cassette (Article C) is as follows :

"The responsibility which I have taken up, which I have carried, that responsibility I will have to carry out and these people will kill me, yet I know that by killing me nobody can finish our movement. It is certain that (1) this question will definitely arise after my death that "who killed me". () who is responsible, behind my death. The people of Simplex the way they are indulging in hooliganism, in particular Moolchand Shah, the manner in which he is collecting criminal persons, on that side goonda brother of Prabhunath (clear indication is towards accused Gyan Prakash Mishra) is also trying with his full force that some untoward incident is made to occur'.

439. Deceased Shankar Guha Niyogi began a movement against the industrialist of Bhillai in September 1990. In the night of 27/28-9-91 Shankar Guha Niyogi was shot dead. In this manner the statements written and recorded in

Niyogi's diary and cassette are relevant. The court has to considered what other evidence is available on record with regard to the accused whose names have appeared in the dramy and the recording in the cassette.

440. Section 32 (1) of the Evidence Act reads as follows :

When it relates to cause of death-when the statement is made by a person as to the cause of his death or as to any circumstance of the case which caused his death in those matters, cases in which the question of the cause of his death his rooted.

Such statements are relavant whether or not the person who made them was, at the time when they were made apprehensive about his death and whatever be the nature of the proceeding in which the question of the cause of his death is rooted.

441. It is not necessary that death of the deceased occurs immediately after the statement made by the deceased. Even if the deceased has made a statement much before his death it is still relevant under the provisions of the above section, provided that the statement is releated with the circumstances under which his death occur. On this subject it is relevant to cite Ratan Singh Vs State of Himachal Pradesh (1997 CLJ 883 para 15) Thus the writing in the diary and statements in the cassettes of the decesead Shankar Guha Niyogi are relevant.

(16) The accused persons who are named by accused Paltan Mallah in his confession.

1. Gyan Prakash Mishra
2. Moolchand Shah
3. Naveen Shah
4. Chandrakant Shah.

442. In para 167 above it is found to be established that accused Paltan Mallah had confessed before Satya Prakash (PWN 105) that he has gone with accused Gyan Prakash and murdered Niyogi in his sleep, with a country-made pistol. He had confessed that accused Moolchand, Naveen Shah and Chandrakant Shah have been colluding with accused Gyan Prakash Mishra. He had also confessed that those persons had given him money and he has done this work for the sake of money.

443. In para 168 it is found to be established that accused Paltan Mallah had confessed to Vishambhar Sahni in Nepal that on the instrucion of Simplex Company people he along the Gyan Prakash has murdered Shankar Guha Niyogi.

444. Accused Moolchand Shah and Naveen Shah are owners of the Simplex Group of Industries. Accused Chandrakant Shah is there brother and he also has industrial and financial links with them. Accused Gyan Prakash Mishra is an intimate friend of accused Chandrakant Shah. During Shankar Guha Niyogi's movement accused Gyan Prakash Mishra used to be present at the Simplex

gate. In this way all these accused are connected with the Simplex Group of Industries.

445. Here, the questions arises that what is evidential significance of the confession of Paltan Mallah in which he has named other accused. Ordinarily confession of accused is not considered within the definition of evidence under the section 3, of the Evidence Act. The Hon'ble Supreme Court in the matter of Shri Shail Nagesh Pare Vs State of Maharashtra (LIR 1985 S.C. 866) has laid down the principle that a confession which has been retracted; can become a basis of establishing guilt of that accused provided that it is corroborated by an independent witness but a confession which has been retracted can not become a basis for establishing guilt of any other accused, although if the court wishes it can consider this retracted confession against the other accused.

446. In this respect it is necessary to consider the illustration in Section 30 of the Evidence Act which reads as follows : A and B are jointly tried for the murder of C. It is proved that A said "B and I murdered C" the court may considered the affect of this confession as against B.

447. Thus, the positon of law which arises is that the court should not straight away consider the confession of one accused against another, rather court must consider the independent evidence against the other accused and if the available evidence logically establishes the guilt of the accused then the confession of accused can be considered as a final link. Thus the confession of accused Paltan Mallah in which he while confesing to his involvement in the crime has named other accused, will be considerable after looking at the other evidence available on recored against the concerned accused.

448. The learned defence counsel Shri Rajendra Singh had taken the plea that this is a matter of criminal conspiracy, hence the statement of a conspriator after the conspiracy is over is not relevant under section 10 of the Evidence Act. This plea has also been taken that in this present case the conspiracy was the murder of Shankar Guha Niyogi Accused Paltan Mallah was one of the conspirators. The statements of accused Paltan Mallah before Satya Prakash (PWN 105) and Vishambhar Sahni (PWN 124) are made after the completion of conspiracy (after the murdered of Niyogi). Hence the statement of accused Paltan Mallah is not relevant and acceptable under the provisions of section 10 of the Evidence Act.

449. Shri Rajendera Singh Adv. has cited the case of Mirza Akbar Vs King Emperor (AIR 1940 Priving Council 176)

450. It is clear from the evidence that has emerged in this case, that accused Paltan Mallah was not a prospeous person economically. He used to make a living cycle repair work. He was given a motor cycle and so much money that he could survive for several years without doing any work and had no need to return to this area. Accused Paltan Mallah managed to survive for nearly two years after the murder of Shankar Guha Niyogi without doing any work. Thus from the evidence it is seen that the conspiracy was not confined mere to the murder of Shankar Guha Niyogi, but beyond that the aim of conspiracy was that

murderer of Shankar Guha Niyogi goes so far away from the area on motor cycle that he became untracable in this area or any where else. Thus in this matter it cannot be said that the purpose of conspirators ended with the murder of Niyogi. Thus the confessions of accused Paltan Mallah before Satya Prakash (PWN 105) and Vishambhar Sahni (PWN 124) are not irrelevant. In the light of evidence available in this case and the purpose of the conspirators the above plea of defence cannot be accepted.

(17) Evidence against each of the accused.

1. Gyan Prakash Mishra

451. In para 187 above it is seen to have been established that on the night of 27/28.9.91 when Shankar Guha Niyogi was sleeping in his quarter MIG 1/55 Hudco, Bhilai the accused Paltan Mallah had fired country made pistol loaded with L.G. cartridge through the window and murdered him.

452. Accused Gyan Prakash Mishra and accused Paltan Mallah were together detained in Durg Jail for a long period. A few months prior to the murder of Shankar Guha Niyogi accused Paltan Mallah had started residing unauthorisedly in Quarter 6 F in Camp 1. Accused Gyan Prakash Mishra is also a resident of Camp 1. Quarter 6 F is in the neighbourhood of accused Abhay Singh who is a friend of accused Gyan Prakash Mishra. In this manner the relation between accused Paltan Mallah and accused Gyan Prakash Mishra has been established.

453. When deceased Shankar Guha Niyogi had begun the agitation of workers in Bhilai during that period accused Gyan Prakash Mishra used to be present at the Simplex gate although he was not an employee of Simplex. Sudama Prasad (PWN 54) has said in his statement that a worker named Ram Asre had acquainted him with accused Gyan Prakash Mishra saying that he is a man of anti-social elements. Ram Asre had also told him that accused Gyan Prakash Mishra regularly frequents Simple Company. He had also said that he is of criminal nature and is in league with the owner, so beware him.

454. Apart from this when the truck of material went from Simplex to Oswal (owner Chandrakant Shah) for scrapping and after being scrapped that used to return, then accused Gyan Prakash Mishra some times used to accompany those trucks to Simplex Castings. In this manner accused Gyan Prakash Mishra had relation with accused Chandrakant Shah and owner of Simplex.

455. According Rajendra Sail (PWN 70) on the last night of his life, Shankar Guha Niyogi had told him that attacks were being made on workers by Gyan Prakash Mishra of private army of Simplex.

456. In his diary Ex.P.93 deceased Shankar Guha Niyogi has written accused Gyan Prakash Mishra's name at several places. On page 169 of this diary in Niyogi's hand-writing it is written that on obtaining 5,00,000 rupees from Simplex Gyanu has collected weapons. From the statement of Rajkumar Harmukh (PWN 90) it is evident that Gyanu is accused Gyan Prakash Mishra.

457. In march 91 accused Gyan Prakash Mishra had along with accused

Chandrakant Shah and other accused, made a trip to Nepal. Subsequently during the search of the house of accused Chandrakant Shah a bill of a provision store of Nepal Madhuban was found with the names and prices of some foreign weapons written behind it. This hand-writing is of accused Gyan Prakash Mishra. It has been established earlier that the aim of Nepal trip of the accused was to collect weapons and that this was a criminal conspiracy.

458. Niyogi in his micro cassette (Article-C) had said that Prabhunath Mishra's gunda brother, (indicating accused Gyan Prakash Mishra) is also putting his full force for some untoward incident to happen here.

459. Two days after Niyogi's murder accused Gyan Prakash Mishra was sitting at accused Chandrakant Shah's house.

460. After the murder of Niyogi on 30-9-91 accused Awadesh Rai was given a contract of the cycle stand of Maurya Talkies to on the recommendation of Prabhunath Mishra, elder brother of accused Gyan Prakash Mishra. The earnings from this cycle stand started being deposited in the syndicate bank a/c of accused Gyan Prakash Mishra.

461. Around 5 days after the murder of Niyogi on 3-10-91 when accused Awadesh Rai came under police observation accused Gyan Prakash Mishra alongwith accused Abhay Singh absconded over-night from this area to Pachmadi on 4-10-91. If accused Gyan Prakash Mishra did not have a guilty mind what was the need to abscond over night from this area ?

462. When on 15-12-91 the Central Bureau of Investigation made a search of the office of Jain and Shah in (Akashganga Complex, Bhilai) an office in the ownership of accused Chandrakant Shah some torn pieces of paper were found there. Those pieces were joined together by the Central Bureau of Investigation which is Ex.P-298. This letter was written by accused Gyan Prakash Mishra to accused Naveen Shah which reads as follows :

28-9-91

Respected Naveen Bhai Ji

Pranam.

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

Your Younger Brother

Gyan Mishra

463. The murder of Shankar Guha Niyogi took place in the night of 27th & 28-9-91. Hence the letter written by accused Gyan Prakash Mishra to accused Naveen Shah on 28.9.91 will be considered a confession of the crime.

464. From the letter written by accused Gyan Prakash Mishra Exhibit P-393 (12 & 13) recovered in the search of accused Chandrakant Shah's house it is seen that there is an intimate relation between the two accused and accused Gyan Prakash Mishra would not hesitate in giving the biggest sacrifice for the happiness and welfare of accused Chandrakant Shah.

465. In the extra judicial confessions made by accused Paltan Mallah before Satyaprakash (PWN 105) and Vishambhar Sahani (PWN 124), he had said that he had gone with accused Gyan Prakash Mishra and murdered Shankar Guha Niyogi with a country made pistol while he was sleeping.

2. Chandrakant Shah :-

466. It is established that the most adverse impact of Shankar Guha Niyogi's agitation was on the Simplex Group of Industries. The greatest number of workers were retrenched by Simplex Group of Industries. Owing to Niyogi's movement the Simplex industry started having losses of lakhs of rupees and they filed two civil suits against deceased Shankar Guha Niyogi and other post bearers of CMM in the District Court Durg.

467. Accused Moolchand Shah and accused Naveen Shah are owners of the Simplex Group of Industries. Accused Chandrakant Shah is their stepbrother but the relationship between these three accused is not bad. In his statement Ketan Shah (PW no. 98)- son of accused Moolchand Shah has called Chandrakant Shah 'Chachaji' with the same respectful mode of address with which he has referred to accused Naveen Shah.

468. In para 7 of his statement an ex-employee of Oswal Iron and Steel Company Trilokinath Pandit (PWN 176) has stated that since there was less supply of rejected material for scrapping from Simplex Casting, hence the work of Oswal had come to a halt. Thus Oswal Iron and Steel was affected by Shankar Guha Niyogi's strike and this factory closed down.

469. In March 91 during Niyogi's agitation accused Chandrakant Shah had journeyed to Nepal along with accused Gyan Prakash Mishra, Abhay Singh and Awadesh Rai. After the murder of Niyogi when the house of accused Chandrakant Shah was searched, a bill of a provision store in Nepal - Madhuban (Ex.P-393 (8)) was found behind which the names and prices of foreign weapons were written. This handwriting was of accused Gyan Prakash Mishra. Earlier it has been established that the purpose of the Nepal visit was to collect weapons and criminal conspiracy.

470. During the search of accused Chandrakant Shah's house a chit (Ex.P.239) was also found on which it was written Fiat car MIR 227 and Jeep No. MPT 7971. It is necessary to note here that Jeep No. MPT 7971 is registered in the name of C M Morcha Fiat car No. MIR 227 is registered in the name of Dr. Gun (PWN 16) but ever since 1987 when Shankar Guha Niyogi's leg was fractured, till the last moments of his life he regularly used the said Fiat car. Even in the night of 27-9-91 Shankar Guha Niyogi had come from Raipur to Bhilai in the said Fiat car. Accused Chandrakant Shah has not clarified as to why he had

kept the numbers of the said vehicles written with him.

471. When the Central Bureau of Investigation had searched the office of accused Chandrakant Shah i.e. Jain and Shah (Akash Ganga, Complex, Bhilai) on 15-12-91, the torn pieces of accused Gyan Prakash Mishra's confessional letter (Ex.P.298) had been found there.

472. In the afternoon of 27-9-91 deceased Shankar Guha Niyogi had told Journalist N.K. Singh (PWN 71) that the Industrialists of Bhilai have brought hired gundas to get him killed. The deceased had also said that the Shah's of Simplex want to get him killed.

473. The deceased Shankar Guha Niyogi had repeated the above conversation to the journalist N.K. Singh (PWN 71) in the night of 27- 9-91 in Picadilly Hotel.

474. In the last night of his life deceased Shankar Guha Niyogi told Rajendra Sail (PWN 70) on 27-9-91 in Picadilly Hotel, Raipur that he faces the greatest threat from Moolchand Shah of Simplex and his partner and private army. He had also said that the work of dirty wing in Simplex is looked after by Moolchand Shah and Chandrakant Shah.

475. Accused Chandrakant Shah's name is also written in Niyogi's diary.

476. After the murder of Shankar Guha Niyogi, when accused Awadesh Rai came under police observation/custody on 3-10-91 and accused Gyan Prakash Mishra and accused Abhay Singh absconded to Pachmarhi, then accused Chandrakant Shah also left Bhilai in his green coloured Tempo Trax No. MP 24 B 6622 and kept staying at various hotels in Nagpur, a hotel in Jamshedpur, Hotel Godavari Bhadrachalam (AP) and Hotel President in Madras. Accused Chandrakant Shah stayed in Hotel Grant, Nagpur under a false name (Hemant Singh), in Hotel Surya, Nagpur under a false name (Ram Singh), in Hotel Continental, Nagpur under a false name (R.K. Singh) and in Hotel Central Point in Jamshedpur under a false name (H.K. Shah).

477. Accused Chandrakant Shah was a millionaire industrialist of Bhilai. After the murder of Niyogi what was the need for him to abscond in this manner and stay under false names ? This shows the guilty mind of the accused.

478. During his absconding accused Chandrakant Shah had abandoned his green coloured Tempo Trax MP-24 B-6622 near village Nagra. The articles inside this Tempo Trax were found to be stained with blood. From this it appears that accused Chandrakant Shah wanted to create a sensation and divert the efforts of the investigating agency in the wrong direction.

479. In the extra-judicial confession before Satya Prakash (PWN 105) accused Paltan Mallah had told him that he has murdered Shankar Guha Niyogi and Gyan Prakash Mishra, Moolchand Shah, Naveen Shah and Chandrakant Shah have been with him in this.

480. In his extra judicial confession before Vishamber Sahni,, resident of Nepal

(PWN 124) accused Palton Mallah had said that on the instructions of Simplex Company people he had gone with Gyan Prakash Mishra and murdered Shankar Guha Niyogi. Earlier it has already been established that accused Chandrakant Shah was inseparably connected with the Simplex Company and its owners.

481. (NOTE) No decision is been given herein with regard to the foreign pistol said to have been recovered from the house of Devendra Patni on 13-10-91 on the basis of memo statement of accused Gyan Prakash Mishra. Accused Chandrakant Shah is an accused in that case also. With regard to the said case a crime has been separately registered in Police Station, Durg and charge sheet has been filed in the court of Judicial Magistrate Class I, Durg.

(3) Awadesh Rai:

482. Jailor S.P. Singh (PWN 63) has proved the Durg jail record (Ex.P.155 A). According to this record accused Awadesh Rai was confined in Distt. Jail, Durg under sections 302/349 of the Indian Penal code between 19-12-87 and 2-7-88. Accused Palton Mallah was confined in Distt. Jail, Durg under section 353, 307, 397, 341, 294, 506 (B), 323, 25 & 27 Arms Act between 1-3-88 and 10-8-88. From this it can be presumed that accused Awadesh Rai and Palton Mallah had an association.

483. In March 91 accused Awadesh Rai travelled to Nepal along with accused Chandrakant Shah, Gyan Prakash Mishra and Abhay Singh. After the murder of Shankar Guha Niyogi when the house of accused Chandrakant Shah was searched, the bill of a provision store in Nepal - Madhuban (Ex.P.393 (8)) was recovered. Behind this bill the names and prices of foreign weapons were written in the hand-writing of accused Gyan Prakash Mishra. It has been established that the purpose of the Nepal visit of the accused was to collect weapons and this was a criminal conspiracy.

484. It is established from the evidence that accused Awadesh Rai is an inseparable friend accused Gyan Prakash Mishra. In the diary of deceased Shankar Guha Niyogi also, accused Awadesh Rai is said to be the left hand of accused Gyan Prakash Mishra.

485. After the murder of Shankar Guha Niyogi, on 30.9.91, accused Awadesh Rai took up the contract of cycle stand of Maurya Talkies, Bhalai at the rate of Rs. 25,000 a month on the recommendation of Prabhu Nath Mishra the elder brother of accused Gyan Prakash Mishra. When tenders had been invited for the cycle stand in September 91, than accused Awaesh Rai had not filled in any tender. Thus, it is clear that the owner of the talkies Sunil Agrawal gave the contract of the cycle stand only on the basis of the recommendataion of Prabhunath Mishra. Accused Abhay Singh had come with accused Awadesh Rai to get the contract.

486. Prior to accused Awadesh Rai getting the contract of the cycle stand a person named Rajappan used to run the cycle stand on Rs. 19,000 monthly contract. Since there was not much income from the cycle stand Rajappan's contract had been reduced from Rs. 19,000 to Rs. 15,000. Thus, it is clear that

accused Awadesh Rai took up the contract of a cycle stand at the rate of 25,000 rupees a month which had early been contracted out for Rs. 15,000 a month.

487. There is no evidence of the fact that accused Awadesh Rai does any job or that he has any other business. Thus, accused Awadesh Rai has not clarified from where, after the murder of Niyogi, he suddenly got so much money or the guarantee of getting so much money. On 24-10-91 a month had not yet passed since accused Awadesh Rai had taken up the cycle stand contract. So, he had not deposited any sum of money.

488. Thus accused Awadesh Rai either suddenly receiving a large sum of money, or getting the guarantee of receiving an extremely large sum of money, after the murder of Shankar Guha Niyogi, and the accused failing to clarify the same will be considered evidence implicating him in the crime.

(4) Abhay Singh :-

489. Accused Abhay Singh is an inseparable friend of accused Gyan Prakash Mishra and Awadesh Rai.

490. In March 91 accused Abhay Singh travelled to Nepal along with accused Gyan Prakash Mishra, Awadesh Rai and accused Chandrakant Shah. Earlier it has been proven that after the murder of Niyogi, when the house of accused Chandrakant Shah was searched then the bill of a Provision Store in Nepal Madhuban (Ex.P.393 (8)) was recovered, at the back of which the names and prices of foreign weapons were written in the handwriting of Gyan Prakash Mishra. Earlier it has been established that the aim of the Nepal trip was to collect arms and criminal conspiracy.

491. A few days before Niyogi's murder, accused Paltan had come to the neighbourhood of accused Abhay Singh and had started residing unauthorisedly in Quarter no. 6 F of the Bhilai Steel Plant.

492. In the search of accused Abhay Singh's house a newspaper Bhilai Times dated 30-4-91 was recovered. This newspaper had been dispatched to the address of Simplex Casting and Engg. Works Industrial Area, Bhilai. The recovery of this newspaper from accused Abhay Singh's house shows that he is connected with Simplex Industry. Here it is necessary to note here that an item has been published in this news paper "Shah had hatched the conspiracy of murder of Niyogi, what is the secret behind Chandrakant Shah's foreign trip ?"

493. In the search of accused Abhay Singh's house a diary Ex.P.71 was recovered. In this diary "Niyogi jeep no. M.B.R.1438" is written. Accused Abhay Singh has not given any clarification why the name and vehicle no. of deceased Shankar Guha Niyogi has been written in his diary.

494. Ravindra Kumar Chowdhary (PWN 81) has said in his statement that his jeep M.B.R. 1438 used to run as a Taxi. 5-6 months prior to the murder of Shankar Guha Niyogi, activists of Niyogiji had hired the said jeep for 2-3 days. From this it appears that the accused Abhay Singh used to keep track of and

follow the said vehicle, when activists of Niyogiji were using the jeep.

495. After the murder of Shankar Guha Niyogi when accused Awadesh Rai had gone to get the contract of the cycle stand of Maurya Talkies, accused Abhay Singh had accompanied him.

496. When accused Awadesh Rai came under Police observation/custody on 3-10-91, then this accused suddenly absconded from this area to Pachmarhi in the night of 4-10-91 along with accused Gyan Prakash Mishra. Accused Abhay Singh has taken the plea that he had gone because he had got news from Uttar Pradesh that his wife is not well. In his leave application (Ex.P.144) which he had submitted to his department through the Darshanand Tiwari (PWN 52), accused Abhay Singh has not written that his wife is unwell. The application only says that due to some essential work he is going home. Subsequently accused Abhay Singh did not at all go back to work. The officials of Central Bureau of Investigation arrested accused Abhay Singh on 17-11-91. in Gazipur. Had accused Abhay Singh's wife really been unwell he would have gone straight to Uttar Pradesh to his wife, rather than running away overnight in the opposite direction with accused Gyan Prakash Mishra to Pachmadi. Thus, accused Abhay Singh had absconded from this area after the murder of Niyogi and he did not at all attend his job.

497. The name of accused Abhay Singh is in the diary of Shankar Guha Niyogi.

(5) Moolchand Shah:-

498. Accused Moolchand Shah is the owner of Simplex Group of Industries. When deceased Shankar Guha Niyogi came from Rajhara to Bhilai in 1990 and began agitation of workers there, the Simplex Group of Industries had been most affected. The largest number of members of CM Morcha had been dismissed from Simplex Group of Industries. Due to this strike Simplex Industry was having losses of lakhs of rupees. Civil suits were also filed on behalf on Simplex Industry in District Court, Durg in which it was stated/admitted that due to the strike of Shankar Guha Niyogi this industry was having lakhs of rupees of losses. In the civil suits filed by Simplex Industries Shankar Guha Niyogi and post bearers of the CM Morcha had been a impleaded as respondents.

499. Accused Moolchand Shah was not even prepared to accept the demand letter of CM Morcha. He was only taking those workers who were prepared to disassociate themselves from CM Morcha. Those workers who were associated with CM Morcha he was not taking on the job.

500. This accused had not gone to the meetings called by the Assistant Labour Commissioner for the resolution of the labour problem.

501. In the search of accused Moolchand Shah's office chits were found on which the present and permanent address of Umashankar Rai and Bharat Bhushan Pandey were written. Both these person were important activists of CM

Morcha. During the labour movement a murderous assault had taken place on Umashankar Rai in respect of which a charge-sheet had been filed against one of the accused in this case Baldev Singh (and two others) under section 307 IPC.

502. On 1-1-91 Bharat Bhushan Pandey had lodged a report in Police Station Jamul (Ex.P.48) that Moolchand Shah of Simplex has given 50,000 rupees and Photographs to kill prominent persons of the union. Out of them one person Umashankar Rai has already been attacked and the next turn is his (Bharat Bhushan's).

503. During the labour movement a worker of CM Morcha Suryadev was attacked by unknown persons in front of Simplex gate.

504. A person named Shantilal Shrivastav lodged the report that some persons have threatened him that he should retract the report which he has lodged against Moolchand Shah.

505. Dr. Punyabrata Gun (PWN 16) in para 5 of his statement said that because of non-appearance in about 32 old cases Shankar Guha Niyogi was kept in jail between 4-2-91 and 3-4-91. In the search of accused Moolchand Shah's house the list of those 32 criminal cases (Ex.P.262) was recovered. It appears from this that accused Moolchand Shah had a role in getting Shankar Guha Niyogi jailed.

506. The essay seized from the house of accused Moolchand Shah (Ex.P.263, 265,266) is one which maligns Shankar Guha Niyogi. Similarly (Ex.P.267) is a cyclostyled article "Dhiresh Kumar alias Shankar Guha Niyogi is the biggest exploiter of the workers and Chhattisgarh Sentiment" (Ex.P.267 to 273) is also one which maligns Shankar Guha Niyogi. This document has also been recovered from the house of accused Moolchand Shah. This document and Ex.P.263, 265 and 266 had been printed during the life time of Niyogi.

507. The document Ex.P.264 recovered from the house of accused Moolchand Shah is one which diverts the investigation agency from the correct course of investigation.

508. After the murder of Shankar Guha Niyogi, the progress of investigation was being published in the newspapers. Accused Moolchand Shah had collected all the cuttings of news papers. related to the investigations. These were also recovered from his house.

509. A confidential action plan (Ex.P.261) has been recovered from the house of accused Moolchand Shah. It is clear from a study of this that the accused wished to make deceased Shankar Guha Niyogi powerless by cutting off his economic sources, by making him ineffective by means of the administration, by encouraging rival labour organisations and by entangling him in legal cases.

510. A half written letter from the accused to the Home Minister (Ex.P.116) has been siezed from the house of accused Moolchand Shah which reads as

follows:-

Hon'ble
Shri Kailash Chawla,
Home Minister,
Govt. of M.P.
Bhopal.

Dear Sir,

Sub: Labour Unrest created at Industrial estate Bhilai.

With ref. to above we have explained to you the unrest and increasing naxalite activities of by Shri Shanker Guha Niyogi.

He has created such situation that local population and willing workers are totally terrorised.

Some of our members units

511. It appears from a study of (Ex.P.116) that accused Moolchand Shah was badly agitated by Shankar Guha Niyogi and his movement. The accused was so tense that he could not even complete the letter.

512. On page 32 of his diary (Ex.P.93) Shankar Guha Niyogi has called Simplex Kedia Industrialists a fascist gang.

513. On page no. 169 of the same diary Shankar Guha Niyogi has written that Gyanu (Gyan Prakash Mishra) has obtained five lakh rupees from Simplex and collected fire arms.

514. In his micro-cassette (Article C/ Transcription Ex.P.10) deceased Shankar Guha Niyogi has said that after his death the question will arise who has killed him. Immediately after this the deceased has said "the people of Simplex the way they are doing villainy, in particular Moolchand the way he is collecting criminal persons".

515. In the afternoon of 27.1.91 deceased Shankar Guha Niyogi had told journalists N.K. Singh (PWN.71) that the industrialists of Bhilai have organised a private army and use their goondas to crush the workers movement. He had also said that the Shaks of Simplex want to get him killed. Shankar Guha Niyogi had repeated the above conversations to N.K. Singh in the night in Picadilly Hotel, Raipur.

516. A few hours before his death, in Picadilly Hotel, Raipur Shankar Guha Niyogi had told Rajendra Sail (PWN 70) that attacks are being made on the workers by Gyan Prakash of the private army of the Simplex. Shankar Guha Niyogi had said his greatest danger is from Moolchand Shah of Simplex, his

partner and private army. Shankar Guha Niyogi had also made it clear that the work of dirty wing in Simplex is looked after by Moolchand Shah and Chandrakant Shah.

517. In the extra judicial confession of accused Paltan Mallah before Satya Prakash (PWN 105) he has said that accused Moolchand Shah was as collaborator with him in the murder of Niyogi.

518. Similarly in the extra judicial confession of accused Paltan Mallah before Vishambhar Sahani (PWN 125) he has said that because of the Simplex company people telling him, he has murdered Shankar Guha Niyogi.

(6) Naveen Shah:

519. Accused Naveen Shah is the owner of the Simplex Casting.

520. The industry of this accused was badly affected by the movement of Shankar Guha Niyogi.

521. During the search of the office owned by Chandrakant Shah i.e. Jain and Shah (Akash Ganga Complex, Bhilai) the torn pieces of paper (Ex.P.298) which were found were of a letter addressed to this accused by accused Gyan Prakash Mishra. In this letter accused Gyan Prakash has written that as you (accused Naveen Shah) had said the work has been done. I have taken 20,000 ruppees from Devendra Patni and given him. You give this money to him. Rest on meeting. Thus this letter from accused Gyan Prakash Mishra confessing to the crime has been addressed to this accused.

522. In the extra judicial confession of accused Palton Mallah before Satya Prakash (PWN 105) he had said that accused Naveen Shah collaborated in the murder of Niyogi.

523. Similarly in the extra judicial confession before Vishambhar Sahni accused Paltan Mallah has said that because of being told by Simplex Company people he has murdered Shankar Guha Niyogi.

(7) & (8) Chandrabaksh Alias Chhotu and Baldev Singh:

524. These two accused are friends, both the accused used to look after the cycle stand which Awadesh Rai took on contract on 30.9. 91 after the murder of Niyogi at the rate of ruppees 25,000 per month.

525. Accused Baldev used to deposit the income of the cycle stand into the Syndicate Bank account of accused Gyan Prakash.

(18) Can any other person/group have a hand in Niyogi's murder:

(1) Internal struggle of C.M. Morcha:

526. Learned counsel for defence Shri Rajendra Singh has put forward the argument that the presently accused don't have a hand in the murder of Shanker Guha Niyogi, rather it is a consequence of internal stuggle of the CM Morcha. He

has also argued that after the murder of Shankr Guha Niyogi, Bengali people and non-Bengali people got divided. From this it appears that prior to Shankar Guha Niyogi's death a struggle was going on between the said two communities. It was also argued that Shankar Guha Niyogi was a Bengali. The working class of Chattisgarh region were not in agreement with his movement and because of this disagreement certain section of C.M. Morcha. got him murdered and paved way for split in CM Morcha.

527. There is no evidence at all that any section of C.M. Morcha had animosity with Shankar Guha Niyogi. When any movement is carried out on a large scale by any leader, then there can be minor differences about working method, but there were no serious internal differences because of Shankar Guha Niyogi's movement. Shanker Guha Niyogi was the unanimously accepted leader of C.M. Morcha. Shanker Guha Niyogi used to arrange to get subsistence allowance for dismissed workers from the organisation. He had linked his workers movement with social reforms also. He also used to make every possible effort for health and education of the children of workers. He had also stressed on prohibition. Thus, there was no such thing in his movement that any section of C.M. Morcha could nurse animosity with him.

528. From the side of defence this argument was also put forward that from subscriptions and other sources CMM had collected unlimited money. There were no accounts of this money. It is possible that in the greed for money, some office-bearer had murdered Shankar Guha Niyogi. In the investigation, no such link is found by which it appears that any section of C.M. Morcha got Niyogi murdered. Thus it was not necessary at all for prosecution to submit the account of income and expenses in front of the court. Office secretary K.S. Sahu (PWN 46) has in para 5 of his statement told that Umendi Ram Yadav (cashier) used to keep account of whatever money used to come to his institution. Thus the above arguments of defence are not worthy of acceptance.

People's War Group:

529. Learned counsel for defence has also put forward the argument that the possibility of the hand of People's War Group (Naxalite Organisation) in the murder of Shanker Guha Niyogi, cannot be denied. Further he has argued that two decades earlier Shanker Guha Niyogi had come from Siliguri (West Bengal) to Chattisgarh region. Siliguri is near Naxalbarri. Naxalbarri is that place from where Naxalism started. In this manner Niyogi himself was a Naxalite.

530. Shri Rajendra Singh also argued that Shankar Guha Niyogi had himself in his micro cassette (Article C/Transcription Ex.P.10) said that politically People's War Group and I.P.F. are closest to us. We also have some difference with Peoples War Group, it is that they want to make organisation only on the basis of gun. I do not subscribe to that. After Niyogi's murder a letter was also published in newspapers from which it can be presumed that the People's War Group might have had a hand in Niyogi's murder.

531. What was published in news-papers, is a hearsay evidence which under the provisions of the Evidence Act. is not admissible apart from under certain special conditions. Neither the evidence provided by the prosecution nor by the defence shows even a bit of evidence of the possibility of People's War Group having a hand in Niyogi's murder. This argument of the defence lies outside of the evidence. Thus it can not be accepted.

(3) Kailashpati Kedia or his agents:

532. Kedia Distillery and Chattisgarh Distillery of Kailash Pati Kedia are in the Bhilai region. It can be presumed that when Shankar Guha Niyogi started his agitation here, then along with other industries it also had an adverse effect on the industries of Kailashpati Kedia. Here the question to be considered is whether in the record there exists any worthwhile evidence to link him with the murder of Shanker Guha Niyogi. It is true that if there was any person from whom there was a danger to the life of Shankar Guha Niyogi, after Moolchand Shah, Chandrakant Shah and these private armies, that was Kailashpati Kedia. On the night of 27-9-91 when Shankar Guha Niyogi and Rajendra Sail (PW No.70) reached Picadilly Hotel then prior to them Shivendra Shrivastava director of Kedia Distillery had gone there to meet N.K.Singh (PWN 71) Prior to Shanker Guha Niyogi and Rajendra Sail (PWN 70) reaching Picadilly Hotel, Shivendra Shrivastava had met N.K. Singh and gone. In this manner there is no evidence that Shivendra Shrivastava and Kailashpati Kedia had information of the fact that Shankar Guha Niyogi had gone to Picadilly Hotel and was going to return to Bhilai at night.

533. From the statement of Rajendra Sail (P.W.No.70) it is seen that on the night of 27.9.91 he had given Shankar Guha Niyogi the order of Hon'ble High Court which was against Kedia Distillery in relation with pollution. This order has not been submitted before the court. From the statement of Rajendra Sail (PWN 70) it appears that this was an old and conditional order. This order was issued on the petition of a petitioner from Raipur. If this witness is to be believed, even then it can not be presumed that by Shankar Guha Niyogi getting a copy of the Hon'ble High Court's said order Kedia Distillery would have closed down.

534. If Kedia Distillery was going to be closed then it would have been closed much earlier, following the High Court's order. If there had been worthwhile substance in the Hon'ble High Court's order to get Kedia Distillery closed, then the petitioner from Raipur would have through further action got Kedia Distillery closed much earlier. Apart from that, Kailashpati Kedia had no knowledge that Shankar Guha Niyogi had obtained a copy of Hon'ble High Court's order against him.

535. When despite the Hon'ble High Court's order, Kedia Distillery was not closed earlier then there was no possibility of Kedia Distillery getting closed because of Shankar Guha Niyogi obtaining a copy of that order.

536. It is also important to mention here that accused Paltan had submitted an application u/s 310 (319) of Cr.P.C. to make Kailashpati Kedia and Shivendra Srivastava accused. This court decided the said application on 26.12.95 after examining 92 witnesses. Reasons are given in detail in the order.

537. Chief Investigating Officer R.S. Prasad (PWN 192) has stated in his statement that he had questined Kailashpati Kedia in Vishakha- patnam Hostel. During the investigation the house, office and factory of Kailashpati Kedia were also searched but no evidence was found to file chargesheet against Kailashpati Kedia.

538. In this manner, on the basis of whatever evidence is available on the record in this case, it can not be said that Kailashpati Kedia or any of his employees had a hand in Shankar Guha Niyogi's murder.

(4) Other Industrialists:

539. After Shankar Guha Niyogi's murder, on 30.9.91 his wife Asha Guha Niyogi had filed a report (Ex.P.111) in Police Station Rajhara. In this report she had stated that Kailashpati Kedia, Moolchand Shah, Arvind Shah, Navin Shah, B.R. Jain, H.P. Khetawat, Vijay Gupta, Kuldip Gupta, Vinay Kedia etc. industrialists have a hand in her husband's murder. But in the investigation no evidence was found to implicate Kailashpati Kedia, Arvind Shah, B.R. Jain, H.P. Khetawat, Vijay Gupta, Kuldip Gupta and Vinay Kedia in the crime.

540. Chief Investigation Officer R.S. Prasad (PWN 192) has in para 80 of his cross examination denied that Kailashpati Kedia, B.R. Jain and other industrialists of Bhilai (who have not been made accused in this case) had such a very close relation with politicians that they were in the position of influencing the Central Bureau of Investigation.

541. The argument of the defence that after Niyogi's murder, because of the pressure of Ex Prime Minister V.P.Singh, ex-Union Minister George Fernandes and national level leaders, the Central Bureau of Investigation has falsely implicated the owners of the politically weakest group of industries (Simplex Group of Industries), is also outside the evidence.

542. After the murder of a high level leader it is natural that other leaders demand the arrest of the criminals, but such a demand of theirs never means that the actual criminals be let off and that innocent people of the weaker section are falsely implicated in the crime. Inspite of the demand and pressure of leaders, it is expected of the investigation agency that they carry out investigation impartially and keep themselves away from political pressures/motives. In this case there is no evidence whatsoever, by which it may appear that Central Bureau of Investigation has carried out a false investigation under political pressure. Thus the above arguments of the defence are not acceptable.

(5) Jharkhand Mukti Morcha:

543. In the statement of Bahalram (PWN 64) it is mentioned that on 24th a

person had come from Jharkhand. That person was there until 27th afternoon. On behalf of the accused it was argued that sudden disappearance of the said person after 27th afternoon creates a situation of suspicion.

544. From the statement of Balahram (PWN 64) it also appears that that person from Jharkhand used to come earlier also. Who this person was, is not known to Baharam.

545. Because Shanker Guha Niyogi was a very big leader of workers, therefore it was natural that persons from various organisations must have been coming to meet him. The question of that person from Jharkhand having a hand in this murder does not even arise. It is possible that, that person from Jharkhand was due to return on the 27th and he had returned. Thus there is no evidence at all, of Jharkhand Mukti Morcha having any connection with the murder of Niyogi.

(19) Conclusions:

546. The settlement between the workers and management which took place under the leadership of Shankar Guha Niyogi at A.C.C. Jamul (Bhilai) was, to a large extent, understood to be in the interest of the workers. On the day of Vishwakarma Pooja (dated 17.9.90) a large procession of workers was taken out in the Industrial Area, Bhilai in which Niyogi delivered a speech demanding reinstatement of the workers separated from employment and regularization of contractual workers. Hurriedly inspired by this, Shankar Guha Niyogi decided at the end of year 90, he would come from Rajhara to Bhilai to work in the interest of workers. In Bhilai region there is no dearth of small and large industrial units. In the end, this decision of Shanker Guha Niyogi proved to be an unfortunate one.

547. Only a few months after initiation of the agitation for regularization of workers and living wage for them, Niyogi had started feeling a threat to his life from the industrialists of Bhilai. Workers started getting threats from the industrialists and some workers even became victims of their violence.

548. During the agitation when an activist of C.M. Morcha named Suryadev reached near the Simplex factory gate, then he was assaulted by unknown persons. Shantilal Srivastava had lodged this report in Police Station Jamul that some persons had come in a car No. CIR 12, had threatened to beat him up and had said that he should take back the report he had lodged against Moolchand Shah.

549. There was a murderous assault on Umashankar Rai- a main activist of C.M. Morcha, in relation to which a charge sheet has been submitted U/S 307 of IPC against an accused of this case Baldev Singh (and two others).

550. Another activist of C.M. Morcha, Bharat Bhushan Pande had on 1.9.91 lodged a report in the police station that accused Gyan Prakash Mishra said that Moolchand Shah of Simplex has 50,000/- rupees and photo to assault some main persons of the union out of which one person Umashankar Rai has been assaulted and now the second number is his (Bharat Bhushan Pande's) .

551. Those workers of C.M.Morcha who were sitting on dharna in front of Simplex, Urla (district Raipur) were assaulted with swords, rods and lathis on 24-8-91.

552. On 29-4-91 Shankar Guha Niyogi himself received an inland letter (Ex.P.103) in which it was informed that Simplex people have assigned accused Chandrakant Shah the responsibility to carry out an attack on him. Some days back accused Chandrakant Shah has purchased and brought very modern weapons from Nepal. Accused Chandrakant Shah is about to leave for abroad and in his absence some attack is going to take place on him (Niyogi). It seems that no investigation was done into all these reports during Niyogi's life-time.

553. In this manner Niyogi used to be concerned about his and the workers' safety. Here it seems appropriate to quote from Gold Smith that, "Laws grind the poor and richmen rule the law." After this Niyogi saw the possibilities of further increase in violence in the coming days. He recorded his feelings and apprehensions in a cassette and said that if he dies then the organisation people be made to hear that cassette.

554. Niyogi went to Delhi and submitted a memorandum signed by 50,000 workers to Hon'ble President on 11 September 91, and asked for workers' Right to Life again the violence of industrialists. In this memorandum the owners of Simplex were accused of making attacks on workers.

555. In spite of that Niyogi was not assured that the industrialists would fulfill his demands.

556. Niyogi wanted to organise some programme of workers on the pious day of Gandhi Jayanti (2nd Oct. 91) but his dream was not fulfilled and in the night of 27/28-9-91 when he was sleeping in his quarter an unknown assassin murdered him by shooting at him. It has been concluded that accused Paltan had shot Niyogi. There is sufficient evidence to believe that the murder of Niyogi was a result of a protracted conspiracy.

557. Criminal conspiracy is like a train which begins at one station and goes to its destination. It is not necessary that every conspirator travels from the first station to the last station. There are can some conspirators who get on at some intermediate station and after travelling for some distance get off. It is also not necessary that every conspirator know the role of another conspirator or collaborates in it. If a conspirator participates in any part of the conspiracy, he cannot be absolved of criminal liability.

558. In this case on the basis of evidence it is established that accused Paltan, Gyan Prakash Mishra and Awadesh Rai had been together for a long time as undertrials in Durg Jail. Thus there was a relation and association between them. During the movement of Niyogi, accused Chandrakant Shah, Gyan Prakash Mishra, Awadesh Rai and Abhay Singh travel from Bhilai to Nepal by Tempo Trax. It has been found proven that during this travel the accused obtained foreign arms and Nepali Khukhri. Some anonymous person without revealing his name writes a letter to Niyogi giving a description of the Nepal

journey of the accused and cautions him that Simplex people have given a contract through accused Chandrakant Shah to get him killed. In the search of the house of the accused Chandrakant Shah, his passport was recovered which confirms the fact stated in that letter that accused Chandrakant Shah had gone abroad. In this manner the evidence shows the truth of the facts of the above mentioned letter.

559. Two days after Niyogi's murder on 30-9-91, accused Gyan Prakash Mishra goes to accused Chandrakant Shah's house to meet him. On the same day Prabhunath Mishra recommends to Sunil Agrawal - the owner of Maurya talkies (Bhilai), that the contract of the cycle stand be given to Awadesh Rai. Earlier some persons had given tenders but overlooking those tenders the contract of cycle stand was given on 30-9-91 to Awadhesh Rai for Rs. 25,000 per month.

560. This cycle stand had been taken on contract earlier by a person named Rajappan for Rs. 19,000 per month but because there was no profit he had reduced the contract amount to Rs. 15,000 per month. Thus it is clear that two days after Niyogi's murder, accused Awadesh Rai took up a cycle stand on contract for Rs. 25,000 per month, which used to be earlier contracted out for Rs. 15,000 per month.

561. It is also an important fact that the income from this cycle stand began to be deposited in the account of accused Gyan Prakash Mishra in Syndicate Bank (which is in the campus of Maurya Talkies.) Accused Gyan Prakash had opened this account (no. 5405) only on 4-10-91. It appears from this that this account was specially opened only to deposit the income from the cycle stand.

562. Accused Awadesh Rai and Gyan Prakash Mishra in their accused statements denied that the income of the cycle stand was deposited in the said account but from the statements of the employee of cycle stand Kamaluddin (PWN 102) and the Assistant Manager of the Bank H.K. Kulbhasker (PWN 85) and bank records this fact is proven beyond doubt that the income from the cycle stand was deposited in the account of accused Gyan Prakash on the following dates.

On 7-10-91 - Rs. 1500

On 10.10.91 - Rs. 1500

On 12-10-91 - Rs. 1100

On 15-10-91 - Rs. 2700

563. In this manner, immediately after Niyogi's murder, accused Awadesh Rai and Gya Prakash Mishra had taken the contract of the cycle stand only under some secret deal. Accused Awadesh Rai or Gyan Prakash Mishra have not given any clarification that from which source they got or were guaranteed to get such a large sum of money for the contract of the cycle stand. In this manner immediately after murder of Niyogi who carried out agitation against the industrialists, accused Awadesh Rai and Gyan Prakash Mishra getting or being

guaranteed to get such a large sum of money is a relevant fact and would be seen as a link in the evidence tending to implicate these two accused and this cannot be seen as separate from the conspiracy to kill Niyogi.

564. On 3-10-91 accused Awadesh Rai comes under police observation. Next day Gyan Prakash Mishra and Abhay Singh abscond from Bhilai to Pachamarhi. Accused Abhay Singh does not even return to his job (at Bhilai Steel Plant) and on 17-11-91 the team of the Central Bureau of Investigation arrested and brought him from Ghazipur (U.P.)

565. Similarly accused Chandrakant Shah suddenly absconds on 4-10-91 itself taking a Tempo Trax and stays at various hotels in Nagpur and Jamshedpur under various false names. He abandons the Tempo-Trax near village Nagra and puts some blood like stains on the clothes kept inside it. In this the intention of accused Chandrakant Shah was to create sensation and to misguide the investigation.

566. These three absconding accused were those very men who had travelled to Nepal.

567. Accused Gyan Prakash Mishra states that in 88-89 he had not been allowed admission in MA Final in college on the instruction of Superintendent of Police, Durg - Surendra Singh. He had filed a writ petition against the Police Superintendent in the Hon'ble High Court. The Police Superintendent did not appear in court so he was admonished by the court and had to apologise. Hence the Police Superintendent Surendra Singh had animosity with him. At the time of Niyogi's murder also Surendra Singh was the Police Superintendent. Hence he has got him falsely implicated in this case.

568. On behalf of the accused, statement of the principal of Durg College - K.K. Verma (DWN 2) has been recorded in the Court. This witness has said that a telephone call had come from the police department saying that the accused be told to submit a no objection certificate. He asked the accused to bring a NOC. The accused did not submit the same. This witness has clearly stated that it is not that the accused was denied admission on the instruction of Superintendent of Police, Durg.

569. Principal Verma has it clear that the department of Higher education, Govt. of Madhya Pradesh frames the rules for admission each year and it is in accordance with these rules the the students are granted admission. The said rules were taken into consideration in the matter of accused Gyan Prakash Mishra also.

570. There is no evidence that the Police Superintendent had to apologise because of a writ petition filed by the accused.

571. If Surendra Singh was posted as Superintendent Durg, at the time of the murder of Niyogi, then was it not his duty to take all the necessary steps to apprehend the criminals? It is the duty of a police officer to investigate objectively. There is no basis to accept that the Superintendent of Police has falsely implicated accused Gyan Prakash Mishra.

572. In this case the investigation has been carried out by the Central Bureau of Investigation. Hence the contention that the accused has been falsely implicated by the Superintendent of Police is not acceptable.

573. During the investigation of this case in the search of accused Chandrakant Shah's house, a chit was recovered on which Fiat car No. MIR 227 and Jeep No. MPT 9771 are written in the accused's own hand. Car no. MIR 227 is the same vehicle which Shankar Guha Niyogi regularly used and in the night of 27.9.91 also he had come from Raipur to Bhilai in the said car. Jeep no. MPT 7971 is registered in the name of C.M. Morcha. From this it can be inferred that accused Chandrakant Shah used to keep a track of or follow Niyogi's car and C.M.Morcha's Jeep.

574. When the office of accused Chandra Kant Shah Jain and Shah (Akashganga Complex, Bhilai) is searched by the Central Bureau of Investigation then *some pieces of paper are found there. When those are stuck together it is found that this was the letter written by accused Gyan Prakash Mishra to accused Naveen Shah on 28.9. 91 This letter was suggestive of confession to the crime.*

575. Accused Moolchand Shah is the owner of Simplex Industry. Simplex Group of Industries was most affected by Niyogi's movement. Accused Moolchand Shah was not even accepting the demand letter of C.M.Morcha. It can be seen from paras 18 and 45 of the statement of S.L. Salam (PWN 7) that in the beginning Niyogi had started his movement against several industries but later it had got focussed against the Simplex Group of Industries. He had called upon the smaller industrialists to convince accused Moolchand Shah and Naveen Shah that they should come and talk to Niyogi.

576. The C.M.Morcha workers were continuously lodging reports against Simplex Industry and Moolchand Shah. Bharat Bhusan Pandey (PWN 57) had even expressed that there was threat to his life from accused Moolchand Shah and Gyan Prakash Mishra.

577. From the documents recovered during the search of accused Moolchand Shah's house it is revealed that the accused had the list of the 32 criminal cases in respect of which deceased Niyogi was sent to jail for non appearance. It can be inferred from this that this accused had an important role in sending deceased Niyogi to jail.

578. A document was recovered during the search of accused Moolchand Shah's house a study of which reveals that the accused wished to make Niyogi powerless by shutting off his economic source, making him ineffective through the administration, encouraging rival trade unions and entangling him in court cases. There were some documents (pamphlets) distributing which the accused wished to sully the image of Niyogi.

579. After the murder of Niyogi this accused was keeping a keen watch on developments in the investigation (The accused had kept cuttings of what was published in all the newspapers). Thus while during Niyogi's lifetime this accused

was fully concentrated on his activities and wished to make him ineffective and sully his image, on the other hand after his death this accused used to keep track of the developments of the investigation and try and mislead it.

580. Accused Moolchand Shah had a direct confrontation with C.M.Morcha. From the documents recovered from accused Moolchand Shah's house it can be inferred that Shankar Guha Niyogi was this accused's greatest enemy and he used to hate him. Halted is the most subtle form of violence. Psychologically behind this was the feeling of guilt hidden in the subconscious of the accused. In this manner accused Moolchand had the strongest motive in the murder of Shankar Guha Niyogi. When the evidence of the documents seized from the house of the accused after the murder of Niyogi, the threat to his (Niyogi's) life from this accused felt and expressed by Niyogi several times prior to his death, and when alongwith these two evidences we consider the extra judicial confession of accused Paltan Mallah (in which while confessing to his involvement in the crime he names the accused), and these are put together then there is formed a chain of circumstantial evidence which implicates the accused in the crime of conspiracy to murder Niyogi.

581. Here again it is necessary to note that is the last night of his life the deceased had felt the greatest threat to his life from accused Moolchand Shah, Chandrakant Shah and the private army of Simplex (accused Gyan Prakash Mishra). Also accused Paltan, who committed the murder of Niyogi for money has in his extrajudicial confession while implicating himself in the crime mentioned the said three accused and accused Naveen Shah as being collaborators.

582. Accused Chandrakant Shah, Gyan Prakash Mishra, and Abhay Singh are all somehow or the other connected with Simplex Industry. Accused Awadesh Rai is a friend of these three. Accused Paltan, Gyan Prakash Mishra and Awadesh Rai were confined together for a long period as undertrials in Durg Jail. Hence it can be inferred that there was an association and relation between the three accused. A few months prior to the murder of Niyogi, accused Paltan came to the neighbourhood of accused Abhay Singh occupied and started residing unauthorisedly in an empty BSP Quarter no. 6-F, Camp-I. This is the same area in which Gyan Prakash Mishra lives. Thus from the relation of accused Gyan Prakash Mishra with the other accused it is clear that it was the accused Gyan Prakash Mishra who was working as an important axis between the accused related to Simplex Industry and the other accused. If we observe the behaviour of the accused before and after the murder of Niyogi and the way the entire sequence of events took shape, it can be said that in this case the centre of the activities of the accused was Gyan Prakash Mishra.

583. It is not possible to find direct evidence of a criminal conspiracy, neither is this necessary in the law. This can be established by the circumstances surrounding the incident, and the pre and post incident behaviour of the accused.

584. It is also not necessary to establish by independent evidence that the

accused are conspirators. It should be established that there is a logical basis to believe that there existed a conspiracy between the accused.

585. In the crime of conspiracy it is not necessary that one conspirator knows what transactions his co-conspirator has transacted in pursuance of the conspiracy. The Hon'ble Supreme Court in Shivnarayan Vs State of Maharashtra (LIR 1980 Supereme Court 439, para 14) has laid down that conspiracy is always hatched in secrecy and it is impossible to show direct evidence for it. The crime of conspiracy is established on the basis of inferences from the acts and illegal omissions of the conspirators.

586. The evidence and circumstances proved against accused Chandrakant Shah, his elder brother accused Moolchand Shah, Gyan Prakash Mishra, Abhay Singh and Awadhesh Rai are looked at separately and in their entirety, we clearly find the existence of criminal conspiracy amongst the accused persons. If the non-judicial confession of the murderer of Niyogi, the accused person Mallah is added on to this as a last link, then the chain of such circumstantial evidence is completed which proves that the object of this criminal conspiracy was to get Niyogi murdered by such a person who after killing him would go thousands of miles away so that no clue to the murder of Niyogi could be located here. This person was the accused Paltan Mallah who for the sake of money shot dead Shankar Guha Niyogi during the night of 27/28.9.91 and fled away to Uttar Pradesh by motorcycle.

587. The Hon'ble Supreme Court has in case of State of U.P. Vs. Ashok Kumar Shrivastava (1992) Cr.L.J. 1104, has held that for the evaluation of circumstantial evidence, it is necessary that all proved facts must be relevant to the hypothesis that the accused are guilty. It does not mean that the prosecution should satisfy each and every hypothesis put forward by the accused.

588. It has been established earlier that it was the accused Paltan Mallah who has murdered Shankar Guha Niyogi. Therefore he is held guilty U/S 302 of I.P.C. The accused Paltan Mallah has also been charged U/S 25 (1) (A) & 27 of Arms Act but the prosecution has not taken the prior approval of the District Magistrate. Therefore, in view of absence of the approval of District Magistrate, the charges against the accused Paltan Mallah cannot be proved U/S 25 (1) (A) & 27 of the Arms Act. Therefore the accused Paltan Mallah is absolved from the charges levelled against his U/S 25 (1) (A) & 27 of the Arms Act.

589. The accused Gyan Prakash Mishra alias Gyanu, Chandrakant Shah, Awadhesh Rai, Abhay Singh alias Abhay Kumar Singh and the accused Moolchand Shah are found guilty U/S 302 read with Sec. 120 (B) (1) of I.P.C.

590. The deceased Shankar Guha Niyogi had not apprehended any danger to his life from the accused Navin Shah. On the night of 27/9/91 he had not named the accd. Navin Shah before Rajendra Sail (PWN- 70) and N.K. Singh (PWN-71). The deceased had also not apprehended any danger to his life from accused Navin Shah in his cassette. The non-judicial confession of the accused Paltan and the letter (Ex.P.298) of the accused Gyan Prakash Mishra indicating confession are relevant only U/S 30 of the Evidence Act for this accused. The

non-judicial confession in itself is not sufficient in absence of other independent and sufficient evidence, on the basis of which an accomplice could be held guilty for the offence. The letter of Ex.P.29B has also not been seized from the possession of the accused Navin Shah. Therefore, in view of absence of sufficient evidence accused Navin Shah cannot be linked to the offence of conspiracy to murder Niyogi.

591. Accused Chandrabaksh and Baldev are friends. These two used to look after the work of the cycle stand of the accused Awadhesh Rai. Their role is after the murder of Niyogi. No evidence is available to link these two accused with the conspiracy to murder Niyogi.

592. Therefore, the accused Navin Shah, Chandrabaksh and Baldev each is absolved of the accusation U/S 302 read with 120-B (1) of I.P.C.

593. In order to hear on the question of punishment, the decision in regard to those proved guilty - accused Paltan Mallah, Chandrakant Shah, Moolchand Shah, Gyan Prakash Mishra, Awadhesh Rai and Abhay Singh, is kept in abeyance.

T.K. Jha
Second Additional Session Judge
Durg (M.P.)

Dt. 23.6.97

594. On behalf of the accused Paltan Advocate Shri R.N. Tiwari submitted the application that he wants to adduce evidence on the issue of punishment. He submitted that he wants to get examined Dr. C.S. Thote of Choithram Hospital, Indore to show that a kidney operation has been performed on Paltan. This fact is on the record of the court that Paltan has had a kidney operation. Advocate R.N. Tiwari said that now he does not want to get the statement of Dr. C.S. Thote recorded. In addition to this, there has been no argument on the issue of punishment to the accused Paltan Mallah. On behalf of other accused, arguments were heard.

595. Deceased Shankar Guha Niyogi was a leader of national stature. He was brutally murdered only because of conducting the labour movement. In this case different accused have different motives and different roles. Under such circumstances, death sentence cannot be inflicted on six persons (accused) for one murder. The sentence has to be passed keeping in view the motive of each accused and his role.

596. Due to one year of labour movement of the deceased Shankar Guha Niyogi, the owner of Simplex Industries Moolchand Shah was agitated and tense. Due to the strike he was running losses of lakhs of rupees. He had filed civil suit for injunction against Shanker Guha Niyogi and the officials of C.M.Morcha for injunction against the strike. Thus, the accused had a clear motive for the offence.

597. The accused Chandrakant Shah is the brother of the owner of Simplex

Industries, the accused Moolchand Shah. He had the trouble of his brother in mind. Besides, due to the labour movement of Niyogi, there was non-availability of the broken materials from Simplex Industries to Oswal Iron & Steel Pvt. Ltd. The work of Oswal Iron & Steel Pvt. Ltd. was also closed. Thus, due to the movement of Niyogi, the Industry of accused Chandrakant Shah was also adversely affected. The accused Chandrakant Shah in addition to family trouble was facing industrial distress as well.

598. The accused Gyan Prakash Mishra, Abhay Singh and Awadhesh Rai are friends of the accused Chandrakant Shah. The three accused joined the criminal conspiracy only due to distressed condition of their industrialist friend. These three accused are of ordinary financial status.

599. But the purpose and role of the accused Paltan Mallah is entirely different from that of the above accused, which is being written separately after this.

600. While passing the order of punishment, the court should in addition to other facts, look into the financial condition of the accd. persons. Thus, the accused having different financial status can be punished with different monetary punishment.

601. The accused Moolchand Shah charged u/s 302 read with 120 (B) (1) is sentenced to Life Imprisonment and the fine of Rs. 10,00,000/- (Ten lacs), the accused Chandrakant Shah charged U/S 302 read with 120 (B) (1) is sentenced to Life Imprisonment and the fine of Rs. 10,00,000/- (Ten lacs). For default of payment of fine, the accused to be imprisoned for an additional period of five years rigorous imprisonment.

602. The accused Gyan Prakash Mishra, Abhay Singh and Awadhesh Rai charged U/S 302 read with 120 (B) (1) are sentenced to Life Imprisonment and the fine of Rs. 2,000/-. For default of payment of fine, accused to be imprisoned for additional two years rigorous imprisonment.

603. After the payment of fine, Rs. 10,00,000/- (Ten lacs) be given to the widow of the deceased Shanker Guha Niyogi - Asha Guha Niyogi, daughters Kranti and Mukti and son Jeet by way of compensation. The aforesaid amount of compensation be divided in equal parts (1/4) among the widow of the deceased and her children and to be deposited in any branch of State Bank of India for a period of at least 5 years in such a fixed deposit scheme whereby monthly interest could be received by them. The order awarding compensation shall be operative after the appeal period.

604. The accused remained in custody as follows:-

1. Accused Chandrakant Shah: 9.11.93 to 19.1.96
2. Accused Gyan Prakash Mishra : 13.10.91 to 21.8.95
3. Accused Abhay Singh: 17.11.91 to 27.6.94.
4. Accused Awadhesh Rai: 13.10.91 to 22.9.92

The above four be given the benefit in sentence of the period spent in custody in the form of Set-off U/S 428 of Cr. P.C.

605. The Parliament of this country has U/S 354 (3) of Cr.P.C. 1973 conferred the discretionary power on the judiciary to either award life imprisonment or alternatively death sentence in a case of murder. Therefore the judiciary has the grave responsibility to choose between the two alternatives whether to sentence the accused to life imprisonment or death sentence.

606. It is well established in law that while passing the order of death sentence, the court has to specify special reasons. As stipulated by law, this maximum punishment should only be given in the rarest of rare cases.

607. It is possible that a judge may not personally be in favour of the death sentence, but in the capacity of a judge, he is bound by that law which has been conferred on him, not by that law which he prefers according to his wishes.

608. The Hon'ble Supreme Court has in Jusabha Bharat Singh Gohil V. State of Gujrat (1994 (4) SC Casses 353), while elucidating Section 354 (3) of Cr.P.C. has said that before inflicting punishment, circumstances in favour of and against the accused should be considered. In case of death sentence special reasons should be recorded. Further in para 12 it has been said that courts have to confront new challenges and it is expected of them to respond to these challenges through the proper form of awarding sentence.

609. Similarly, the Hon'ble Supreme Court has in Anand Vs. State of Karnataka (1994 (4) Supreme Court cases 381) held that while inflicting punishment the court should consider the nature of offence, the quantum of brutality with which the crime was committed, the background of the criminal, the weapon used etc. It is not possible to give a list of all those factors which are to be considered. It depends on the facts of the particular case as to what factors are to be considered.

610. The accused Paltan Mallah had no personal animosity with labour leader Shankar Guha Niyogi. He had no motive for this offence except that he received money from those industrialists against whom the deceased Shankar Guha Niyogi was organising the labour movement. Therefore, the gravity of the crime of accused Paltan appears comparatively much greater than of any other accused in this case.

611. The Hon'ble Supreme Court in Ramesh Vs State of Uttar Pradesh has confirmed the death sentence where the murder was committed by a hired assassin without any motive only for the sake of money.

612. On the unfortunate night of 27/28.9.91 when Shanker Guha Niyogi was sleeping in his Quarter, the accused Paltan shot him dead with a country made pistol. The deceased was a defenceless person.

613. Accused Paltan has been tried for attempt to murder, causing injury while looting restraining a public servant from his duty, attack, forcible entry, theft and offences under Sec. 25 & 27 of Arms Act. Thus, in the background of

the accused Paltan there is a record of offences.

614. Shankar Guha Niyogi had done a lot of work for the education and health of the children of the workers. He had linked his labour movement to Social Reform. The accused Paltan has by murdering him, not only harmed his (Niyogi's) family, but has hurt the human feelings of thousands of workers who form the foundation of our society.

615. The object of the system of awarding punishment on committing a crime is not only to make the criminal face the consequence of his deeds, but also to warn the people in society that if they commit an offence, they too shall not be spared from punishment.

616. Therefore, keeping in view the security of society, and with a view to prevent such megacrimes in future, this is a case which is rarest of rare.

617. There is nothing in favour of accused Paltan on the basis of which it could be said that he is not entitled for the maximum punishment as stipulated by the Law.

618. In view of special reasons, given hereinabove the punishment of life imprisonment to accused Paltan would be insufficient. Therefore the accused Paltan is sentenced to death u/s 302 of the Indian Penal Code. Under Sec. 354 (5) of Cr.P.C. it is directed that the accused Paltan be hanged till his death. Under section 366 of Cr.P.C. it is also directed that this punishment not be executed unless the Hon'ble High Court confirms it. These proceedings may be submitted to the Hon'ble High Court.

T.K. Jha

Second Addl. Sessions Judge,

DURG (M.P.)

23.6.97

DISPOSAL OF PROPERTIES:

619. The seized properties in this case: bottle of Amrutanjan, Match box, two cigarette Packets, a pair of hawal chappals, one Lungi stained with blood, a bunch of keys, comb, match box, two packets of agarbattis, one hawai chappal, a pair of shoes and socks, one pillow, with cover, one bedsheet, one umbrella, one shirt, one scale, one poly bag, mirror, mosquito net and its piece, bed-sheet with blood stains, vest, a piece of skin, pillow cover, piece of cork, thick piece, mattress, a piece of polythene, sheet, curtain with spring, towal, warm cap and rubber floor mat be destroyed. One book Lenin Trade Union, and TVS motorcycle without number be auctioned and the amount received be deposited in Govt. Treasury. The purchaser will get the registration and insurance done at the R.T.O. office as per rules.

620. Nepali notes seized in this case are for feited. These notes be sent to Reserve Bank of India, Nagpur. Those Nepali notes be deposited in the Account

of Central Govt. by the Reserve Bank in accordance with the rules.

621. The micro cassette and filled cassette be returned to the wife of the deceased Asha Guha Niyogi. 8 Audio cassettes, Hockey stick, Bull Worker, a bag full of clothes, mirror and Jute Bag which are on the supurdnama of the accused Chandrakant Shah be returned to him. Brief case be returned to accused Chandrakant Shah.

622. 26 Live catridges of 12 Bore, 3 L.G. Catridges (of 12 bore), 6 wads of catridges, three pellets, one country made 12 bore pistol, cloth belt in which there are 12 live catridges of 12 bore and one empty shell of 12 bore, .38 Bore Revolver (U.S.A.), 5 live catridges of .38 Bore, one fired catridge, one 32 bullet (connected with this case), and .38 revolver (country made), .32 country made (Revolver) and 10 bullets (in case challan is not submitted in regard to the seizure to the District Magistrate and to the concerned court if a separate challan has been filed) be sent to the District Magistrate for disposal as per rules. This order of property disposal will be effective after the period of appeal. In case of appeal disposal of these properties shall be done as per the instructions of appellate court.

623. B.K. Singh had submitted an application on 22.7.92 to obtain on supurdnama his seized gun 12 bore Hedium Ordibase No.44366/1989 and licence. But later on B.K. Singh died, therefore his Advocate did not press the application and it was dismissed. Police Station Bhilainagar, had on 10.4.92, given the report that the gun of B.K.Singh is with the C.B.I. at New Delhi. If the father of B.K. Singh- Ram Bahadur Singh obtains the licence from the competent authority, the gun be returned to him.

624. The Hon'ble High Court has given the delivery of seized Tempo Trax No. MP 24 B-6622 and Fiat Car. No. MP-22/7736 respectively to Ramji Shah and Surajmal Jain. These vans be returned to their registered owners. This order of property disposal shall be effective after appeal. In case of appeal, the disposal of properties would be as per the directions of the appellate court.

(T.K.Jha)

Second Addl. Session Judge,

DURG (M.P.)

Dated: 23.6.97