
***Trial Court gives death sentence
to hired assassin, life-imprisonment to
two industrialists and three other goons.***

High Court acquits all.

What went wrong ?

Where ?

Read and decide for yourself.

EVIDENCE AGAINST KILLERS OF NIYOGIJI

**Summary of the M.P. High Court Judgement in the Niyogiji Murder
Case and Comparison with the judgement of the Trial Court at Durg
and the arguments advanced by the Prosecution CBI.**

INJUSTICE ANYWHERE IS A THREAT TO JUSTICE EVERYWHERE

An extract from the famous Vohra Committee Report on Criminal-Politician Nexus, that rocked parliament for many days.

"6.2 (ii) The big smuggling syndicates having international linkages, have spread into and infected the various economic and financial activities, including havala transactions, circulation of black money and operations of a vicious parallel economy causing serious damage to the economic fibre of the country. These syndicates have acquired substantial financial and muscle power and respectability and have successfully corrupted the govt. machinery at all levels and yield enough influence to make the task of investigation and prosecuting agencies extremely difficult, even the members of the Judicial system have not escaped the embrace of the Mafia."

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Summary of the M.P. High Court Judgement in the Niyogiji Murder Case and Comparison with the judgement of the Trial Court at Durg and the arguments advanced by the Prosecution CBI.

The MP High Court on 26.6.98 while pronouncing the judgement in the Niyogiji murder case has concluded: "The circumstances found proved in this case are wholly insufficient to establish that the accused persons or any of them conspired to cause the murder of Niyogi and that the accused Paltan killed him, much less in pursuance of the conspiracy. The conviction and sentence against Moolchand Shah, Paltan Mallah, Gyan Prakash Mishra, Awadesh Rai, Abhay Singh and Chandrakant Shah are set aside."

Whereas the Court of the Second Additional Sessions Judge at Durg had on 23.6.97 found accused industrialists Moolchand Shah, Chandrakant Shah, and other accused persons Gyan Prakash Mishra, Abhay Singh, Awadesh Rai guilty u/s 302 (Murder) read with section 120-B (Criminal Conspiracy). Accordingly they had been sentenced to life imprisonment and the two industrialists to a fine of Rs. Ten Lakhs each. Paltan Mallah was found to be the hired assassin and was held guilty u/s 302. The Sessions Judge had adjudged

that this case was the 'rarest of rare' since the hired assassin while murdering 'defenseless' Niyogi, with 'no personal animosity' and 'no motive except money', had 'harmed not only his family but human feelings of thousands of workers who form the foundation of our society'. Thus 'with a view to prevent such megacrimes in future' Paltan Mallah was sentenced to death. Industrialist Naveen Shah and two other accused Chandrabaksh Singh and Baldev Singh were acquitted by the Court for want of sufficient evidence.

In the following summary we present a comparison of the findings of the two courts i.e. their evaluation and appreciation of the same evidence, to understand how they arrived at conclusions so much at variance with each other. The written arguments advanced by the prosecution CBI are also mentioned. The arguments of the defence are not separately discussed as they have been accepted in toto by the High Court. (Parenthetical clarifications in italics ours)

Evidence against Accused Moolchand Shah

| High Court Order/ Defence arguments | Trial Court Order | Prosecution Argument |
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| <p>Para 39 Evidence given by the police officers of Jamul, Lalbagh, Bhilai and Urfa coupled with various oznamcha reports, as well as copies of plaints, injunction applications and order sheets only show that Niyogi was creating trouble for the Simplex Group." And also other industrialists - (Para 103.) "Accused Moolchand</p> | <p>Para 498 "When deceased Niyogi came to Bhilai in 1990 and began agitation of workers there the Simplex Group had been most affected. The largest number of members of Chattisgarh Mukti Morcha had been dismissed by the Simplex Group. Civil suits were filed on behalf of Simplex Industry in which it was stated that due to the strike of Shankar Guha Niyogi</p> | <p>Para 6 It is the consistent testimony of witnesses that the Simplex group have retrenched the maximum number of workmen and their wage levels are also low. Para 12 An averment in a plaint (in this case that the company is suffering loss of lakhs of rupees) is a positive statement of facts. It is not open to the accused now to disestablish motive</p> |

| High Court Order/Defence arguments | Trial Court Order | Prosecution Argument |
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| <p>Shah was resisting him in a lawful manner by starting legal proceedings."</p> | <p>this industry was having lakhs of rupees of loss. In these civil suits Shankar Guha Niyogi and the post bearers of the Chattisgarh Mukti Morcha were impleaded as respondents."</p> | <p>for murder by persuading the court that their concerns were never running on loss.</p> |
| <p>"The confidential note found at Moolchand Shahs place reaffirms that that an action plan was being prepared to take steps to curtail the influence of Niyogi. It was planned that the action should not be hasty, that rival trade unions be given importance that the criminal cases pending against Niyogi in different courts be pursued, that the foreign link of Niyogi be traced and published. A list of 32 cases recovered goes further to confirm that the action plan was being acted upon. This too rules out that there was a scheme to physically eliminate him."</p> | <p>Para 509 "A confidential action plan has been recovered from the house of Moolchand Shah. It is clear from a study of this that the accused wished to make deceased 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." Para 505 "PW 16 said that because of non-appearance in 32 old cases Niyogi was kept in jail between 4.2.91 and 3.4.91. In the search of Moolchand Shah's house the list of those 32 criminal cases was recovered. It appears from this that he had a role in getting Niyogi jailed."</p> | <p>Para 15 The Confidential Note is composed of parallel strands of actions each complementing or supplementing the other which together is meant to achieve the end result of destroying Niyogi and his trade union CMM. The different strategies adopted to contain Niyogi and CMM can be traced to the strategies outlined in the Confidential Note. For example the non-response to conciliation can be traced to facets outlined in Para 2. Similarly attacks on individual workers can be traced to Para 2 and 6(f). Also the maligning pamphlets can be related to strategy outlined in Para 6(d). Para 6(f) about getting Niyogi arrested was a strategy that was successfully implemented.</p> |
| <p>Para 40 The incomplete letter addressed to the Home Minister against Niyogi's activities also shows that Moolchand was prepared to commit the political level also. These documents do not show that the murder of Niyogi was in the plan of Moolchand."</p> | <p>Para 510 A half written letter from the accused to the Home Minister reads as follows Para 511 "It appears from a study of this 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."</p> | <p>Para 18 The contents of the letter itself clearly establishes the intention of Moolchand Shah to falsely portray Niyogi as a Naxalite, knowing fully well that a strong reaction is bound to result. The only inference that can be drawn of the letter being unfinished is that he stopped looking towards the State for help in the fight against Niyogi as by then the plan for liquidating Niyogi had already been hatched.</p> |
| <p>Para 41 The various pamphlets and paper cuttings about Niyogi, is nothing unusual that Moolchand Shah should keep records of what was said about</p> | <p>Paras 506-508 "The essay seized from the house of accused Moolchand Shah is one which maligns Niyogi. Similarly the cyclostyled article "Dhires Kumar alias Shankar Guha Niyogi is the</p> | |

| High Court Order/Defence arguments | Trial Court Order | Prosecution Argument |
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| <p>Niyogi during his lifetime and what the newspapers said about Niyogi's murder."</p> | <p>biggest exploiter of the workers and Chattisgarh sentiment" is also one which maligns Niyogi.</p> <p>The document Ex. P 264 recovered is one which diverts the investigation agency from the correct course of investigation."</p> | |
| <p>Extra Judicial Confessions of Paltan Mallah</p> <p>Para 99</p> <p>"We do not consider it safe to rely on the evidence of Satya Prakash on the question of retracted oral extra judicial confession. The criticism levelled against him does not seem to be without force."</p> <p>Para 101</p> <p>"We are therefore not prepared to hold that any such confession (to Vishamber Sahni) was made by accused Paltan Mallah."</p> <p>The grounds for these conclusions will be dealt with in detail below in the discussion of evidence against Paltan Mallah.</p> | <p>Para 167</p> <p>"It is proved beyond reasonable doubt that the accused Paltan had made confession before Satya Prakash (PW 105) that he along with Gyan Prakash had murdered Niyogi with a country made pistol while he was sleeping; that accused Moolchand Shah, Naveen Shah and Chandrakant Shah were collaborating. He had also confessed that those persons had given him the money and he had done this work only due to money."</p> <p>Para 168</p> <p>"It is proved beyond reasonable doubt that accused Paltan Mallah had made a confession before Vishamber Sahani (PW 124) in Nepal that on instructions of the persons of Simplex Company he had along with Gyan Prakash Mishra murdered Shanker Guha Niyogi"</p> <p>The grounds of the above conclusions will be dealt with in detail below.</p> | |
| <p>Not looked into</p> | <p>Para 499</p> <p>"Accused Moolchand Shah was not even prepared to accept the demand letter of the CMM. He was only taking those workers who were prepared to disassociate themselves from the CMM. Those workers who were associated with CMM. he was not taking on Job."</p> <p>Para 500</p> <p>This accused had not gone to the meetings called by the Assistant Labour Commissioner (ALC)"</p> | <p>Para 15</p> <p>It is in the evidence of Sudama Prasad (PW 54) that Moolchand Shah refused to take back workers unless they disassociated themselves from CMM. In fact this witness stated that Moolchand Shah refused to accept the demand letter. This stubborn resistance to any resolution of conflict is also evidenced by the testimony of the ALC (PW 65). These facts bring out clearly the rancour and animosity of Moolchand Shah and Naveen Shah against Niyogi and his trade union CMM.</p> |

| High Court Order/Defence arguments | Trial Court Order | Prosecution Argument |
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| <p>Not dealt with.</p> | <p>Para 501 "In 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 persons were important activists of the CMM. During the labour movement a murderous assault had taken place on Uma Shankar Rai in respect of which a charge sheet had been filed against one of the accused in this case Baldev Singh (and two others) u/s 307 IPC."</p> <p>Para 502 "On 1.9.91 Bharat Bhushan Pandey had lodged a report in the PS Jamul that Moolchand Shah of Simplex has given 50,000 rupees and photographs to kill prominent persons of the union. Out of them one person Uma Shankar Rai has already been attacked and the next turn is his."</p> <p>Para 503 "During the labour movement a worker of CMM Suryadev was assaulted by unknown persons in front of Simplex Gate on Vishwakarma Day procession."</p> <p>Para 504 "A person named Shantilal Shrivastava lodged the report that some persons have threatened him that he should retract the report which he has lodged against Moolchand Shah."</p> | <p>Para 19 The facts spoken to and the documents exhibited establish the growing animosity Moolchand Shah & his associates Naveen Shah & Chandrakant Shah to the activities of CMM and the need felt by them somehow suppress the growing trade union movement by using their henchmen Gyan Prakash, Awadesh Rai and Abhay Singh. In the beginning the offensive took the shape of tiring the workers by not yielding to their demands and thereby forcing them to launch agitations during which course they were attacked, threatened and intimidated from participating in the union struggles. Attempts were made to implicate them in false criminal cases and to pressurise the administration to declare prohibitory orders. When such strategies did not succeed individual terrorism against workers and selected leaders was indulged in. When however even these measures did not prove effective, the desperate Simplex owners decided that the only effective way to suppress the movement was to do away with the person of Shankar Guha Niyogi himself.</p> |
| <p>giji's diary 105 h was tried to made of the in Niyogi's diary which is as s: re lacs from Simplex, Gyanu ed firearm from Pradeep of 9, got a man from Siwan iyogi. Accidently the party ested due to a police raid mb Kand of Durg"</p> | <p>Para 512 "On page 32 of his diary Shankar Guha Niyogi has called Simplex-Kedia industrialists a fascist gang."</p> <p>Para 513 "On page 169 of the same diary Shankar Guha Niyogi has written that Gyanu has obtained five lakh rupees from Simplex and collected fire arms".</p> | <p>Para 38 In his diary Niyogi has mentioned the names of Simplex, Gyanu-Chandrakant, Awadhash-left hand of Gyanu, Gyan Prakash Mishra, Awadhash - now Sector 4, Abhay Singh; and it is also noted that Gyanu had collected Five lacs from Simplex for collection"</p> |

| High Court Order/Defence arguments | Trial Court Order | Prosecution Argument |
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| <p>Para 106</p> <p>We do not know who was this Pradeep Singh. But evidently this entry contains allegations about some persons hired from Siwan District. It also says that the plot was foiled. It is also significant that accused Paltan has nothing to do with Siwan District, and has not been named in this diary.”</p> | | <p>The entries were proved to be in the handwriting of Niyogi by a number of witnesses and the hand writing expert.</p> <p>The diary mentions the names of the accused and the mentioning of the names has to be understood in the context in which the names are mentioned, viz, the attempt by the accused to get him killed. No other manner of reading the diary entries are possible in the circumstances of the case.</p> |
| <p><i>Niyogiji's Microcassette.</i></p> <p>Para 110</p> <p>It was emphasised by the counsel for defence that it is repeatedly shown that if Niyogi had apprehensions from Simplex, Kedia was also not far behind.”</p> <p>Para 111</p> <p>The same thing is true about the transcription even assuming that this was the message recorded by Niyogi. It also names Simplex and Kedia as the persons behind the conspiracy against him. We agree that nothing turns on these two documents.</p> | <p>Para 295</p> <p>When in the court micro cassette Article C was operated, wife of the deceased Asha Guha Niyogi started weeping on hearing the voice. Similarly Kranti Guha Niyogi started weeping after hearing the cassette, after seeing the writing in the diary 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.</p> <p>Para 514</p> <p>“In his micro cassette deceased Niyogi has said that after his death the question will arise who had killed him. Immediately after this he has said, “The people of Simplex, the way they are doing villainy. In particular Moolchand the way he is collecting criminal persons..”</p> | <p><u>Relevant portion of the translation of the transcript:</u></p> <p>“I know these people are after my life. I know it very well that it is possible that during this movement they shall kill me....Despite this I know that by killing me, no one can finish our movement. After my death certainly the question will arise “who killed me”, and who are those behind who are responsible for my death. The people of Simplex, the way they 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 untoward incident here. Kedia is a very cunning man. Because of this it is my belief that Moolchand and Kedia these two persons only are at this time behind all the conspiracies. I am sensing continuously that these persons in collaboration of IG of Police are involved in a big conspiracy. And therefore I am getting these facts, my heart felt feelings taped, because perhaps very soon something is going to happen.”</p> |

| High Court Order/Defence arguments | Trial Court Order | Prosecution Argument |
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| <p>Apprehensions expressed by Niyogi on the last day and night of his life.</p> <p>Para 114 "... If Niyogi had apprehensions from the Shahs of Simplex, he had also expressed the same fear from other industrialists also, as has been deposed by Narendra Kumar Singh (PW71), Rajendra Kumar Sial and others."</p> | <p>Para 515 "In the afternoon of 27.9.91 deceased Niyogi had told journalist NK Singh (PW 71) that the industrialists of Bhilai have organised a private army and used their goondas to crush the workers movement. He had also said that the Shahs of Simplex industrialists of Bhilai have organised a private army and used their goondas to crush the workers movement. He had also said that the Shahs of Simplex want to get him killed. Niyogi had repeated the above conversations to NK Singh the same night at Picadilly Hotel Raipur.</p> <p>Para 516 "A few hours before his death, Niyogi had told Rajendra Sail (PW70) that attacks are being made on the workers by Gyan Prakash of the private army of Simplex. He said his greatest danger is from Moolchand Shah of Simplex, his partner and private army. He had also made it clear that the dirty wing in Simplex is looked after by Moolchand Shah and Chandrakant Shah."</p> | <p>Para 41 It is submitted that these statements (made by Niyogi to NK Singh and Rajendra Sail in the afternoon and evening of 27.9.91) read in their context are admissible and relevant u/s 32(1) of the Indian Evidence Act as dying declarations. They may not qualify to be statements as to the cause of death, but they do qualify as "any of the circumstances of the transactions" which resulted in his death. The statements made whether in the diaries, microcassette or to witnesses later are proximate to his death and therefore constitute relevant evidence, along with other circumstances to prove conspiracy. The Hon'ble Supreme Court sets out the principle regarding the proximity test in "Sharad Birdichand Sharda Vs State of Maharashtra.</p> |

Evidence against Accused Chandrakant Shah

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| | <p>Para 466 "It is established that the most adverse impact of Shankar Guha Niyogi's agitation was on the Simplex group of industries. ... Owing to Niyogi's movement the Simplex industry started having losses of lakhs of rupees ..."</p> <p>Para 467 "Accused Moolchand Shah and Naveen Shah are owners of Simplex Group of industries. Accused Chandrakant Shah is their step brother but the relationship between</p> | |
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| High Court Order/Defence arguments | Trial Court Order | Prosecution Argument |
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| <p>Para 25</p> <p>On behalf of Chandrakant Shah was particularly argued that there was no evidence to prove that his factory Oswal Industry was affected on account of strike at the Simplex Company. Moreover there was no cogent evidence that any strike was actually going on. It was pointed out that Pradeep Kumar Sural (PW 133 hostile) himself admitted that the production in Simplex Casting was not affected by any strike by the workers because the labourers were procured through the Industrial Labour Welfare Cooperative Society.. The trial court has referred to the vague statement of Trilokinath Pandit (PW 176) that about one and a half months prior to 27.10.91 the supply of scrap from the Simplex reduced resulting in the closure of the company. But as against his testimony there are four witnesses KS Bhatia, AtulChandra Pal, KC Mary and Achamma Verghese who were all employees of Oswal at the relevant time."</p> | <p>Para 468</p> <p>"In para 7 of his statement an ex-employee of Oswal Iron and Steel Company Trilokinath Pandit 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 had to shut down."</p> | |
| <p>Nepal visit of accused</p> <p>Para 115</p> <p>"We are also unable to appreciate the visit of Chandrakant Shah, Abhay Singh, Gyan Prakash and Awadesh Rai to Nepal as evidence of conspiracy to kill Niyogi. As argued on behalf of the accused this visit was wholly innocuous. The prosecution could not prove that any of these accused persons had purchased any firearms from Nepal. Ex P 393(8) on which the prosecution had relied contains a</p> | <p>Para 366</p> <p>"The statement of a witness under Sec. 164 is used to corroborate or rebut the statement given by him in court. Here a situation has been created wherein the said witness (Driver Ravi Kumar Mende PW91) has stated in court that weapons were not brought from Nepal but he admits that he had stated so under the provisions of Sec. 164. It cannot be concluded on the basis of oral evidence that weapons were brought from Nepal. It is to be seen what is the circumstan-</p> | <p>Para 25</p> <p>The evidence regarding the visit of accused A1 to A4 to Nepal is unfolded by the evidence of Ravi Kumar Mende (PW 91) and strengthened by the evidence of PW 150 Shambhu Prasad Choulagai, receptionist of Hotel Janak near Kathmandu, Nepal. It is his clear testimony that the four accused were booked in the hotel in the name of Chandrakantbhai and party. The hotel Room Chart, Ex P-382 reveals that the accused stayed there between 9.3.91 and 13.3.91. The bill of Madhuban Stores is dated 11.3.91</p> |

| High Court Order/Defence arguments | Trial Court Order | Prosecution Argument |
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| <p>agree with the defence argument that firstly there is no evidence to show that any of the accused persons had purchased any of these weapons. Secondly since it is established that Niyogi was murdered by a country made pistol, the evidence relating to foreign made weapons is of no avail."</p> | <p>Para 369 "When the CBI made a search of Chandrakant Shah's residence on 12.11.91, a bill of a provision store Madhuban in Nepal Ex P-393(8) was recovered behind which the names and prices of some foreign firearms were written. It has been proven that this handwriting is of accused Gyan Prakash Mishra. Neither accused Chandrakant Shah nor Gyan Prakash 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 a bill of a provision store. From this it can only be assumed that during their Nepal trip the accused obtained foreign weapons. Apart from this, in the search of Chandrakant Shah's house a Nepali Khukhri and a .32 misfire cartridge were also recovered."</p> <p>Para 370 "The timing of the Nepal trip undertaken by the accused is also important. At the time Niyogi's movement in Bhilai was growing rapidly. Two of the persons who accompanied Chandrakant Shah have a background of cases like murder against them, one is a crane operator in the Bhilai Steel Plant If indeed the sole aim of accused Chandrakant Shah was pilgrimage he would have undertaken this trip with his wife, children or other members of the family."</p> <p>Para 371 "After his release from jail when Niyogi reached Rajhara an anonymous person warned him by sending him an inland letter Ex 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 is seen in the light of the evidence it seems</p> | <p>which is during the period the accused stayed in Nepal. Thus the evidence presented by the prosecution clearly establishes that the accused A1 to A4 went to Nepal to purchase foreign made firearms in pursuance of the conspiracy to murder Niyogi</p> <p>Para 26 The visit to Nepal stands unrebutted. The bill of Madhuban provision store dated 11.3.91 on the reverse of which the handwriting of A2 is found fixes the presence of A2 in Nepal and the seizure of this exhibit from the residence of A1 confirms the role entrusted to A1. The recovery corroborates the evidence regarding Chandrakant organising the visit to Nepal. The very fact that A1 requisitioned the driver PW 91 though he has drivers working in his establishment is an adverse circumstance which has not been explained.</p> <p>Para 27 The fact that foreign firearms were in fact purchased has been established by the prosecution through the disclosure statement of Paltan Mallah in Ex P-285 leading to recovery of a .380 American revolver which is marked before the court as W2. It should be pointed out that the serial number of this revolver, which was found to be in working order, had been erased and further that 6 live .380 cartridges were found at the same time. Similarly the recovery of a foreign firearm on the disclosure statement of Gyan Prakash from the house of Devendra Patni on 13.10.91 also proves the allegation.</p> <p>Para 20 Niyogi was in Durg Jail between 4.2.91 and 3.4.91. There he came to know that a conspiracy was afoot to kill him. The anonymous letter Ex P-103 brought the conspiracy into the</p> |

| High Court Order/Defence arguments | Trial Court Order | Prosecution Argument |
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| | <p>to be factually true to a large extent since during the search of accused Chandrakant Shah's his passport Ex P 235 had also been recovered which is related with his visits to Switzerland, Germany and Netherlands."</p> | <p>open. When this was sent to the police it became credible information in their hands. While Ex P-103 bears the character of hearsay evidence, when linked to the conspiracy to murder Niyogi, it qualifies to be an exception to the hearsay rule and is admissible as res gestae.</p> |
| <p><u>Confessional letter of Gyan Prakash</u></p> <p>Para 27 'Recovery of the letter Ex P298 torn into pieces from the office of Chandrakant Shah was vehemently denied. It was highly unlikely that a slip of paper addressed to Naveen Shah allegedly written by Gyan Prakash on 28.9.91 should be found although torn into pieces two and a half months later lying in a corner of an open cupboard. If it was an important document to be preserved, then it would not have been torn into pieces. The wrapping of these pieces in a news paper makes the recovery still more mysterious"</p> <p>Para 29 This letter was a subject matter of argument on behalf of all the accused particularly Gyan Prakash, Chandrakant Shah and Naveen Shah. Devendra Jain (PW. 158 hostile) who is supposed to have carried this letter to Akash Ganga Complex and delivered it to Chandrakant Shah stoutly denied this fact in his statement. The result was he was declared hostile. He denied that he had paid any money to Gyan Prakash. It was argued that this document was a very crude attempt at concocting false evidence against the accused."</p> <p>Para 30 "it was also turned on behalf of the</p> | <p>Para 201 "R S Prasad (PW192) has stated that the documents found there (the office of Chandrakant Shah at Akash Ganga Complex) 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 he had taken the signatures of the witnesses. The constable of the Malkhan of CBI wrote the number of the case in red ink behind this letter. At this stage it would be relevant to quote Ex P- 298 28.9.91 Respected Naveen Bhaiji, Pranam. As you had said the work has been got done. I have taken 20,000 rupees from Devendra Patni and given to him. You give him this money. Rest on meeting. Your younger brother Gyan Mishra"</p> <p>Para 209 "R S Prasad (PW 192) has stated that on reaching Akash Ganga Complex he had called the persons of the neighbouring shops to be witnesses, but none came forward. M Toppo (PW 113) was a responsible officer working as a Manager in the Bhilai Steel Plant. This witness has admitted that he had gone for 10-12 searches done by the 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 makes the officers of public</p> | <p>Para 64 Ex P-298 admittedly is an incriminating piece of evidence The letter in whole was found by the handwriting expert Dr. Mittal (PW 160) to be in the hand of Gyan Prakash Mishra.</p> <p>Para 65 Another question raised by the defence is regarding the fact that Rajesh Shah (<i>nephew and manager of Chandrakant Shah</i>) has not signed on the reverse of the torn pieces of the letter. However this is of no value to the defence when we consider that the search memo records "... Throughout the search both the aforesaid witnesses and Rajesh P. Shah remained present. Only the documents mentioned in the list have been taken into possession. The documents taken have been signed by the witnesses</p> <p>Para 66 All available evidence on record internally consistent with the prosecution version that the recovery of the torn pieces of letter which make up Ex P-298 was genuine and substantiated.</p> <p>Para 67 The language of Ex P-298 is a cryptic style of conveying certain type of information that is incapable of interpretation. That this style is peculiar to A2 (<i>Gyan Prakash</i>) is illustrated by Ex P-295, certified copy of the Designated TADA Court, Raipur dated 11.8.88. The TADA Court has in</p> |

| High Court Order/Defence arguments | Trial Court Order | Prosecution Argument |
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| <p>accused persons that Devendra Jain having turned hostile there was no basis for the letter being interpreted in the manner done by the trial court. Even assuming that accused Gyan Prakash wrote this letter to accused Naveen Shah a simple reading of the letter does not make it clear as to what work it referred to for which payment was to be made. After all they were businessmen and there may be any number of transactions involving money. This letter torn into pieces was innocuous. If this letter really related to the murder of Niyogi the accused persons would not have committed the utter folly of preserving it with them for the benefit of the investigation agency."</p> <p>Para 102 "..The prosecution has not proved beyond doubt that accused Paltan was responsible for the fatal shot. There is no evidence to show that he had been used by the other accused persons to eliminate Niyogi. We also refuse to read the torn pieces forming the letter Ex P-298 to say that Rs. 20,000 were paid to the assassin of Niyogi. And that this assassin happened to be accused Paltan has not in our view been established."</p> | <p>sector witnesses it cannot be called illegal. Hon'ble Supreme Court in Durand Deedidhar Vs. Chief Secretary has held that even if the witnesses of the seizure do not belong to the area they cannot adversely affect the evidence of seizure."</p> <p>Para 212 "On 28.9.91 when Chandrakant Shah reached Akash Ganga Complex and opened his office, 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 (PW 92) advised all traders including the accused that they may open the shutter of their shops 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 to show that accused Chandrakant Shah came to his office again. On the contrary the evidence is that he had stopped coming to his factory as stated by Trilokinath Pandit (PW 176). There is also sufficient evidence to show that Chandrakant Shah all of a sudden and in haste absconded from Bhilai and kept on staying in different provinces under different names."</p> <p>Para 218 "If CBI had to fabricate false evidence, they could have made the search immediately on any day after 25.11.91 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 the 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. While there is a presumption in law</p> | <p>order reproduced the accusation against Gyan Prakash and two others. It is mentioned that on the instructions of Chandrakant Shah, Gyan Prakash sent a letter to one of his friends Satyender in UP and asked him "to come to Bhilai with full preparations." The two of his friends who are the other co-accused in that case came to Bhilai and were arrested and a country made revolver, four live cartridges were recovered from them. What is sought to be highlighted is the letter written to his friend asking him to come to Bhilai "with full preparations". In the same language and cryptic style Ex P-298 merely says "The work has been got done."</p> <p>Para 70 Thus Ex P-298 is not only an admission by Gyan Prakash Mishra but being a statement made immediately after the murder is therefore covered by Section 10 of the Evidence Act. In view of this it is admissible against all the accused.</p> |

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| | <p>that the accused is innocent, there is no presumption that CBI fabricates evidence."</p> | |
| <p>Para 116 Some evidence is there about Chandrakant Shah's absconion from Bhilai and his stay at different hotels at different places. But his learned counsel has tried to explain this circumstance by arguing that he was trying to escape torture at the hands of the police. We however think that this circumstance alone is not sufficient to hold this accused guilty in this case. The same is also true about accused Gyan Prakash and Abhay Singh's escape to Pachmadi."</p> <p>Para 36 "About the abandoned Tempo Trax also it was argued that there was no evidence to show that accused Chandrakant Shah had left Bhilai in this motor vehicle, which was registered in the name of Oswal Iron and Steel Company and not in the personal name of Chandrakant Shah."</p> | <p>Para 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 Pachmadi, then accused Chandrakant Shah also left Bhilai in his green coloured Tempo Trax MP 24 B 6622 and kept staying at various hotels in Nagpur, a hotel in Jamshedpur, Hotel Godavari at 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 (RK Singh); and in Hotel Central Point, Jamshedpur under a false name (HK Shah)."</p> <p>Para 431 "Accused Chandrakant Shah had stayed in Hotel Surya, Nagpur from 5.11.91 to 8.11.91 under a false 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 (PW 120)..."</p> <p>Para 419 "CA Shivkumar (PW 141) is a taxi driver. He states that his employer told him that a phone call had come from Hotel Surya to take a customer. He reached Hotel Surya at around 3 pm on 7.11.91. He left that customer</p> | <p>Para 94 A1 (Chandrakant Shah) did not offer any clarification or explanation why the Tempo Trax, which is admittedly his, was abandoned and as to unde what circumstances the article found in his Tempo Trax were blood stained.</p> |

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| | <p>in front of Navegaon Bandh Tourist Lodge. A Tempo Trax was parked there. The customer went towards Nagpur road driving the Tempo Trax. .. Prior to this accused Chandrakant Shah had stayed in Navegaon Bandh Lodge from 3.11.91 to 8 am on 5.11.91. From this it appears that prior to staying in Hotel Surya, accused Chandrakant Shah had left the Tempo Trax in front of the Navegaon forest lodge."</p> <p>Para 424 "The Patel of village Nagra Mahngulal Panchbudh (PW 143) 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..."</p> <p>Para 425 "Police Inspector Sahasram Kumbhalkar (PW 145) has stated that after receiving information on 11.11.91 that Tempo Trax MP 24 B 6622 was standing there he went to village Nagra... In the meanwhile a telegram was received from Ramji Shah (father of accused Chandrakant Shah) that his son is being harassed by the police near Nagra. The witness sent a letter to Ramji Shah at his Jabalpur address to come to the police station and give information. Subsequently one more letter arrived from Ramji Shah that he has received information from some Nair in Bhilai that his son is being harassed."</p> <p>Para 427 "SP CBI BS Kanwar (PW 183) has stated that all the articles and documents found inside the Tempo Trax standing on the Gondia Balaghat Road were seized. The witness further stated that blood stains were found on the white towel and rubber mat found in the Tempo Trax. A cardboard (Ex. P-237) was also found on which Chandrakant Shah, some phone numbers were written</p> <p>Para 429 ".. Serologist CM Patel (PW 152) has stated that human blood was found on the seized towel, cap and rubber mat which was of group 'O'</p> | |

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| <p>Niyogiji's Diary. Para 104 During the course of arguments we were also referred to the entries in the diary Ex P-93, said to be made by Niyogi from time to time and also his recorded message which was transcribed as Ex P-101. Reference was specifically made to the entries marked P 94 to P 99 in this diary. We have examined these entries, and, without entering into the controversy whether or not these entries were made by Niyogi, we find that these entries only contained certain references to names including those of Gyanu and Avadesh Narayan. But many other persons are also named in these entries. As, for example in Ex P 95, name of Ajit Jogi also appears. And in Ex P 96, the names of "Shakeel Abbas and Oker Hussain of Congress I" have been mentioned. We do not think any adverse inference can be drawn from the mere fact that the diary, assuming it was written by Niyogi as testified by expert witness SC Mittal (PW 160) contains the names of the accused."</p> | <p>Para 286 "The entries made in connection with the present accused by late Niyogi in his diary are as follows: 1. Pg 32 Industrialists like Simplex Kedia in collaboration with the higher officials of Durg have formed a fascist gang. It is an unfortunate thing that the judiciary of Durg and Rajnandgaon districts have also joined this gang. 2. Pg 169 is in English and is a complex sentence which can be translated as: From the persons arrested by the police in Bomb explosion case, information has been gathered that Gyanu has collected Rs 5 lacs from Simplex for collecting firearms. Pradeep Singh Sector 2 has got a man from Siwan district to kill Niyogi. 3. Pg 172 Gyan Prakash Mishra Awadshesh - now Sector 4 Abhay Singh Awadshesh - left hand of Gyanu 4. Pg 174 Gyanu - Chandrakant" Para 475 "Accused Chandrakant Shah's name is also written in Niyogi's diary."</p> | <p>Para 38 In his diary Niyogi has mentioned the names of Simplex, Gyanu-Chandrakant, Awadshesh-left hand of Gyanu, Gyan Prakash Mishra, Awadshesh now Sector 4, Abhay Singh; and it is also noted that Gyanu had collected Five lacs from Simplex for collecting firearms. The entries were proved to be in the handwriting of Niyogi by a number of witnesses and the hand writing expert. The diary mentions the names of the accused and the mentioning of the names has to be understood in the context in which they are mentioned, viz, the attempt by the accused to get him killed. No other manner of reading the diary entries are possible in the circumstances of the case. No other inference can also be derived.</p> |
| <p>Para 26 "About the slip of paper Ex P 239 on which the car and jeep numbers were written which was allegedly recovered from his office, it is said that the jeep was registered in the name of CMM while the car was registered in the name of Dr. Gun although it was being used by Niyogi. The trial Court treated this too as an incriminating circumstance against the accused Chandrakant Shah. But no adverse inference can be drawn from the recovery of this slip,</p> | <p>Para 470 "During the search of accused Chandrakant Shah's house a chit (Ex P 239) was found on which it was written Fiat MIR 227 and Jeep No. MPT 7971. It is necessary to note here that Jeep No MPT 7971 is registered in the name of Chattisgarh Mukti Morcha. Fiat car No. MIR 227 is registered in the name of Dr Gun (PW 16) but ever since 1987 when 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 Niyogi had come from Raipur to Bhalai in the said Fiat car. Accused</p> | <p>Para 34 In the course of the search a slip paper was recovered in which was noted the registration number of vehicles which were used by Niyogi for moving about. It is thus clear the accused were keeping track of the movements of Niyogi and the vehicles used by him. The only inference that may be drawn in view of other circumstances already stated is that the intention of the accused was to plan an attack on Niyogi. Para 35 Ex P 329 also contained the</p> |

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| <p>especially when the accused was not afforded an opportunity to explain this circumstance u/s 313 CrPC."</p> | <p>Chandrakant Shah has not clarified as to why he had kept the numbers of the said vehicles written with him."</p> | <p>of four important CMM activists MH Khan, Dildar Singh, Bhagwan Das and Sudama. Significantly these are the same four persons who are also named as Defendants 10, 11, 12 and 15 in the two suits filed by Simplex Engineering in the District Court, Durg. They are also employees of Simplex. The names were found to be written in the hand of Chandrakant by the handwriting expert. This establishes the fact that Chandrakant Shah was very much part of Simplex and played an active role in the conspiracy</p> |
| <p>Refer to "<u>Apprehensions expressed by Niyogi</u>" in 'Evidence against Moolchand Shah' above.</p> | <p>Para 472-474 <i>Apprehensions expressed by Niyogi in the afternoon and night of 27.9.91 to NK Singh and Rajendra Sail that 'the Shahs of Simplex want to gethim killed'; 'he faces the greatest danger from Moolchand Shah, his partner and private army'; and that 'the work of the dirty wing in Simplex is looked after by Moolchand Shah and Chandrakant Shah'.</i></p> | |

Evidence against Gyan Prakash Mishra.

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| <p>Para 37 "About accused No 2 Gyan Prakash it was pointed out during arguments that the only evidence against him was that he was a friend of Chandrakant Shah and had accompanied him to Nepal, and that Niyogi had mentioned his name in his diary. The fact that he had gone to Pachmadi on 4.10.91 with his friend accused Abhay Singh did not militate against his innocence. The criticism about extra judicial....."</p> | <p>Para 464 "From the letter written by accused Gyan Prakash Mishra Ex P-393 recovered in the search of accused Chandrakant Shah's house it is seen that there is an intimate relation between the two accused and Gyan Prakash Mishra would not hesitate in giving the biggest sacrifice for the happiness and welfare of accused Chandrakant Shah." Para 454 " When the truck material went from</p> | <p>Para 96 Gyan Prakash Mishra (A2) and Chandrakant Shah (A1) have a business and personal relationship with one another. This is evidenced by the letters written by A2 to A1 recovered in A1's house. Apart from these Ex P 447 to 449 are the complaints made on behalf of A2 by his brother Prabhunath Mishra to the Chief Minister against CSP of Police Ram Shankar Singh and an order of a Judicial Magistrate registering a crime against the police official on the</p> |
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| <p>confession and letter Ex P298 has already been referred to earlier. It was argued that there was no evidence of conspiracy, and nothing to connect him with the crime".</p> | <p>Simplex to Oswal (owner Chandrakant Shah) for scrapping and after being scrapped used to return, then accused Gyan Prakash Mishra sometimes used to accompany those trucks to Simplex Castings. In this manner Gyan Prakash had relation with accused Chandrakant Shah and owners of Simplex."</p> | <p>basis of a complaint of A2. When A2 was arrested under TADA charges, A1 sent an application of Police (Terrorist) to release him. A copy of this application dated 3.7.88 was recovered from A2's house. Ex P295 is the copy of the order of the TADA court dated 11.8.88 The facts of the case stated in the order are that A1 had enmity with one Gurnet Singh, so on the instructions of A1, A2 had sent a letter to one of his friends Satyender in UP and asked him to "come to Bhilai with full preparations". The two of his friends who are the other accused in that case came to Bhilai and all three were arrested and a country made revolver, 4 live cartridges and one spring knife were recovered from them. A vehicle belonging to Oswal company being used by them had also been seized. These recoveries establish the nature of the long standing and intimate relationship of A1 and A2.</p> <p>Para 98 Atul Chandra Pal (PW 31) an employee of Chandrakant Shah's Oswal Iron and Steel Private Ltd stated that A1 purchased a brick kiln at Sonapur village, Patan Tehsil and A2 used to supply coal and other things to the kiln. Ramesh Bhasin (PW 142) has stated that A2 used to frequent the factory of A1 and whenever A1 by letter requested him to advance moneys to A2 he used to oblige.</p> |

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| Not dealt with | <p>Para 453</p> <p>"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 (PW 54) has said in his statement that a worker named Ram Asre had acquainted him with accused Gyan Prakash saying that he regularly frequents Simplex Company. He had also said Gyan Prakash is of a criminal nature and is in league with the owner, so beware of him."</p> | |
| Not dealt with. | <p>Para 452</p> <p>"Accused Gyan Prakash Mishra and accused Paltan Mallah were together detained in Durg Jail for a long time. A few months prior to the murder of Niyogi Paltan Mallah started residing unauthorisedly in Qtr. 6F in Camp 1. which is in the neighbourhood of accused Abhay Singh who is a friend of Gyan Prakash. In this manner the relation between accused Paltan and Gyan Prakash is established."</p> | |
| Refer to <u>Nepal trip</u> in 'Evidence against Chandrakant Shah' above | <p>Para 457</p> <p>"In March 91 accused Gyan Prakash had along with Chandrakant Shah and other accused made a trip to Nepal. Subsequently during the search of Chandrakant Shah's house a bill of a provision store of Nepal was found with the names and prices of some foreign weapons behind it. This handwriting is of accused Gyan Prakash Mishra. It has been established that the aim of the Nepal trip was to collect weapons and this was a criminal conspiracy."</p> | |

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| <p>Refer to <u>Niyogiji's diary</u> in 'Evidence against Moolchand Shah' and 'Evidence against Chandrakant Shah' above</p> | <p>Para 456</p> <p>"In his diary Ex P 93 deceased Shankar Guha Niyogi has written accused Gyan Prakash Mishra's name at several places. On Pg 169 he has written that on obtaining 5 lakhs from Simplex Gyanu has collected weapons. From the statement of Rajkumar Harmukh (PW 90) it is evident that Gyanu is Gyan Prakash Mishra."</p> | |
| <p>Refer to <u>Niyogiji's microcassette</u> in 'Evidence against Moolchand Shah' above</p> | <p>Para 458</p> <p>"Niyogi in his micro cassette (Article C) has said that Prabhunath Mishra's goonda brother (indicating accused Gyan Prakash Mishra) is putting his full force for some untoward incident to happen here."</p> | |
| <p>Refer to <u>Confessional letter of Gyan Prakash Mishra</u> in 'Evidence against Chandrakant Shah.'</p> | <p>Para 463</p> <p>"The murder of Shankar Guha Niyogi took place in the night of 27th and 28th. The letter Ex P 298 written by Gyan Prakash Mishra to Naveen Shah on 28.9.91 and recovered from Chandrakant Shah's office will be considered confession of the crime."</p> <p>Para 465</p> | |
| <p>Refer to <u>Extra Judicial Confessions of Paltan Mallah</u> below in 'Evidence against Paltan Mallah' below.</p> | <p>"In the extra judicial confessions made by accused Paltan Mallah before Satyaprakash (PW 105) and Vishamber Sahni (PW 124) he had said that he had gone along with accused Gyan Prakash Mishra and murdered Shankar Guha Niyogi with a country made pistol while he was sleeping."</p> <p>Para 582</p> <p>".. From the relation of Gyan Prakash Mishra with the other accused it is clear that he was working as the axis between the accused of Simplex industry and the other accused and was the centre of their activities.</p> | <p>Para 95</p> <p>Ex P-298, the letter dated 28.9.91 written by A2 that the consideration fixed had also been paid establishes the link between Paltan Mallah, A9 and the other conspirators more particularly A1,A2,A5 and A6. It should be emphasised that the evidence before the court clearly shows that the role of Gyan Prakash A2, is more than that of a mere conspirator. It is actually in the nature of being an active participant also, in the crime of murder of Shankar Guha Niyogi. Gyan Prakash ought to have sentenced to the same punishment as Paltan Mallah.</p> |

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| <p>Para 116</p> <p>'Some evidence is there about Chandrakant Shah's absconsion from Bhilai and his stay at different hotels at different places. But his learned counsel has tried to explain this circumstance by arguing that he was trying to escape torture at the hands of the police. We however think that this circumstance alone is not sufficient to hold this accused guilty in this case. The same is also true about accused Gyan Prakash and Abhay Singh's escape to Pachmadi.'</p> | <p>Para 396</p> <p>'Rajkumar Harmukh alias Bantu (PW 90) has said in his statement that his uncle Kaushal Deshmukh had a Maruti van MP 24 8256 which Tikamdas Sahu (PW 88) used to drive. One night in October 91 Gyanu came to him and said he needed the vehicle to go to Pachmadi. He knows Gyanu because Gyanu is a frequent visitor of Devendra Patni (PW 158 hostile)..."</p> <p>Para 397</p> <p>Rajkumar Harmukh (PW 90) further stated that he went at about 10 pm to the house of Tikamdas Sahu (PW 88) and called him. Accused Gyan Prakash himself filled petrol in the vehicle. Tikamdas Sahu left taking accused Gyan Prakash Mishra .."</p> <p>Para 398</p> <p>"According to Tikamdas Sahu (PW 88) Bantu Mistri and Devendra Patni came to his house in the night of 4.10.91 and said that he has to take the Maruti van to Pachmadi 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 and Devendra Patni came again and told him that he need not stay in Pachmadi till the 9th, he could drop the passengers and return the next day. On this condition he got ready to go to Pachmadi."</p> <p>Para 122</p> <p>Mahendra Singh Patel (PW122) is a receptionist of Nilamber Hotel in Pachmadi. This witness stated that on 5.10.91 there is mention of an Abhay Kumar Singh coming to his hotel. They were totally two persons and they hired two rooms. All the three travellers vacated the two rooms on 6.10.91 and subsequently on he same day two of them hired only one</p> | |

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| | <p>room and they remained in the room till 11am on 9.10.91..”</p> <p>Para 404 “.. On 9.10.91 the accused persons made a telephone call from Pachmadi to Durg Tel. No. 3854. In his statement Devendra Patni has admitted that this is his residence telephone no...”</p> <p>Para 405 “It appears that the background of absconding of accused Gyan Prakash and Abhay Singh from Durg is that their companion of the Nepal trip accused Awadesh Rai had come under police observation.”</p> <p>Para 406 “The absconding of accused Abhay Singh is also corroborated by the fact that on 3.10.91 he had given Darshanand Tiwari (PW 52) a leave application (EX P144) but he came to work. He explained that money could not be arranged so he will go a day or so later. When Abhay Singh did not come to work on 5.10.91 Darshanand Tiwari changed the date of the 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 (PW 53) established that Abhay Singh absented himself on 5.10.91 and did not come back to work, his services were terminated on 23.1.92...”</p> | |
| <p>Para 118 We are also of the view that cycle stand contract Ex P 314 in the name of Awadesh Rai or the deposit of income in the name of Gyan Prakash are not incriminating circumstances.”</p> | <p>Para 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, Bhilai at the rate of Rs.25,000 a month on the recommendation of Prabhunath Mishra elder brother of Gyan Prakash Mishra. When tenders had been invited for the cycle stand in September 91 accused Awadesh Rai had not filled any tender. It is clear that the owner of the talkies Sunil Agrawal</p> | |

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| | <p>gave the contract solely on the basis of recommendation. Accused Abhay Singh had come with Awadesh Rai to get the contract."</p> <p>Para 486</p> <p>"Prior to Awadesh Rai 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."</p> <p>Para 525</p> <p>"Accused Baldev Singh used to deposit the income of the said cycle stand into the Syndicate Bank account of accused Gyan Prakash in the campus of Maurya Talkies"</p> <p>Para 561</p> <p>".. Accused Gyan Prakash had opened the said account on 4.10.91. That the income of the cycle stand was deposited in it is deposed by the cycle stand employee Kamaluddin (PW 102) and Bank Manager Kulbhasker (PW 85)."</p> | |

Para 60 Evidence against accused Paltan Mallah

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| <p>A perusal of the record shows that long before the entry of the CBI the newspapers carried headlines on the front page that Niyogi was murdered by Paltan Mallah with a country made pistol. Ex P-75 "Amrit Sandesh," Ex P-281 29) "Samvet Shikhar" Ex P-81(31) "Desh Bandhu" are some of the news items published in Hindi daily news papers of Raipur dated 15.10.91 We do not find any explanation as to how suspicion had fallen upon Paltan"</p> | | <p><i>It is clear from the record that during the police investigation of this case accused Awadesh Rai came under police observation on 3.10.91, owing to which accused Gyan Prakash and accused Abhay Singh absconded. Accused Chandrakant Shah not only absconded but also made efforts to fabricate evidence that he had been murdered by the police. Accused Gyan Prakash was arrested on 13.10.91. A number of associates of the accused including Devendra Patni (PW 158) had been interrogated by this time. These persons also subsequently made statements u/s 164 CrPC although they resiled from them in the trial court. The statement of Sub Inspector DP Singh (PW 126) shows that on 14.10.91 the Bhilai (MP) police had already reached Paltan Mallah's native village Nibahi.</i></p> |
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| <p>Presence of Paltan Mallah in Bhilai and his absconion therefrom.</p> <p>Para 61 "The learned counsel from CBI argued that accused Paltan Mallah had a criminal background and was found absconding from Bhilai after the incident. But we agree with the submissions made in defence that the prosecution evidence does not establish the presence of Paltan in Bhilai at the relevant time and therefore the question of his absconion does not arise. The learned counsel for accused Paltan rightly pointed out that of the four witnesses examined by the prosecution about Paltan Mallah's residence in Quarter 6F, Camp 1, Bhilai, in the neighbourhood of Abhay Singh, three witnesses namely Mithoolal (PW40 <i>hostile</i>), Jaswant Kumar (PW 41 <i>hostile</i>) and Asit Kumar (PW 43 <i>hostile</i>) denied this fact. The fourth, namely Krishna Kumar (PW 42) is not a reliable witness. He has contradicted himself from his earlier statement under Section 161 Cr PC. According to the prosecution story the photograph of Paltan Mallah was shown to him by the police whereupon he had stated that this was the man who lived in Quarter 6F and was seen coming and going at night. But in his statement before the Court, he denied that any photograph was shown to him by the police. He also denied that he had seen Paltan moving around in the night On the contrary he emphatically stated that he had never seen him in the night, and had only seen him at day</p> | <p>Para 236 "Accused Paltan was the permanent resident of village Nibahi, Distt Devaria,UP and since the last few years he had been living in the industrial city of Bhilai. He used to do the work of repairing cycles. He had kept a divorced lady Reshmi Bai (PW 51) at least 10 years older to him and used to live in her house."</p> <p>Para 237 "Accused Paltan had been tried for various offences u/s 457 380 379 394 IPC and 25/27 of the Arms Act; and for various offences u/s 353 307 397 341 294 506 (B) 323 and 25&27 Arms Act. He had gone to jail a number of times."</p> <p>Para 169 "Visamber Das Manikpuri (PW 121) owns Asian Arts studio in front of Purani Bhilai Police Station. On intimation by the Police station he takes the photograph of any person. .. In the beginning of 1991, on being asked by the police, he had taken photographs of accused Paltan. Ex P 318 A is its negative and Ex P 318 is its positive..."</p> <p>Para 170 "... The accused Paltan has himself produced the certified copy of the criminal case No 231/91 pending before the Magistrate Class I Durg, according to which he was arrested on 21.1.91 under 25 Arms Act by PS 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 he was actually released has not been produced. The accused in his accused statement has stated that was released from jail in the fifth month of 1991."</p> | <p>Para 42 Paltan Mallah, A9 is a hireling criminal whose services were requisitioned by A2. The evidence on record shows that Paltan has been continuously residing in Bhilai area from 1988 onwards. This is clear from Ex P 155A which reveals that he was arrested and imprisoned in Durg Jail between 22.1.88 and 28.1.88 and between 1.3.88 to 10.8.88. During this period he comes to know Gyan Prakash, A2 who was also in jail for a period of one month and 13 days in two phases, the first period between 29.4.88 to 9.5.88 and on the second occasion between 18.8.88. A3 Awadesh Rai was also imprisoned in the same prison for nearly six and a half months between 19.12.87 to 2.7.88. For many years prior to the incident, Paltan had been living in Bhilai and for seven years he had a living in relationship with Reshmi bai (PW 51). She has testified to the fact that Paltan used to run a cycle repair shop in Khursipar. She however has stated that she did not know where the shop was and had never been there.</p> |

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| <p>time on one or two occasions. We do not find the testimony of this witness to be worthy of acceptance. What is more, even this witness admitted in the cross examination that he had last seen Paltan in the house one or two months before the murder of Niyogi. This witness does not, therefore, prove the presence of Paltan in Bhilai immediately before the crime."</p> <p>Para 62 "PW 51 Reshmi Bai (<i>hostile</i>) who was living as a wife of Paltan also testified that Paltan had left Bhilai a couple of months before the incident. Reshmi Bai, Mithoolal, Jaswant Kumar and Asit Kumar were of course all declared hostile by the prosecution. But nothing has been elicited in their evidence to show that they were suppressing the truth."</p> | <p>Para 233 "Krishna Kumar (PW 42) is an operator in Bhilai Steel Plant and resides in Qtr No. 7C, Camp I 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 the fourth quarter on the right side. He further tells that in September 91 prior to the murder of Niyogi he had seen Paltan living in Qtr 6F. In para 8 of his cross examination he has clarified that about a month or two prior to the murder of Niyogi he had seen accused Paltan residing in Qtr 6F. In the statement of the witness there is nothing by which his statement may appear doubtful."</p> | <p>Para 45 Reshmibai who turned hostile also made a statement that Paltan, A9 told her two months before the murder of Niyogi that he was leaving for Bombay. From this statement of a hostile witness the defence wanted to urge a plea of alibi, that during the relevant period Paltan, A9 was not living in Bhilai. For this plea of alibi neither evidence nor proof is available on the record. In fact it is part of the conspiratorial activity to bluff Reshmibai, who is not his wife, and who in any event will not verify the truth or otherwise of the statement made by him excepting to repeat what he might have told her. This is also an ingenious way of covering one's tracks after the murder in the event of any investigation into his complicity in the crime.</p> |
| <p>Para 63 "Zakyuddin (PW 61) and Nuruddin (PW 66) are father and son who sell arms and ammunition in Sadar Bazar Raipur in the name of Badruddin Mulla Shamsuddin. They have proved from their records that on 14.9.91, one Birendra Kumar Singh purchased a 12 bore single barrel gun and 5 cartridges from his shop on his own license, and also purchased 13 cartridges on the license of Satyanarayan Singh. But Zakyuddin (PW 61) admitted that the make of the cartridges has not been mentioned in the bills book Ex P 149 or Sales Register Ex P 148. Nuruddin (PW 66) improves upon his statement by asserting that out of these 13 cartridges, 3 were of LG make. Nuruddin says that Birendra Kumar was accompanied by another person whom he had left in</p> | <p>Para 127 "Nuruddin (PW 66) in his lengthy cross examination, has firmly stated that accused Paltan Mallah present in the court was the very person who had come to his shop with BK Singh. It is common experience that different persons have different capacities of memory. There are some persons who forget people a few days after meeting, they are others who might recognise a person even after many years. Recognition by Nuruddin of accused Paltan having along with BK Singh seems natural due to the following reasons also:</p> <ol style="list-style-type: none"> 1. BK Singh had come to the shop with that Armorer of Police Lines Raipur who had earlier purchased a gun for himself. 2. The accused Paltan sat at his shop for a considerably long period, so the witness had sufficient opportunity to | <p>Para 46 The admitted fact is that Birendra Kumar Singh had purchased 3 LG cartridges on 14.9.91 on the license of Satyanarayan Singh. The presence of a boy along with him has not been disproved by the defence nor any doubt created. The only argument is that the shopkeeper (son) Nuruddin could not have identified A9 after such a long lapse of time. One cannot be definite about the memory of a person as the learned Trial Judge pointed out. The police had made photo identification of Paltan much earlier. Apart from that fact, Paltan, was heavily advertised as a fugitive offender for whose apprehension a reward was announced. Under the circumstance the question of identification para does not assume much importance. The effect of not holding test identification was dealt with by the <u>Surandi Narain Vs State of UP</u> which</p> |

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| <p>his shop when he had gone to call an armourer of his acquaintance to choose a gun for him. Nuruddin identified accused Paltan being that other person."</p> <p>Para 64 "The evidence of Nuruddin was vehemently criticised on behalf of accused Paltan on the ground that he has not given any identification mark on any other reason for being able to identify this accused as companion of Birendra Kumar. The police did not conduct any test identification parade. The CBI had shown him the photograph of the person who had accompanied Birendra Kumar on 14.9.91 and he says that had identified the person in the photograph. Nuruddin identified accused Paltan in the trial court. But he has admitted in cross examination that he had seen all accused persons on 3-4 occasions when he had come to the Court in connection with the hearing of the case. Nuruddin admitted in his cross examination that about 100 persons had purchased arms and ammunition from his shop in September 1991 and he can identify each one of them. It was argued that this claim of his was unacceptable. Unless there be any special reason for identifying any particular customer, it was not possible that this shop keeper should recognise some one who had visited his shop only once, and that too, not a customer but only as a companion of the purchaser. We find considerable force in this defence contention."</p> | <p>3. There is no possibility of this witness implicating accused Paltan falsely."</p> <p>Para 128 "Besides this Nuruddin (PW 66) has stated at para 9 of his cross examination that he was shown two photographs by the CBI, out of which he could recognise one. In this way, first recognising the photograph and thereafter recognising him in court proves that Nuruddin had correctly identified the accused Paltan."</p> <p>Para 129 "On behalf of accused Paltan the plea has been advanced that as identification parade was not conducted so it cannot be said that Nuruddin has identified Paltan correctly. .. Hon'ble Supreme Court in the recent case of <u>State of Karnataka Vs Dea K Sethi</u> held that due to some small discrepancies or if the investigating officer does not conduct identification parade, even then the prosecution case does not necessarily become suspect."</p> <p>Para 173 ".. The childhood friend of accused Paltan Mallah Suresh Vishwakarma (PW 97) has stated that at first the accused used to live at village Nibahl and later on he came to Bhilal. In October 91 the accused had met him at Khorma Crossing (District Devaria). At that time the accused had a red coloured motorcycle and he had gone along with accused Paltan to the brick kiln of Ram Pravesh Mal for purchasing bricks. The accused Paltan Mallah has crossexamined this witness but nothing has emerged to treat the statement of this witness as unreliable."</p> | <p>emphasised that "identification parades are held not for the purpose of giving defence advocates material to work on, but in order to satisfy investigating officers of the bonafides of the prosecution witnesses."</p> |

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| <p>Para 84</p> <p>Sub Inspector DP Singh (PW 126) (posted at PS Rudrapur un-which village Nibahi falls) has been produced by the prosecution to depose that on 12.10.91 he had seen an accused Paltan riding a red coloured Suzuki Motorcycle MP 24 07 at the road trisection in mlakhan Bazar. One Rishikesh Upadhyay was riding pillion. This Sub Inspector says that they overtook Rishikesh Upadhyay by the roadside but just as they wanted to search the canvas bag hanging on the motorcycle, accused Paltan raced the vehicle and moved towards village Nibahi. This Sub Inspector gave him a chase, but could not catch him. What sort of police officer was that he helplessly watched a suspect running away before his own eyes, but could not catch him though he claims to have recognised this man to be Paltan of village Nibahi."</p> | <p>Para 175</p> <p>"During arguments on behalf of accused Paltan Mallah it was said that he believes the statement of the police officer (D.P.Singh). On the basis of this statement the plea was taken that in September 91 the accused Paltan was at Nibahi. The basis of the plea is para 10 of the statement of this witness which is as follows: 'I used to go to the house of the Gram Pradhan at village Nibahi and the house of accused Paltan is in front of it. For this reason I know him. ... 8-10 days prior to stopping at the Tiggada I knew that the house in front of the Gram Pradhan is that of accused Paltan. At that time I had received 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 at the Tiggada. 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 purchasing bullocks.'</p> | |
| <p>Para 86</p> <p>When SI DP Singh was examined by the CBI on 20.12.91 he had stated that he wanted to ascertain the identity of the driver, but the latter sped away. He was confronted with his statement in cross examination but he denied having said so. He has also contradicted himself with his statement recorded by the police on 14.10.91. In that statement he has not spoken about giving a chase to Paltan. DP Singh seems to be a witness of doubtful credibility"</p> | <p>Para 176</p> <p>"The statement of DP Singh (PW 126) has to be read along with the statement of Suresh Vishwakarma (PW 97) who has clearly stated that he met the accused Paltan Mallah in October 91 and he went with him to the brick kiln of Ram Pravesh Mal for purchasing bricks. Thus the plea of accused Paltan that he was in Nibahi in September 91 cannot be accepted."</p> | |
| <p>Para 87</p> <p>"Our attention was invited to para 10 of the statement of SI DP Singh wherein he says that 8 or 10 days before the incident of stopping and</p> | <p>Para 177</p> <p>"The accused Paltan Mallah had kept Reshmi Bai (PW 51) as his wife without marriage. The prosecution has after declaring her hostile cross examined this witness. Her statement that the accused Paltan had gone to Bombay two months before the incident took place is unreliable."</p> | |

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| <p>ving a chase to Paltan at this tri- ction, this Inspector had learnt at accused Paltan had come to illage 8 or 10 days before and was nstructing a house. .. This es- blishes Paltan's presence in ibahi around 23rd September 991. This means that on 28th Sep- mber, the date on which Niyogi as murdered, Paltan was very uch in village Nibahi. The evi- ence of DP Singh thus does not upport the prosecution case."</p> | <p>Para 178 "From the statement of Krishna Kumar (PW 42) it appears that the accused Paltan Mallah had a red col- oured motorcycle at Bhilai. On 12.10.91 when DP Singh (PW 126) saw the accused Paltan at Ramlakhhan Bazar, UP 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 motorcycle at the house of Satya Prakash (PW 105) at village Chainpur, it had no number, its engine and chassis number had been rubbed off."</p> <p>Para 179 "Deepak Surana (PW 87) is a resi- dent of Padmanabhpur Durg. He has said in his statement that the number of his Bajaj Scooter is MP 24 1707. Thus the registration number which the accused Paltan Mallah had got written on his red coloured motorcy- cle was fictitious. Later on he removed this number and rubbed the chassis and engine numbers. Thus it is es- tablished by sufficient evidence that the accused Paltan Mallah absconded from this area after the murder of Shankar Guha Niyogi."</p> | |
| <p>Arrest of accused Paltan and Recovery of the weapon of the crime</p> <p>Para 69 "The fact that accused Paltan Mallah was apprehended by Suresh Sharma, Master Warrant, Indian Air Force and was handed over to the police for investigation of offences under Section 25 of the Arms Act, the Official Secrets Act and the Motor Vehicles Act was also admitted by Paltan Mallah in</p> | <p>Para 74 "In charge Police Station Gorakhpur Cantt. Umesh Chandra Mishra (PW 125) in his statement, stated that on 21.8.93 Master Warrant of the Indian Air Force Suresh Sharma arrested Paltan Mallah by the name of Sanjay Yadav and handed over the accused to his Police Station. Cases under Arms Act and Official Secrets Act had been registered against accused Paltan Mallah. On intensive enquiry it was revealed that the man who has been arrested by the name of Sanjay Yadav is in reality Paltan Mallah."</p> | |

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| <p>PC. But we agree with the defence contention that the prosecution has not been able to prove that accused Paltan had concealed his identity, and had given out his name as Sanjay Yadav. The claim of Inspector Umesh Chandra Mishra (PW 125) is that it was only after intensive interrogation on his part that he could discover the true identity of the man who was arrested as Suresh Sharma of the Indian Air Force as Sanjay Yadav. This Suresh Sharma was not examined in the trial... It is significant that seizure memo Ex D 45 relating to the arms and ammunition found in possession of this accused when it was handed over to Insp. Umesh Chandra Mishra has been signed by this accused as "Paltan Mallah" and "Ravi." A perusal of this seizure memo shows that it was prepared at the Airport itself and because of the allegations that it took special efforts on the part of the police to ascertain his correct identity."</p> | <p>Para 75 "... From perusal of Ex D45 it is clear that Paltan Mallah had been arrested as Sanjay Yadav and seizure was carried out in this name only. The accused has signed as Ravi alias Paltan Mallah. Umesh 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 was Paltan Mallah .. "</p> <p>Para 76 "... Umesh Mishra (PW 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.. He presented a remand application before the court at Gorakhpur on 22.8.93 and the court granted three days police remand of accused Paltan Mallah."</p> <p>Para 77 " Umesh Mishra (PW 125) further states that on 24.8.93 he interrogated Paltan further in the presence of Dinesh Baloni (PW 104) and witness Ram Bahadur Singh. Accused Paltan said that he has buried a country made pistol, a foreign revolver and a cloth belt with 13 cartridges in which there are two LG 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 a km away from the house of his father. He agreed to get the articles seized. Accused Paltan also said that he has kept a Suzuki Motorcycle at the house of Satyaprakash who is his cousin brother-in-law's younger brother in village Chainpur, PS Badhalgani. He will get the same seized."</p> | <p>Para 88 The contention raised by the defence is regarding the fact that Paltan Mallah was arrested for an entirely different offense and the recovery effected therefore is not from the crime presently before this court. It has been argued therefore that the recovery is suspect and no reliance can be placed upon it. A recent judgement of the Hon'ble Supreme Court directly deals with the issue. In '<u>State of Rajasthan Vs Bhup Singh</u>' (1997) the Apex Court considered the legality of seizure of weapons used in a crime when the accused was arrested for an entirely different crime altogether.</p> <p>".. The High Court sidestepped the evidence regarding the recovery of the pistol and the statement of the accused which led to it on the mere ground that the pistol was recovered in connection with another case .. PW 12, SHO of Raising Nagar Police Station has deposed in this case that when the Respondent was questioned he told him that the pistol was wrapped in a bag and buried in his house. When the Respondent was taken to that place he disinterred Article 4, pistol and handed it over to the police.</p> <p>14. It is clear from the above evidence that PW 12 discovered the fact that Respondent had buried Article 4, the pistol. His statement to the police in the ground near his house therefore gets extricated from the ban contained in Sec 25 and 26 of the Evidence Act as it became admissible under Sec.27. ... It is immaterial whether the information was supplied with the same crime or with a different crime. Here the fact discovered by the police is not Article 4, the pistol, but that the accused had buried the said pistol and he knew where it was buried. Of course the said fact became</p> |
| <p>70 conduct of Inspector. Umesh Chandra Mishra has been subjected to severe criticism on behalf of accused Paltan and we think, unjustified. This Inspector stated that he did not require the identity of accused Paltan for investigation in connection with the offences under the Official Secrets Act or the Arms Act, yet he ordered police remand of this accused on 23rd August 93. He admitted before the court that he was aware of the fact that accused Paltan was wanted by the police in connection with the murder of Kar Guha Niyogi. He also stated that Paltan carried a reward of 1 lakh. This witness Inspector admittedly claimed and received</p> | | |

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| <p>is reward. We would not comment upon the validity of this claim his. But we are unable to appreciate this Inspector's enthusiasm meddling with the investigation to the Niyogi murder case. The oss examination of Inspector ishra shows that he was aware the fact that Niyogi murder case as being investigated by the CBI. e has admitted that Ashok Tadiyal id Sudama Prasad, both Inspectors of the CBI had arrived at PS orakhpur on 22nd August 1993 ren before he made the application for police remand. Under these rcumstances one fails to understand why Inspector Mishra indulged in questioning this accused altan with respect to the crime of urder allegedly committed by him a faraway place in the State of adhya Pradesh much beyond his risdiction. In the normal course e accused ought to have been nded over to the CBI without any ss of time"</p> <p>Para 73</p> <p>must be remembered that Paltan as arrested under the Arms Act and the Official Secrets Act on 1.8.91. It is surprising that Inspector Umesh Chandra Mishra could not have him delivered to the CBI l 25.8.93 much after the alleged disclosure statement Ex P 285 allegedly made by accused Paltan ading to the alleged discovery of istol Art. X2 and ammunition including LG cartridges. The defence contention that there was something fishy about Inspector ishra's act of keeping accused altan in police custody till the 25th ugust and that the memorandum m seizure memo Ex P285 was anufactured by Mishra in</p> | <p>Para 78</p> <p>".. Umesh Mishra 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 did not note the same"</p> <p>Para 79</p> <p>"According to Umesh Mishra after the above information was divulged by the accused Paltan, he (Mishra) accompanied by Dinesh Baloni (PW 104), witness Ram Bahadur and police staff left for village Nibahi at about 12.30 in a Govt. Jeep UMB 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 asked to the 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 Farooq Mirza Beg, and after explaining him the reason, they took him with them. It is an admitted fact that Farooq Mirza Beg is a bonafide resident of village Nibahi. On behalf of the accused persons, it has been stated that there were some civil disputes between Farooq Mirza Beg and accused Paltan's father."</p> <p>Para 80</p> <p>"According to Umesh Mishra, while walking ahead the accused Paltan 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</p> | <p>complete only when the pistol was recovered by the police."</p> <p>Yet another related contention to this is that PW 125 had no jurisdiction to effect recoveries in Nibahi because it is beyond the jurisdiction of his police station. A perusal of Sec. 156 CrPC sets at rest this controversy. No proceeding of a police officer shall be called into question on the ground that he was not empowered to investigate.</p> |

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| <p>mplicity with CBI cannot be said to be groundless.”</p> <p>Para 74</p> <p>The document Ex P 285 has also been subjected to very severe criticism. It runs into 5 pages of fool-size. It purports to be a record of what accused Paltan Mallah stated before Inspector Mishra and witnesses including Dinesh Baloni (PW 104) and proceeds on to the record that the party went to village Nibahi, recording all details of Paltan taking them to his father's house and eventual recovery of guns and ammunition near the northern wall of the room. It was argued on behalf of the accused that this document was prepared at one sitting at the Engineering College Hostel, Gorakhpur itself and this accused neither gave any information about these articles nor did he take them to his father's house or recovered any guns or cartridges. We carefully examined this document Ex P 285 and we found ourselves in agreement with the defence contention that the entire document must have been prepared at one sitting. The explanation of Inspector Mishra that he had written this document upto "Sadhe Barah Baje Din Ravana loker" and leaving the sentence incomplete, went to village Nibahi and there after obtained the signature of witnesses and the accused the entire proceeding concluding at 4.45 pm having commenced at 0.30 am is not found acceptable. We have not been shown any rules in UP Police Regulations or any other instructions that the memorandum and seizure should be recorded in one single document in</p> | <p>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 LG cartridges and six other .38 bore cartridges from the bag. The witness noted down the description of all the articles in the 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 Pard on the spot it was read out 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 In the seizure memo Dinesh Baloni (PW 104) has signed in portion A to A. Witness Ram Bahadur, Mirza Farooq Beg and accused Paltan have signed in respectively. Staff of the police department who had accompanied them has also put up their signatures.”</p> <p>Para 82</p> <p>“Umesh Mishra has further stated that after completing the aforesaid procedure, he left for village Chainpur, Belsadi, PS 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 to the house of Satya Prakash (PW 105) where he had hidden a TVS Suzuki Motorcycle. The accused walked ahead and the rest followed. On reaching the house of Satya Prakash (PW 105) they stopped. The accused showed a red coloured</p> | |

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| <p>in the form of a continuous narrative has been done in this case."</p> | <p>motorcycle which had been kept in a room on the western side of the house. There was no air in both wheels of the motorcycle and it was covered with dust. With the help of the Staff the motorcycle was taken out. There was no number plate on the motorcycle and the engine and chassis numbers had been erased. There was no petrol in the tank. He seized the motorcycle in the presence of witnesses and obtained their signatures. He also took the signature of the accused Paltan Mallah and gave a copy to him. Ex P 287 is the Pard wherein his signatures appear in portion E to E. He has mentioned the timing under the signature as 18.15. Signatures of Dinesh Baloni (PW 1040), Ram Bihari Singh, Satya Prakash(PW 105) and Paltan have been affixed .."</p> | |
| <p>Para 75 This document Ex P 285 shows that the statement of accused was taken in the presence of two witnesses, Ram Bihari Singh and Dinesh Baloni. Out of them only Dinesh Baloni (PW 104) was examined. He is an employee of Gorakhpur Engineering College with his residence in the campus. Gorakhpur Engineering College is 8 Kms away from Police Station Cantonment and village Nibahi was 40-45 kms away. And these two witnesses accompanied the police to village Nibahi where the alleged seizure was made. The police had called Mirza Farooq Beg from the neighbouring field also. But for some unexplained reason Mirza Farooq Beg was given up by the prosecution although he appeared before the trial court on 31.1.96. And Dinesh Baloni admitted in cross examination that he was on friendly terms with Inspector Umesh Mishra."</p> | <p>Para 83 "After completing the above procedure Umesh Mishra returned to the Police Station with the seized articles, accused and witnesses and put the procedure in writing. It was 8 pm when they reached Police Station Gorakhpur Cantt."</p> | |
| <p>Para 76 "It may also be noted that reading paras 13 and 22 of the statement of Dinesh Baloni (PW 104) shows that the alleged recovery was made from the southern corner of the verandah. But contrary to this, document Ex P 285 records that the arms and ammunition were recovered near the northern wall of the room. This is, by no means, an insignificant discrepancy.</p> | <p>Para 85 "The prevalent practice in MP Police is that u/s 27 of the Evidence Act the memo statement of the accused and the seizure memo are written separately, but from the statement of Umesh Mishra it appears that in UP 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 more with convenience and practice. .. Thus the procedure adopted by the police of UP in writing memo statement and</p> | |
| <p>Para 77 "It is also a queer coincidence that a "Khurpi" was readily available at the same spot for digging out the concealed gun and cartridges."</p> | | |

Para 78

It is the prosecution case that Paltan fled from one place to another and also went to Nepal to escape apprehension. We find it very strange that in this interval of nearly two years while he was a fugitive from law, he could not get hold of the weapon allegedly used by him for committing this crime. We find it rather unusual that he would carry the crime weapon with him hundreds of kilometres away to his maternal home and there bury it in an open verandah and also place a Khurpi over it for promptly digging up when the police party arrives."

seizure memo is not against any rule."

Para 86

"Umesh Mishra has in para 11 of his cross examination stated that when on 22.8.93 he had applied for remand of Paltan Mallah at a court in Gorakhpur, Ashok Tadiyal and Sudama Prasad of the CBI had come, but in further cross examination he has emphatically said that being a police officer it was his bounden duty to interrogate accused Paltan and prompted by the urge of duty, he had interrogated accused Paltan."

When Paltan Mallah was arrested he was in possession of illicit arms. After the murder of Niyogi he would have definitely escaped armed. The prosecution story, in fact, is completely consistent. Immediately after the incident Paltan fled to Nibahi where he was purchasing bricks. However by 14.10.91, the Bhilai police were already at Nibahi where he gave them the slip. At this juncture he must have buried the crime weapon. With the wide publicity subsequently given to his capture by CBI it is not surprising that he may have never been able to return to Nibahi until his arrest in 1993

Para 87

"Counsel for defence has pleaded that when a crime was already registered with the CBI, it was expected of Umesh Mishra that instead of taking the memo statement of the accused Paltan u/s 27 of the Evidence Act, he ought to have handed him over to the CBI. The question here is whether the recording of memo statement of accused Paltan Mallah u/s 27 of the Evidence Act is contrary to the law?"

Para 88-89

".. The Hon'ble High Court, Madras has in the case of Inery Kamakshi Naidu 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 evidence is admissible U/S 27 of Indian Evidence Act. Similarly the Hon'ble High Court of Madras has in another case Public Prosecutor Vs Kandikatala Nagabhushanam laid down that if during investigation the accused makes confession in some other case, such confession is relevant u/s 27 of Evidence Act. It is

Para 79

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

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| | <p>the procedure adopted by Incharge PS Gorakhpur Cantt. Umesh Chandra Mishra (PW 125) in respect of recording the memo statement of accused Paltan Mallah and the seizure procedure is completely legal."</p> <p>Para 90 "The learned defence counsel Shri Rajendra Singh has argued that in Ex P 285 & 286 Umesh Mishra has written the whole prosecution story 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, 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 the duty of the police officer 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 the Evidence Act and which is inadmissible. Thus Ex P 285 & 286 prepared by Umesh Chandra Mishra (PW 125) cannot be said to be fictitious."</p> <p>Para 92 "It is worth mentioning here that accused Paltan Mallah has not cross examined Incharge PS Gorakhpur Cantt. Umesh Mishra (PW 125). The cross examination of the said police official done by other accused persons too does not reveal any fact to show that he was lying..."</p> <p>Para 93 "Dinesh Baloni (PW 104) is a witness to the memo statement of the accused and the seizure proceedings thereafter (Ex P 285 & 286). He</p> | |

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| | <p>imparts practical training to 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 PS is calling him. Before going to the police station he sought permission from his incharge. He reached the police station at about 10 am. Ram Bihari and accused Paltan Mallah were present there. Incharge Umesh Mishra told him that this was accused Paltan Mallah who is a criminal of Niyogi murder case and he desires to give some statement."</p> <p>Para 95</p> <p>"In his statement Dinesh Baloni has told in detail that they, along with accused Paltan Mallah, first went to village Nibahi in two jeeps. At village Nibahi the accused Paltan had dug a hole in a room in 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 able to do the digging work. When he asked the police to open the handcuffs of one hand, the police opened it... Police recorded the seizure on the spot. Accused Paltan Mallah and the witnesses signed at the same time."</p> <p>Para 97</p> <p>"Dinesh Baloni (PW 104) has further stated that after the above proceedings were finished they along with accused Paltan went to village Chainpur. The distance between village Nibahi and Chainpur could be about 30-40 km. They reached Chainpur at about 5 - 5.15 pm. .. The accused Paltan showed the room of Satya Prakash's house where the motorcycle was kept. That room was closed but the witness could not tell whether the room was locked or not</p> | |

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| | <p>He definitely said that the room was opened. A red coloured Suzuki motorcycle was kept in that room on which there was a lot of dust. ..."</p> <p>Para 98 "The statement of Dinesh Baloni (PW 104) has been challenged mainly on the ground that when he came from UP he stayed with his friend a CBI Inspector Ashok Tadiyal at Bhilai. But the Court has to evaluate the statement of a witness on merits not on any technical or irrelevant grounds. Had not Dinesh Baloni 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."</p> <p>Para 100 ".. From the statement of Satyaprakash (PW 105), that of Dinesh Baloni (PW 104) and of the Incharge of the 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 were seized and from the house of Satya Prakash (PW 105) at Chainpur, a red coloured Suzuki motorcycle without number was seized whose chassis and engine numbers had been rubbed off."</p> | |

Report of the Ballistic Expert

Para 80

'Since the recovery of country made pistol Art X2 becomes doubtful, the opinion of the Ballistics

Para 109

"Roop Singh (PW 159) after detailed laboratory tests, test-fire, microscopic examination and comparison has submitted the report Ex P 399 which is as follows.

Para 56

In the case of Ramanathan Vs State of Tamilnadu, during the discussion at paras 23-26 the Supreme Court quoted authors including Hatcher to show that photographic examination

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| <p>Expert Roop Singh (PW 159) that 3 pellets recovered from the body of Niyogi were fired from this country made pistol loses significance."</p> | <ol style="list-style-type: none"> 1. The three lead pellets marked as P1 to P3 must have come from firing of 12 bore LG cartridges. 2. These three lead pellets have been fired by 12 bore countrymade pistol marked as W1." | <p>of firearms is inferior to visual examination by comparison microscopes.</p> |
| <p>Para 81</p> <p>The learned counsel for this accused challenged the correctness of the report Ex P 399 given by Roop Singh (PW 159) on the ground that the report does not contain the details leading to this conclusion. The worksheet Ex P 399A specifically refers to microscopic examination and photographic details given in photographs Ex P400 Ex P401 and Ex P402. These are composite photomicrographs of the 3 crime pellets and the test slugs. But the photographs Ex P400 to Ex P402 do not support this opinion. Shri Roop Singh himself admitted the points of difference in his cross examination."</p> | <p>Para 110</p> <p>"Roop Singh (PW 159) has stated that his report in Ex P398 and 399 has been prepared on the basis of microscopic examination and comparison. He has certainly taken the photographs of crime pellets Ex P1 to P3 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."</p> | <p>Para 57</p> <p>Regarding the contention that no reasons have been given it may be relevant to note that u/s 293 CrPC there is no necessity for the expert to come and depose unless the court requires him to do so. To that extent the rigour of Sec. 51 does not operate to documents covered by Sec. 293. Even u/s 51 Evidence Act grounds can be disclosed in chief examination or cross examination. In the present case PW 159, Roop Singh, has himself been examined and cross examined in detail. In any case, PW 159 has provided the details of the test conducted and the work sheets on the basis of which the report was prepared. Under these circumstances the argument that reasons have not been given with the report is untenable and cannot in any manner affect the report given by the ballistics expert. Even in Administrative Law where reasons are furnished to the court for passing a non-speaking order the court may not set at nought such order. It is submitted that such hypertechnical arguments cannot be pleaded as the basis for diminishing the value of prosecution evidence in any manner.</p> |
| <p>Para 82</p> <p>The learned counsel for the CBI referred to <u>Ramnath's case</u>, in support of his contention that the court would not be justified in rejecting the opinion of the expert given on the basis of comparison microscope. We have gone through this judgement and find that in that particular case, no photographs were taken by the Expert who had examined the marks under the comparison microscope. But in the instant case photographs were taken by the expert. We are not satisfied from these photographs that the striation marks on the crime pellets and the test slugs matched or tallied."</p> | <p>Para 113</p> <p>"Roop Singh (PW 159) has deposed that he is MSc In Mathematics. He has undergone training in firearms at the Police Training College, Pillore (Punjab). In 1970 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. The witness has about 35 years experience in examination of firearms and has given evidence in the court in hundreds of cases. At present he is Senior Scientific Officer, Grade I and Head of the Ballistics Department in the Central Forensic Laboratory. Thus on the basis of high educational qualifications and sufficiently long experience, it can be said with certainty that Roop Singh (PW 159) is an expert witness."</p> | |

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| | <p>Para 117 "Roop Singh has made a comparative picture in Ex P399 of the microscopic examination of crime pellets P1 to P3 and the 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. 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."</p> | |
| | <p>Para 119 "RS Prasad (PW 192) has in para 62 of his statement said that the 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 (PW 159) has given a wrong report under the influence of CBI."</p> | |
| | <p>Para 120 "Hon'ble Supreme Court has, in the matter of <u>Kalua Vs State of Uttar Pradesh</u>, 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 <u>Birpal Singh Vs State of Uttar Pradesh</u>, the Hon'ble 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."</p> | |
| | <p>Para 121 "In this case there was a lengthy cross examination of ballistic expert Roop Singh (PW 159) but no such evidence</p> | |

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| | <p>report could be rejected. Thus the statement of Roop Singh (PW 159) is fully reliable that crime pellets Ex P1,2 and 3 are the same pellets which were fired by the country made pistol which was seized on the basis of the memo statement of the accused Paltan Mallah.'</p> | |
| <p>Extra Judicial confessions of Paltan Mallah</p> <p>Para 93 'Satya Prakash was not a close relative of Paltan. He was also much younger to him in age. The trial court recorded his age to be 19 years when he was examined as a witness in the year 1996 more than 4 years after the alleged confession. Satya Prakash was not holding any influential position and was the youngest of the 3 brothers. He had failed in BA Final Examination and in para 42 of his statement he has called himself an educated unemployed. We find it extremely unlikely that Paltan could choose such a person to make a confession to."</p> <p>Para 94 Satya Prakash has given a detailed statement before the trial court wherein he deposed that accused Paltan had come to meet him in age Chainpur <u>in the first week of October 1991</u> and that in the <u>last week of November 1991</u>, Paltan met with an accident at a place 3-km from Chainpur and stayed in the house of Sriram Dubey for nearly one and a half months. It is also stated that Paltan is said to have told Satya Prakash about his committing murder of Niyogi at Bhilai, implicating Gyan Prakash.</p> | <p>Para 137 "Satya Prakash's (PW 105) elder brother Omprakash is married to the cousin sister Kumari Bai of accused Paltan Mallah. Satya Prakash 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 Nibahi and that of the witness - 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 the accused Paltan had come on red coloured Suzuki motorcycle and after staying for a day or two had returned."</p> <p>Para 138 " Satya Prakash further states that in the last week of November 91 a few children came to him and told him that on Saonkhor crossing, 3-4 kms from Chainpur, one of his relatives has met with an accident. On this information he went to Saonkhor Crossing and found that accused Paltan had fallen and his motorcycle had also fallen. He brought the accused Paltan and his motorcycle to Badhalganj town. As the accused had received an injury he got him treated by Dr 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</p> | |

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| <p>Moolchand, Naveen Shah and Chandrakant Shah too. This brings the said confession to the last week of December if not later. And it was then that Satya Prakash took Paltan to his brother in law Sheshnath at Dohariya Bazar, District Gorakhpur and left him there with a request to send him to Nepal. But these dates do not tally with those given by him in his statement to the CBI in Ex D 41. To the CBI he had said it was in the <u>last week of October 1991</u> that Paltan had come to meet him at Chainpur. And that it was in the <u>beginning of November 1991</u> that Paltan had met with an accident at Badhalganj. He denied having made this statement to the CBI. This witness has given a confused statement about the time when Paltan had met him at Chainpur and the period he had stayed at Badhalganj, and also the time when he left Badhalganj"</p> <p>Para 95 Shriram Dubey of Badhalganj has not been examined. One wonders why Satya Prakash left this relative of his in an injured condition at Badhalganj and did not take him to his own house at Chainpur. Had he really been close to him, he would not have left Paltan alone at Badhalganj"</p> <p>Para 97 We also find it unworthy of credit that accused Paltan would give Satya Prakash all the details about whom he had killed, at what time and with what weapon, and also would name all his accomplices too. What is more surprising is that Satya Prakash who is a resident of District Gorakhpur in UP having nothing to do with the persons</p> | <p>complaining of pain in his stomach, his X Ray was also taken. Since there was a possibility that the treatment would take about a month, accused Paltan started living in the house of Shriram Dubey. After leaving the accused at Badhalganj, he returned to his village Chainpur and sometimes he used to go to Badhalganj to meet the accused.."</p> <p>Para 139 "Satya Prakash has stated that when one day he had gone to Badhalganj, 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. When the witness inquired why, the accused took him to a secluded place and told him that 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, Naveen 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 stay at Badhalganj. The accused expressed the desire to go to his (Satya Prakash's) father-in-law's place at Azamgarh. Before telling these things the accused had on some day left the motorcycle at his house."</p> <p>Para 140 " According to Satya Prakash, he and the accused reached Azamgarh by bus from Badhalganj. There the accused got a little upset and said that he will not live at the witnesses father-in-law's house. He asked him to meet him next morning at the Azamgarh bus stand. The witness stayed at his father-in-law's</p> | |

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| <p>med Niyogi of Bhilai, or Gyan Prakash, Moolchand, Naveen Shah and Chandrakant Shah, could remember that it were they who were named by Paltan. He also remembered other details narrated by Paltan that he had murdered Shankar Guha Niyogi of Bhilai while he was asleep at night by firing a country made pistol and that Gyan Prakash Mishra, Moolchand, Naveen Shah and Chandrakant Shah had associated with him. The questions put to him in para 43 show that Satya Prakash does not have a particularly sharp memory. He could not remember any of the dates when he had met Paltan in October and November 1991. He could not recollect the date on which he learnt about the automobile accident in which Paltan was injured. He did not remember the date on which he took Paltan to his brother-in-law Keshnath. He did not remember the date on which he returned from the house of Keshnath. And yet he remembered the names of the accomplices of the accused Paltan in the murder of Niyogi. Satya Prakash admitted that Gyan Prakash, Moolchand, Naveen Shah and Chandrakant Shah were not known to him before and he had heard their names for the first time when Paltan made his confession. He did not note down their names anywhere. And he could not remember their names and could reproduce them to the CBI nearly two years later. He does not think Satya Prakash is capable of such an unusual feat of memory."</p> | <p>house. When he came to the bus stand the next day, the accused told him that in the night there was news on the TV that CBI has declared a reward of one lakh for arrestion him. The accused started insisting that he would not live in India and wants to go to Nepal. When the accused started saying that he should tell him some means of going to Nepal the witness said he would take him to his brother-in-law Keshnath at Dohariya Bazar."</p> <p>Para 141</p> <p>"Satya Prakash further states that he brought the accused to Dohariya Bazar. At that time only his sister was in the house and his brother-in-law Keshnath returned home at about 8 pm. The witness introduced Paltan Mallah to his brother-in-law but in the night there was no special talk."</p> <p>Para 142</p> <p>"..The next day Satya Prakash's brother-in-law asked them why they had come, the accused Paltan repeating the same thing said that at Bhilai he has murdered Niyogi.. He also said that the CBI and police are chasing him and therefore he wants to go to Nepal. The accused started asking Keshnath some means of going to Nepal. Satya Prakash's brother-in-law said that he cannot hide him, despite this Paltan kept on requesting that though he may not hide him, but somehow or the other he should leave him at Nepal."</p> <p>Para 143</p> <p>"Satya Prakash has stated that in the morning the accused Paltan came to the crossing of Dohariya Bazar all alone. They followed him. The accused Paltan called him aside and</p> | |

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| <p>Para 98</p> <p>'Confessions are usually made when an offender suffers from qualms of conscience and repents his action. Sometimes he confesses to a person in the hope that that person would help him out of the difficult situation. But in this case these circumstances and considerations were totally absent. Accused Paltan is not said to have confessed out of remorse. Nor was it necessary for him to make a clean breast of it to Satya Prakash for making good his escape to Nepal. Satya Prakash himself admitted that if Paltan had only told him what he wanted to go to Nepal without confessing to murder, he would have still helped him out. He could not give any reason why Paltan took him into confidence and volunteered the information that he had committed the murder, giving all the details .. Satya Prakash does not say that he had read in the newspapers or had learnt from the TV news that Paltan was a wanted criminal.'</p> | <p>said whatever he has told must not be told to anyone else or 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 at his brother-in-law's place and himself left for his home Chainpur by bus."</p> | <p>Para 75</p> <p>Thus we have two extra judicial oral confessions made by Paltan, one to Satya Prakash (PW 105) and other to Vishamber Sahni (PW124). One of the criticisms levelled against placing reliance on these has been based on the fact that by shielding Paltan they have become accomplices and therefore their testimony is tainted; and further that there was a delay in disclosing the fact that the confessions were made.</p> |
| <p>Para 99</p> <p>For all these reasons we do not consider it safe to rely on the evidence of Satya Prakash on the question of retracted oral extra judicial confession. The criticism levelled against him during the arguments as mentioned in para 34 above does not seem to be without force."</p> | <p>Para 144</p> <p>" Satya Prakash stated that the motorcycle kept by Paltan in his house remained there. On 22nd August 93 there was a big commotion that accused Paltan has been arrested, On 24893 Gorakhpur Police came and seized the motorcycle. The accused Paltan had also come with them,"</p> | <p>Para 76</p> <p>We submit that an extra judicial confession so far as the maker is concerned can be relied upon even if it is not corroborated if the evidence is reliable, trust worthy and beyond reproach. (<u>State of UP Vs M K Anthony</u>)</p> |
| <p>Para 34</p> <p>.. It is also significant to note that Satya Prakash was questioned by the police at the time of recovery of the motorcycle from his house on 18.8.93. But he did not speak about</p> | <p>Para 145</p> <p>" This witness has admitted in cross examination that he did not earlier know Moolchand Shah, Naveen Shah, Chandrakant Shah and Gyan Prakash Mishra, but he has clarified since this was a case of murder, he remembers these names even today. The statement of the witness is not at all unnatural. He also clarified that accused Paltan had said that those persons have given him the money and he had done this work only for money."</p> | <p>Para 77</p> <p>We do submit that delay cannot defeat the ends of justice and therefore delayed communication cannot lead to acquittal in a capital crime. Communication is not one of the ingredients of confession and therefore, as regards the maker, the confession has to be assessed <u>de hors</u> the delay or otherwise of the communication of the confession. Our submission is that if the extra judicial confession has probative value, it cannot be disbelieved or thrown out on the ground that it was not communicated. That would amount to prescribing a limitation to the investigation and trial of Capital Crimes.</p> |
| <p>.. It is also significant to note that Satya Prakash was questioned by the police at the time of recovery of the motorcycle from his house on 18.8.93. But he did not speak about</p> | <p>Para 146</p> <p>"During cross examination this witness has said that the day the police along with accused Paltan had come to his house to seize the motorcycle, at that time he had not informed that the accused Paltan had confessed and had named the other accused also. Here it is pertinent that Incharge Police Station, Gorakhpur was not doing any regular investigation. Therefore there is no question of intermingling and recording the state</p> | |

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| <p>confession made to him. It was later that he spoke about this confession before the CBI at Delhi. The witness admitted that he was arrested in the SP Office at Delhi. It was an offence to harbour a criminal. It is argued that Satya Prakash was forced to make a false statement about this confession of accused Paltan under threat of prosecution by the CBI for harbouring a criminal."</p> | <p>ment of this witness. This witness has further told that on 28th or 29th August 93 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. This witness has described in detail how they reached the office of the CBI by making enquiries, and gave statement before the SP. Thus there appears to be no unnaturalness in the statement of this witness."</p> <p>Para 147</p> <p>" During cross examination this witness had stated that the accused Paltan had come to his house in the first week of October 91 whereas the witness in his statement recorded by the CBI 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."</p> <p>Para 149</p> <p>"Satya Prakash is a close relative of the accused Paltan. On being threatened by the accused it was natural for him to have fear in his mind. .. Under such circumstances if Satya Prakash (PW 105) had not revealed the confession of accused Paltan to anyone for a long time, to reject the statement of this witness merely on this basis would be unjustifiable."</p> <p>Para 151</p> <p>" Before treating the statement of Satya Prakash as reliable or unreliable it is necessary to consider the following circumstances:</p> <ol style="list-style-type: none"> 1. The accused Paltan is his close relative. 2. When accused Paltan had met | |

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| | <p>Crossing, this witness had made arrangements for his stay at Badhalganj.</p> <p>3. This witness got the accused Paltan treated by two doctors.</p> <p>4. This witness used to go to Badhalganj to meet the accused Paltan every 2-4 days.</p> <p>5. Before leaving Badhalganj the accused Paltan had left the red coloured Suzuki motorcycle at the witnesses house."</p> <p>Para 152</p> <p>"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 (PW 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."</p> | |
| <p>Para 100</p> <p>'Vishamber Prasad Sahni (PW 124) is the other witness of confession. He was a total stranger to accused Paltan whom he was meeting for the first time. There was hardly any necessity for him to confess a crime like murder to such a stranger. It is also difficult to believe that this stranger would recollect the names of Gyan Prakash and of Simplex Company as the associates of Paltan in the murder of Shankar Guha Niyogi. It is also difficult to believe that this stranger would recollect the names of Gyan Prakash and of Simplex Company as the associates of Paltan in the murder of Shankar Guha Niyogi. What is more, in his cross examination he insisted that the CBI had approached him within one and a half months of the visit of the accused Paltan and not one and a</p> | <p>Para 157</p> <p>"Vishamber Sahni (PW 124) has studied upto M.A. from Gorakhpur (UP). 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 District Headquarters Navalparasi for departmental meeting. When in the evening he returned 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."</p> <p>Para 158</p> <p>"Vishamber Sahni has further stated that in the morning when he asked these persons why they have come,</p> | |

| High Court Order/Defence arguments | Trial Court Order | Prosecution Argument |
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| <p>f years later. That would take the alleged confession to the year 1993 and not Dec 1991 because, it is on record that the CBI had recorded his statement in September 1993. This contradicts his statement in chief examination that the alleged confession was made to him in December 1991 and also contradicts the story of Gyan Prakash that Paltan had gone to Vishamber Sahni in December 1991."</p> <p>Para 101 The defence are therefore not prepared to contend that any such confession was made by Paltan Mallah "</p> | <p>Keshnath said that accused Paltan is his brother-in-law Satya Prakash's relative. The witness further asked what work is it that you people have come for? Upon this Keshnath clarified that he should keep the accused Paltan at any safe place in Nepal. The curiosity of this witness increased and he asked the accused Paltan why he wanted to live in Nepal. Paltan said many things but finally he told that on the instructions of Simplex Company he had together with Gyan Prakash 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 confirmed that he is the same person who had come to Nepal along with his brother-in-law Keshnath."</p> <p>Para 162 "It is necessary to mention here that the accused Paltan Mallah did not cross examine Vishamber Sahni(PW 124). There is no such important discrepancy in his statement on the basis of which the witness could be treated as unreliable. Therefore Vishamber Sahni is a reliable witness and it is 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."</p> | |
| | | |

Notes

When appreciating evidence and fixing criminal liability in a case like this i.e. one of conspiracy based on circumstantial evidence the following must be taken to account:

Principles governing the legal perspective on conspiracy.

1. There may be many devices and techniques adopted to achieve the common goal of conspiracy: there may also be plurality of means, sometimes even unknown to one another amongst the conspirators. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy, notwithstanding some misfire or overshooting of some of the conspirators.
2. The prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to do the illegal act. The agreement may be proved by necessary implication. Nor actual meeting of two persons is necessary. If the circumstances establish a tacit understanding that is sufficient.
3. It is not open to the accused to take the plea that he should be judged only with regard to the part played by him. The entire agreement must be viewed as a whole.
4. The approach of courts to evaluate and appreciate evidence in a case involving circumstantial evidence is to examine whether the circumstances proved by the prosecution cumulatively form so complete a chain that there is no escape from the conclusion that within all human probability the crime was committed by the accused. It is not open to the defence to break the chain of circumstance and to show that there are various missing links in an effort to claim a benefit of doubt.

"Beyond reasonable doubt"

The presumption of innocence of the accused unless the contrary is proved and the burden in an accusatory system being upon the prosecution to prove guilt of the accused beyond reasonable doubt is a cardinal principle of criminal law. How have the

courts defined "beyond reasonable doubt?" The following case law (HP Administration Vs Om Prakash) lays down the principle:

The line which the defence adopted was to establish that the witnesses referred to above had an interest in implicating the accused or at any rate to create uncertainty and doubt sufficient to give the benefit to the accused. It is not beyond the ken of experienced able and astute lawyers to raise doubts and uncertainties in respect of the prosecution evidence either during trial by cross-examination or by the marshalling of that evidence in the manner in which the emphasis is placed thereon. But what has to be borne in mind is that the penumbra of uncertainty in the evidence before a court is generally due to the nature and quality of that evidence. It may be the witnesses are lying or where they are honest and truthful, they are not certain. It is therefore, difficult to expect a scientific or mathematical exactitude while dealing with such evidence or arriving at a true conclusion. Because of these difficulties corroboration is sought wherever possible and the maxim that the accused should be given the benefit of doubt becomes pivotal in the prosecution of offenders which in other words means that the prosecution must prove its case against an accused beyond reasonable doubt by a sufficiency of credible evidence. The benefit of doubt to which the accused is entitled is reasonable doubt - the conscientiously entertained and not the doubt of timid mind which fights shy-though unwittingly it may be - or is afraid of the logical consequences, if that benefit was not given or as one great Judge said it is "not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism". It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence. If that were so the law would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures, untenable doubts and will result in deflecting the course of justice.

preciation of Evidence:

While the presumption of innocence is, as laid out above, a cardinal principle of criminal law, it is of necessity also if courts are to administer justice-a presumption that relevant and admissible evidence coming before the court whether oral or documentary-in absence of evidence (or evidence of sufficient probative force) to the contrary is to be relied upon. Were this not so, courts would be adjudging cases on the basis of that which occurs outside the courtroom.

In this case the testimonies of expert witnesses (Ballistic Expert Roop Singh and Handwriting Expert SC Talwar) have been relied upon by the Trial Court, while doubt has been expressed by the High Court. Similarly the witness of search and seizure-M Toppo and Anand Baloni have been disbelieved by the Higher Court. The testimonies of police officials of Jamalpur, Patna and Urdu as to the existence of a strike in the printing industry, of Inspector D.P. Singh of Rudrapur as to the pursuit of accused Paltan Mallah, as well as SHO Gorakhpur Cantt. as to recovery of vehicle

and crime weapon from Paltan Mallah have also not been believed. The same is the case with the testimonies of Satya Prakash and Vishamber Sahni as regards extra judicial confession made by Paltan Mallah, or those of arms and ammunition dealers Zakyyuddin and Nuruddin in identifying Paltan Mallah. While it is certainly not the case that the entire testimony of a hostile witness is washed off the record, a hostile witness-meaning in this case a prosecution witness found by the prosecution to have resiled from his/her original statement u/s 161 Cr.P.C. or from the statement made before a Magistrate u/s 164 of Cr.P.C. - is not considered very trustworthy. The High Court in this case has placed reliance on or believed a number of hostile witnesses including Devendra Patni and Jai Narayan Tripathi who have resiled from their statements u/s 164 Cr.C.P. and Reshmi Bai (Companion of Paltan Mallah). The difference in approach outlined in the above section may explain to some extent the divergence in conclusion of the Trial Court and the High Court.

To,
The Director
Central Bureau of Investigation
Special Investigation Cell II
C.G.O. Complex, Block No.3
Lodhi Road, New Delhi

Sir,

Sub: Niyogi Murder-Appeal against Conviction of Referred Trial
Ref: Case RC-9(S)/91-SIU. V/SIC-II

This is to inform you that I have completed the assignment entrusted by you. It was a very interesting experience for a person who has been more or less engaged in breaking conspiracies in political trials for over two to three decades.

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Thanking you once again for giving me the opportunity to argue this unique case. It is unique because no employer was prosecuted for the murder of a Trade Union Leader. This is one of those freaks which this system has produced. Look at the way it all happened. The CBI made out a fairly good case of conspiracy and murder. The trial judge who tried this case was not yet infected by the distortions that have taken root in the system. If he had been, he would have convicted only the hireling. At the Higher levels the Judiciary is not structured to send the affluent and the powerful to jails for life for the murder of a trade union leader or such other leaders of the poor and the oppressed. It has not evolved itself into such a pristinine institution and I donot think there is such a possibility in the near future.

We do hope you will settle the bills early.

With regards.

(K.G. KANNABIRAN)

6TH March 1998

A Martyr's Words ...

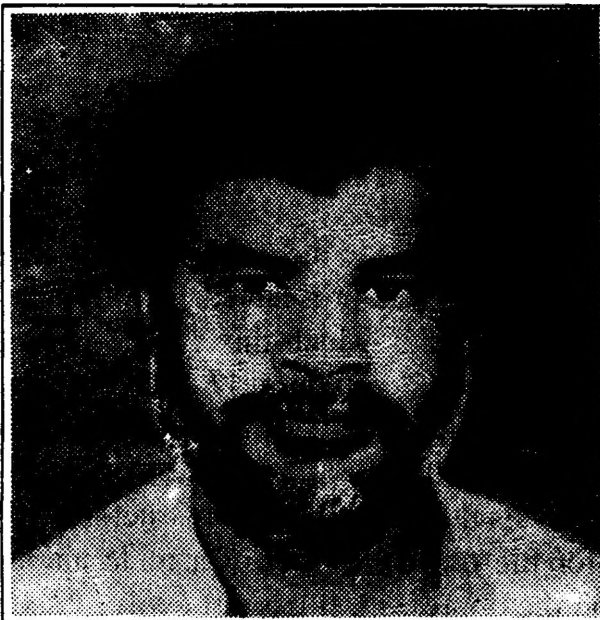
"The way the capitalists of Bhilai are running a regime of untruth and fraud, the way they are pressurising the district administration, the way they are instigating the goondas to fatally attack the supporters of the union and union leaders, it is becoming clear that in the near future some such wrong action would be organised there by, to shatter, to finish it last attempt through a brutal attack on the worker's 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 these 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 establish 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, especially 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 untoward incident here. Kedia is a very cunning man. Because of this, it is my belief that Moolchand and Kedia these two persons only, who to



day 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 tape recorded, my sentiments because perhaps very soon something is going to happen. Therefore this record would help my comrades to understand all the things".

Relevant part of the statement recorded in the micro - cassette by Com. Shanker Guha Niyogi before his death. (Translated into English).