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Introduction

On December 24, 2010, Dr Binayak Sen, President, PUCL, Chhattisgarh state unit and Vice President, PUCL (National) was convicted of sedition for helping the Maoists and sentenced to life imprisonment by a sessions court in Raipur. In the pre-Independence days, many nationalist leaders and freedom fighters were convicted of sedition by the British - the illustrious list included Gandhi among others – under the same Act that has now been applied to Dr Sen. This is not a mere coincidence.

Before 1947, the imperialist government of Britain subordinated India's economic and political interests to its own interests. Similarly, in 2010, in the state of Chhattisgarh and elsewhere, the ruling elite and governments of Independent India are busy subordinating the interests and rights of people to the demands of mega corporations. Then, as now, to raise one's voice against such exploitation is to incur the wrath of the people in power and to risk harsh punishment at their hands.

Dr Binayak Sen routinely and repeatedly committed the 'crime' of exposing the collusion between the state government, bureaucrats and the police and the powerful industrialists in the resource-rich state, in exploiting the tribal population of the state in the guise of 'Salwa Judum', termed as a 'people's spontaneous movement' against Maoist terror, by the state government ! He exposed how the sole objective of the state-sponsored 'Salwa Judum' was to uproot the tribal population from their villages so that their land could be handed over to industrialists for a pittance. That is how Dr Sen, till then a member of the advisory committee of the state's health ministry for his pioneering role in developing a model for its rural health mission, became an enemy of the state government in Chhattisgarh . That enmity first led to his arrest in 2007 for 'helping' the Maoists and has now culminated in his conviction by the Sessions Court on the charge of sedition!

But Dr Binayak Sen is in august company. The well-known writer Arundhati Roy, social scientist, Dr Ashish Nandy and many lesser known activists have been charged with sedition in recent years. In a growth-obsessed economy, as the clash between the needs of domestic and foreign investors and the livelihoods, needs and rights of the people escalates, the state machinery has begun to increasingly view dissent itself as an 'obstacle' to growth.

The Committee for the Release of Binayak Sen, Mumbai, decided to publish this booklet to put together the context, the actual case filed against Dr Sen and others, the judgment of the Sessions Court of Raipur and its critical appraisal, as also a glimpse of how Dr Sen is viewed by others for his commitment. We think it is important to place Binayak Sen's conviction in this larger framework so that others in the democratic rights movement may learn about the risks and rewards that await them even as they commit themselves to people's rights and their numerous struggles.

“We are all seditious.”

PM Bhargava

Pushpa Mitra Bhargava, Padma Bhushan awardee, well known scientist and founder of Center for Cellular and Molecular Biology spoke at the Free Binayak Sen campaign meeting in Hyderabad on Thursday, December 30, 2010. The note is reconstructed from memory, and is the gist of a 15-minute speech which was attended by an activist.

"I was an adult when India became independent. I have personally met Gandhiji. We had a dream at the time of Independence. In the last 63 years, we have done many things. We have produced some of the world's greatest scientists. We have also produced some of the worst forms of ignorance. We have ended zamindari system. But we have also produced the land mafia.

Until last week I think I could have said that I still had that dream that I received at the time of Independence. But last week, the day after Binayak Sen was sentenced to a life term, when I read the newspapers my dream lay shattered. I am no lawyer. But I could tell from what I read that day and from what I have seen of Dr. Binayak Sen personally, as a man of exemplary humility, I am convinced that something went terribly wrong that day in Raipur.

But that is not the reason for my dream being shattered. It is that even as every single newspaper carried critical editorials on that matter, I had not seen even one single government pronouncement. I am willing to grant that government leaders may have constraints on their freedom to express opinions. But what about the ruling party? Why is it that no one in the ruling party has said a word about the judgement till now ?

That was when I felt that India is not independent.

We have fought two Independence Wars. The first War of Independence we lost. Then we thought we won the Second War of Independence. But that is now looking dubious. If we are independent then why is Binayak Sen in jail ? So, I think it is time for the third Independence War.

I can say this without hesitation: If I have to choose sides between Salwa Judum and Left-wing extremism, I will choose Left-wing extremism without any hesitation. It is wrong. It is wrong to put Binayak Sen in jail for saying that it is wrong.

If saying this is sedition, then so be it. We are all seditious. We have no choice in this matter. "

Dr Binayak Sen speaks

Final Statement of Binayak Sen in court

I am a trained medical doctor with a specialization in child health. I completed my MBBS from the Christian Medical College, Vellore in 1972, and completed studies leading to the award of the degree of MD (Paediatrics) of the Madras University, from the same institution in 1976. After this, I joined the faculty of the Centre for Social Medicine and Community Health at the Jawaharlal Nehru University in New Delhi and worked there for two years, before leaving to join a field based health programme at the Friends Rural Centre, Rasulia in Hoshangabad, MP. During the two years I worked there, I worked intensively in the diagnosis and treatment of Tuberculosis and understood many of the social and economic causes of disease. I was also strongly influenced by the work of Marjorie Sykes, the biographer of Mahatma Gandhi, who lived at the Rasulia centre at that time

I came to Chhattisgarh in 1981 and worked upto 1987 at Dalli Rajhara (district Durg), where, along with the late Shri Shankar Guha Niyogi and the workers of the Chhattisgarh Mines Shramik Sangh, I helped to establish the Shaheed Hospital, that continues to practice low cost and rational medicine for the adivasis and working people of the surrounding areas upto the present. After leaving Dalli Rajhara, I worked to develop a health programme among the Adivasi population in and around village Bagrumnala, which today is in Dhamtari district. This work depended on a large group of village based health workers who were trained and guided by me. When the new state of Chhattisgarh was formed, I was appointed a member of the advisory group on Health Care Sector reforms, and helped to develop the Mitanin programme, which in turn, became the role model for the ASHA of the National Rural Health Mission. A copy of the Order of the Department of Health and Family Welfare of the Govt. of Chhattisgarh regarding my nomination to the advisory group mentioned above is attached.

My work in the area of community health, as well as my work on Human Rights which is detailed below, has been nationally and internationally recognized. I have been awarded the Paul Harrison Award by the CMC Vellore in 2004; the RR Keithan Gold medal by the Indian Academy of Social Sciences in 2007; and have received the Jonathan Mann award for Health and Human rights from the Global Health Council in 2008. I am attaching notarized copies of the citations of these awards with this statement, and am carrying the originals for the perusal of the court.

I have been a member of the Peoples' Union for Civil Liberties (PUCL) since 1981. The PUCL is an organization devoted to the preservation of constitutional civil liberties and human rights that was founded by the late Shri Jayprakash Narayan during the years of the Emergency. In Chhattisgarh, as well as in many other parts of the country, the PUCL led the campaign for the preservation of the freedom of speech, prevention of custodial violence, and for the public accountability of the police. I became General Secretary of the Chhattisgarh unit of the PUCL in 2004, and am currently the President of the State unit, and Vice President of its National body.

In Chhattisgarh, the PUCL has been in the forefront of exposing the atrocities of the police. Atrocities by men in uniform against vulnerable sections continue to be a serious problem in the state, as the front page news item in the "Sunday Times" dated 12th September 2010, annexed hereto shows. In this situation PUCL's efforts were always directed towards the establishment of good governance and constitutional values. PUCL findings and investigations were always made available in the public domain through press releases and its own publications. One such Press Release reporting investigation into police atrocities in Village Jiramtarai, Thana Koylibeda is annexed hereto. The report of one such investigation pertaining to police atrocities in Katgaon (Kanker district) was published in the "Navbharat" and "Deshbandhu" newspapers which are annexed hereto. A PUCL publication on the State of Human Rights in Chhattisgarh is appended to this statement. In this connection PUCL regularly corresponded with the National and State Human Rights Commissions. Copies of some of the letters sent to the PUCL by the National Human Rights Commission (collectively) and the State Human Rights Commission are attached to this statement. Apart from investigating and documenting

many cases of Human Rights abuse involving the police, the PUCL has acted as a whistleblower in the matter of exposing the true nature of the Salwa Judum. The Salwa Judum, which began in the Dantewada district in 2005, has been represented by the state government as a spontaneous peoples' movement against the Maoists active in the area. However, an investigation led by the PUCL and involving several other Human Rights organizations revealed that it was in reality a state sponsored and state funded as well as completely unaccountable vigilante force, to which arms were provided by the government. The activities of the Salwa Judum have led to the emptying of more than 600 villages, and the forced displacement of over 60,000 people. Concerns regarding the activities of the Salwa Judum have been expressed by several independent organizations including the National Human Rights Commission. International organizations like the UNICEF have also voiced serious concern and have invited me to dialogue with them about the restoration of normalcy in the region affected by Salwa Judum. The Hon'ble Supreme Court has also, on several occasions, expressed its grave concern over the activities of the Salwa Judum and the deployment of armed vigilantes for the promotion of state policy. This has been widely reported in the press. A Table with an indicative list of agencies that have made critical observations on the Salwa Judum is attached. A copy of the report on the Salwa Judum by the Chhattisgarh PUCL and other organizations, and copies of the investigation reports on the Salwa Judum brought out by the Independent Citizens Initiative and Asian Centre for Human Rights are being filed along with this statement. An invitation from the UNICEF, Chhattisgarh Regional Office to participate in a dialogue to seek a resolution to the crisis in Dantewada as a fallout of the Salwa Judum is similarly attached to my statement. Press reports in the Hitavada, dated 23.10.2010 pertaining to the Hon. Supreme Court's critical observations are attached, as are Certified copies of Supreme Court orders that make critical observations on the Salwa Judum.

The PUCL has also, during 2006, organized two major conventions, opposing the proposal to enact the Chhattisgarh Special Public Security Act, because it has been, and continues to be, our view that this Act contravenes the civil liberties assured to us in the constitution. I have expressed these views in the Press as well, and am attaching with this submission a copy of newspaper carrying a press report of such a convention, as well as a copy of the newspaper "Chhattisgarh" dated 30th March 2006 in which my interview appears in this regard. A Civil Writ Petition (Writ Petition No 2163/2009) challenging the vires of the Chhattisgarh Special Public Security Act has been filed by the PUCL in the Chhattisgarh High Court. Certified copies of the Court orders admitting this petition and issuing notice are being filed along with this statement.

For all the reasons mentioned above, the Chhattisgarh police and the state government have harboured a grudge against me, and the then DGP of Chhattisgarh, Mr OP Rathore, has gone on record threatening to take action against the PUCL and its office bearers. Copies of a newspaper of 3rd January 2006 carrying a report to this effect are attached to my statement. I have been concerned with the rights of prisoners in my capacity as a Human Rights worker and was approached by the family of Mr Narayan Sanyal to look after his health and well being after he was brought to Raipur jail in 2006. My first visit to him in jail was in the company of his family and lawyer. Subsequently, I obtained permission from the police authorities for visiting him in jail, and visited him several times, each time applying to do so in my capacity as a PUCL office bearer. After my visits, I informed his family members about his condition over the telephone. During the course of these visits, it was brought to my notice that the surgery on his hands that was necessary for medical purposes, was being delayed due to communication problems between the jail and the doctors in the Raipur Medical College. I played a role in facilitating his surgery and kept his family informed about the process. During this period there was considerable correspondence between the prisoner's family, jail administration and medical authorities, of which copies were marked to me. I attach along with this statement copies of the letter written by Mr Radha Madhav Sanyal (brother of Narayan Sanyal) to the Jail Superintendent with a copy to me; copies of my applications to visit Mr Narayan Sanyal in jail which were obtained through an application under the RTI; copy of the written permission given to me

by Shri BS Maravi, Senior Superintendent of Police, Raipur and copies of the correspondence from the Jail authorities to the medical doctors mentioned above with copies marked to me.

It was with similar concern for the situation of prisoners that I acted upon the letter received in the post from one Madanlal Barkhade about prison conditions in the Raipur Central Jail. I released his letter to the press in Raipur and attach the newspaper in which the aforesaid letter was published. The documents seized from my house during the house search on 19.5.2007 were those of concern to me in the ordinary and transparent conduct of my work. Human rights organizations from all over the country used to send me books, pamphlets and documents, and there were thousands of these lying in my residence, which I also used as my office. None of the seized documents had been secretly or clandestinely obtained. Document No. A 19 was sent to me by post by Shri Govindan Kutty, Editor, Peoples' March. Document no A 20, purported to be written by Madanlal Barkhade was similarly received by me in the regular post. The document A 21 was sent to me by Dr Kalpana Kannabiran, one of the authors of the article, then Professor at the National Law School Hyderabad, by e-mail. Article A 22, photocopy of a hand written document, and Articles A 23 and A 36 were available for distribution at a seminar on the Salwa Judum organized by the Nelson Mandela Centre for Peace and Conflict Resolution, Jamia Milia Islamia, New Delhi in January, 2007, to which I was invited, and were picked up by me there. Article A 24 was received by me in the post. Newspaper clippings A 25 to A 35 are newspaper clippings that I had maintained in furtherance of my interest in the emerging situation in Chhattisgarh.

Several policemen in the search party were involved in the process of the search at my house. Having found a document, the person finding it would hand it over to Mr Rajput. Mr Rajput would first read it, and then hand it over to me for my signature. He would also sign it himself. After we had both put our signatures on the document, he would dictate to TI Jagrit what was to be written in the seizure memo. Mr Jagrit would then make the entry, following which Mr Rajput would then hand over the document to Mr Jagrit. In this manner, each document was seized, signed, and entered in the seizure memo. None of the documents were signed by the public witnesses in my presence. Nor were the documents sealed in my presence. At the end of the search process the documents were carried away in a paper bag in an unsealed condition. Document A37 was never received by me to sign. It was not in my office, and was not seized during the search. It was fabricated after the search by the police to implicate me falsely. When the challan in my case was filed, my advocate, Mr Amit Banerjee was present in court and received the chargesheet on my behalf. A copy of the chargesheet is annexed hereto. Upon going through the charegesheet, we noticed that in the copies of articles A 19 to A 24, the signatures of the panch witnesses were not present in the documents. Copies of articles A 25 to A 37 were not supplied to us at the time. Despite a court order, the contents of the computer were copied onto DVDs without the presence of my advocate, and only DVDs of selected material from the computer were supplied later during the course of the trial. Out of the DVDs supplied, three relate to investigation of police atrocities / fake encounters in Golapally, Jiramtarai and Katgaon. My images on these tapes are in conversation with the villagers who are affected by these atrocities. I have never seen Deepak Chaubey (PW7) until the time he testified in the court. I did not introduce Narayan Sanyal to him and his story that Narayan Sanyal was arrested from his house is patently untrue as, in fact, Sanyal was arrested in Bhadrachalam.

I submit that my prosecution is malafide; in fact it is a persecution. I am being made an example of by the state government of Chhattisgarh as a warning to others not to expose the patent trampling of human rights taking place in the state. Documents have been fabricated by the police and false witnesses introduced in order to falsely implicate me.

Binayak Sen

A MOCKERY OF JUSTICE

JYOTI PUNWANI

The conviction wasn't unexpected. Too much was at stake in this particular prosecution that had invited international attention. What was unexpected was the sentence.

A day after the verdict, Chhattisgarh DGP Vishwa Ranjan looked suitably impassive while commenting on the conviction of Dr Binayak Sen on TV, but surely this would have been a memorable X'Mas for this 'poet-policeman'. A life sentence for the man because of whom he had had to tolerate all that hatred from people like him – he with his love for the liberal arts, and a St Stephen's background. Now finally, the soft-spoken Doctor would stop giving interviews about the State's military campaign against the poor.

Everyone else had been dealt with. Gandhian Himanshu Kumar, who had toured the country appealing for intervention against the brutish Salwa Judum after his Vanwasi Chetna Ashram was demolished, was forced to flee in January, as were fact-finding teams and academics. Dantewada and Bastar became a no-go zone where troops carrying out Operation Green Hunt against the Maoists were the only outsiders allowed. What was going on in those jungles? No news came out. Just one man kept fighting there, former CPI MLA Manish Kunjam, but he was reminded again and again that in Chhattisgarh, anyone who dared work openly among the Adivasis would be treated like a criminal. His party leaders were jailed on charges of murder, Adivasis going for his rallies assaulted.

There was of course, the Supreme Court, which ever so often, responding to prayers from the tireless Prof Nandini Sundar (and her co-petitioners), lashed out at the Chhattisgarh government for arming Adivasis to fight other Adivasis through the Salwa Judum, and allowing troops to take over schools. But so far, the Raman Singh government has made sure no one monitors the court's orders. On the ground, the police still rule.

As they do in court. Comparing Additional Sessions Judge B P Verma's judgment with the notes of evidence, one agrees with Sen's lawyer Mahendra Dubey that the judge chose to ignore most of the cross-examination, relying only on the special PP's examination-in-chief. The most far-fetched police testimonies have been accepted. Consider this: exhibit A 37, the crucial unsigned computer print out sent ostensibly by Maoists to Dr Sen, was, according to the police, found in his house. But, unlike the other articles seized from his house, it does not bear either Sen's signature or that of the investigating officer. It bears only the signature of the two seizure witnesses. Had he allowed the defence to play the video of the seizure, the judge would have seen the police taking away the seized documents from Sen's house in an open bag. A copy of this letter was not given to Sen, though copies of all the other seized articles were. Nor is it mentioned in the seizure memo. Asked to explain, both the inspectors handling the case gave the same explanation:

``Either we forgot, or this paper got overlooked because it was stuck

to some other document seized during the search.” How then did the police remember to get the two witnesses sign this letter?

But Judge Verma accepts this explanation!

This isn't the only one. Piyush Guha, the Kolkata-based businessman also convicted to life, was, according to the police themselves, arrested from two different places. The police told the court he was arrested from Station Road, Raipur, where he was hanging around suspiciously. However, in their reply to his bail application in the Supreme Court, the police stated his place of arrest as Mahendra Hotel, Raipur. Produced before the magistrate after his arrest, Guha had also said that he had been arrested from Mahendra Hotel. Asked to explain, Investigating Officer Rajpoot told the court: “I dictated Station Road, but the typist took down Mahendra Hotel.” Judge Verma described this typing mistake as “natural”.

Again, in the course of the trial, two different places and dates were given for the arrest of Narayan Sanyal. Policemen from Andhra Pradesh testified that Sanyal had been arrested from Bhadrachalam. But the judge chose to rely on the testimony of one Deepak Choubey who said he had taken Sanyal as a tenant in his house on the recommendation of Binayak Sen, and that Sanyal had been arrested from his house. Under cross-examination, Choubey admitted that that he had no direct knowledge of Sanyal's arrest, someone else had told him about it.

If Choubey's hearsay evidence could be accepted, why not that of policemen? The judge relies on the fantastic testimony of two policemen that Binayak Sen, Iina Sen, and former PUCL general Secretary Rajendra Sail used to attend meetings with Naxalites in the jungle. Under cross-examination, the policemen admitted they had been told this by villagers, whose statements they had not taken down.

On such evidence has Judge B P Verma accepted that a seditious conspiracy was hatched between 'Naxalite' Narayan Sanyal (who has yet to be convicted in any of the cases against him), Dr Binayak Sen and Piyush Guha, and sent them to jail for life. 'Naxalite' prisoner Sanyal passed on letters to Sen, Sen delivered them to Guha. In addition, literature critical of Salwa Judum was found in Sen's house, says the judgment. Significantly, the judge, disregarding the Supreme Court's criticism of Salwa Judum, accepts the official version that it is a voluntary peace movement by Adivasis.

The judgment is completely silent on the testimony of two jailors that it was not possible for Sanyal to hand over anything to Sen in jail, for their meetings, cleared by the police, were held under strict supervision. The judge relies, instead, on the examination-in-chief of the jail staff, which said that Sen would pass himself off as Sanyal's relative. Under cross-examination, they admitted that applications to meet Sanyal were made by Sen as PUCL general secretary, on the PUCL letter-head. These applications are part of the court's record.

With all the skills they commanded, the Chhattisgarh police could not prove that Sen and Guha ever met. A hotel owner and a hotel manager told the court they had never seen Sen visiting Guha in their hotels. But this finds no mention in the judgment. Instead, the testimony of one Anil Singh is relied upon, a man who apparently happened to be passing by when Guha was being arrested, and who overheard Guha tell the police that the letters found on him had been given by Sen. These

letters find no mention in Guha's arrest panchnama. Guha, points out the judge, is an accused in a Naxalite case in West Bengal. Again, he ignores the crucial date when Guha's name was added as an accused in that case – after his arrest in Raipur.

Interestingly, Judge Verma, the third judge to hear this case, in which 473 documents were produced and 80 judgments cited, delivered his verdict in a record eight days after the six-day-long arguments concluded. And then he chose a day before the high court closed for X'Mas.

Courtesy: New Indian Express, December 28

A critique of the Binayak Sen Judgement

ILINA SEN, SUDHA BHARADWAJ, KAVITA SRIVASTAVA

The Second Additional District and Sessions Judge of Raipur Sh. B. P. Verma convicted Binayak Sen, Pijush Guha and Narayan Sanyal for rigorous life imprisonment on the 24th of December, 2010. A 92- page judgement was delivered by Judge BP Verma on the 24th of December, 2010. What follows is a quick analysis of the facts of the case and the judgement that has finally been delivered.

Important Dates of the case

The FIR was lodged on the 6th of May, 2007, when Pijush Guha's arrest was shown. Dr. Sen was arrested on the 14th May, 2007 from Bilaspur and Narayan Sanyal was only made an accused in July 2007, who was already an under trial detained in the Bilaspur Jail in another case. The Charge sheet was filed in August, 2007. The charges were framed on 27th December, 2007 and subsequently the trial began. The trial lasted for two years where 97 prosecution witnesses and 12 defence witnesses deposed. Many of the prosecution witnesses were policemen. Three judges presided over the two year trial. They were Judge Saluja, Judge Ganpat Rao and finally Judge B P Verma (a judge awaiting confirmation in the lower judiciary). The judgement would have taken longer had it not been for the Supreme Court, which on a bail application filed by Pijush Guha ordered in October, 2010 that the trial be completed in three months.

The Analysis of the Judgement

The Second Additional Sessions Judge, Raipur B.P. Verma has sentenced human rights defender Dr. Binayak Sen, Kolkata businessman Pijush Guha and Maoist ideologue Narayan Sanyal for rigorous life imprisonment and shorter prison terms, to run concurrently under Sections 124A read with Section 120B of the Indian Penal Code, Sections 8(1), 8(2), 8(3) and 8(5) of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005 (Chhattisgarh Special Public Safety Act) and Section 39(2) of the Unlawful Activities Prevention Act, 1967. Narayan Sanyal has been additionally sentenced under Section 20 of the UAPA Act, 1967. Briefly put Section 124A read with Section 120B of IPC pertains to sedition and conspiracy for sedition; CSPSA, 2005 makes culpable membership of, association with, and furthering the interests, financially or otherwise, of organizations notified and banned under the Act as unlawful. UAPA, 1967 seeks to penalize membership of a terrorist gang or association, holding proceeds of terrorism, or support given to a terrorist organization.

To hold the three accused guilty under the above mentioned laws, the judgment had to establish beyond reasonable doubt that the accused were either directly indulging in seditious activities as individuals or as members of an organization, or conspiring to abet and further seditious activities of individuals or organization. Also, the judgment was to establish beyond reasonable doubt that the accused were either members of organizations notified as unlawful under CSPSA or/ and UAPA, or conspiring to abet and further the activities of such unlawful organizations. Judge Verma's verdict weaves a flawed legal narrative trying to establish the aforementioned links.

Judge Verma's narrative hinges on the following points:

Narayan Sanyal is a member of the highest decision making body, Politburo, of CPI (Maoist) a seditious organization and notified as unlawful under the CSPSA and UAPA. As a basis for this, the judgment cites the content of certain journals purported to be organs of the CPI (Maoist) and certain cases lodged against him for Maoist activities in the states of Andhra Pradesh and Jharkhand. The above-mentioned magazines have been reportedly seized from co-accused Pijush Guha who has contended that they were planted on him by the police. The judge has unquestioningly accepted the version of the police on the basis of the supposed testimony of the seizure witness Anil Singh, ignoring the objections of Pijush Guha and co-accused Binayak Sen to the effect that the seizure witness had claimed to overhear a conversation between Guha and the police in a situation where the police had Guha in their custody, and any statement made by Guha to the police in a custodial situation is inadmissible as evidence under the Indian Evidence Act, 1872. It should not be forgotten

that the seizure witness Anil Singh did not accompany the police when they came to apprehend and search Guha, but was supposedly a passerby, who was stopped by the police when Guha was already in their custody. The judge has held Narayan Sanyal to be a member of CPI (Maoist) on the basis of cases against him in other states in which he has not yet been pronounced guilty.

The central point around which the verdict's narrative is woven is the arrest and seizure of certain articles, including the abovementioned journals and three letters supposedly written by Narayan Sanyal to his party comrades, handed over to Binayak Sen when he met Sanyal in jail, and then handed over by Sen to Pijush Guha who was supposed to pass it on to Sanyal's party comrades. This supposedly establishes a chain binding the three in a conspiratorial relationship. According to this supposed conspiratorial chain, Narayan Sanyal is a leader of a seditious organization also notified as unlawful and as such banned; Binayak Sen conspires with Sanyal to pass on his letters to his party comrades through Guha, thus both Sen and Guha assist in the activities of a seditious and unlawful organization. In constructing this conspiratorial chain, the Judge has relied on forensic evidence testifying that the letters were indeed written by Sanyal, but for them being in possession of Pijush Guha, he has relied solely on the evidence of police officers and seizure witness Anil Singh whose versions have been contested by Guha but ignored by the Judge. Guha's statement before the Magistrate which was recorded when he was produced on the 7th of May, 2007 says that he was arrested on 1.5.2007 from Mahindra Hotel, kept in illegal custody blindfolded for six days and finally produced before a Magistrate only on 7.5.2007. The Judge has ignored even Guha's statement to this effect made before the Magistrate as soon as he was produced. Judge Verma has said in his verdict that Guha has failed to produce any evidence in favour of his statement, **thereby putting the onus of proof on the accused and not the prosecution, which is bad in law.** (Neither the CSPSA or UAPA (2004) puts the burden of proof on the accused.

The Judge has also ignored the contradiction between the police affidavit filed before the Supreme Court while opposing the bail application of Binayak Sen and the police version presented in the charge sheet filed in the sessions court. In the Supreme Court the police said that Guha had been arrested from Mahindra Hotel (which Guha has alleged in his testimony) but in the sessions court the police have said that Guha was arrested from Station Road where the police supposedly seized the aforementioned incriminating articles in the presence of seizure witness Anil Singh. The police's flimsy argument, that the discrepancy was because of a typographical error in the affidavit filed before the Supreme Court, has been fully accepted by Judge Verma. Actually, the police officer responsible should be tried for either filing a false affidavit in the Apex Court, or lying in the Sessions court under oath. Accepting Guha's testimony would have rendered the seizure witness's statement implausible on which the Judge has centrally relied for his narrative. This would have in turn resulted in a complete collapse of the case against all the accused, especially so against Guha and Binayak Sen, against whom there was no material evidence of either being a member of CPI (Maoist) or being in conspiratorial relationship with Narayan Sanyal, the principal Maoist character in Judge Verma's narrative.

Once the central conspiratorial point and incident has been constructed in the judicial narrative, conspiratorial linkages between the three accused and their common causes and actions before the incident also needed to be established. This has been attempted in Pijush Guha's case by a reference to his frequent visits to Raipur and a case pending in district Purulia, West Bengal. Judge Verma has ignored the fact that Guha was made an accused in the Purulia case after 6.5.2007, the date on which he is said to have been arrested in Raipur. This fact strongly generates a suspicion of afterthought by the police of the two states acting in collusion. Judge Verma's verdict also naturally ignores the fact that Pijush Guha's frequent visits are explained by his being a tendu leaf trader trading in the areas of Chhattisgarh.

Binayak Sen's supposed conspiratorial relationship with Narayan Sanyal and his seditious Maoist causes is sought to be established by the following:

1. Testimony of the so called Landlord of Narayan Sanyal

Deepak Choubey' in his testimony stated that he accepted Narayan Sanyal as a tenant in his house on the recommendation of Binayak Sen some time before Sanyal's arrest.

The Judge has ignored the fact that Deepak Choubey did not own the house but acted on behalf of his brother in law. More crucially, the Judge set aside Sen's objection that Choubey's assertion came in response to a leading question by the Public Prosecutor. Judge Verma's verdict makes no reference to Sen's objections against this witness going beyond his statement under Section 161 of the Cr.P.C., and the fact that the witness admitted in cross examination that an earlier statement recorded by the police at the time when allegedly a Maoist leader was arrested from his house was not brought on record. This casts doubt as to the veracity of the statement made subsequently since the same could be manipulated so as to suit the Prosecution story. Judge Verma rejected Sen's contention that Choubey's statement was made under duress because the police threatened to implicate him in context of the said arrest. It also does not take into account the contradiction with the police's own version that Narayan Sanyal was arrested from Bhadrachalam in Andhra Pradesh to which effect police officers of Andhra Pradesh have testified.

2. Binayak Sen's 33 meetings in 18 months with jailed Narayan Sanyal

The judge without giving any reason has ignored Sen's contention that he was merely performing his duty as a human rights activist and a physician in addressing the legal and health issues of an ailing undertrial prisoner on the request of the undertrial's family. The Judge has not considered the documents exhibited by the defence showing that Sen had permission from the Senior Superintendent of Police for his jail visits. Instead, Judge Verma's verdict makes a convoluted argument by holding that Sanyal's sister-in-law's (Bula Sanyal's) phone calls to Binayak Sen in this regard proved a conspiratorial relationship between him and Narayan Sanyal, whereas Bula Sanyal is a housewife absolutely unconnected with any kind of Maoist/ unlawful activity. Since the prosecution failed to produce even a single jail official or any other eye witness testifying to any letter or message, oral or written, being passed by Narayan Sanyal to Binayak Sen in their jail meetings, the verdict makes much fuss about certain entries in jail registers referring to Sen being Sanyal's relative, ignoring the defence contention that these entries were filled in by the jail officials, and not by either the visited or visitor, as apparent from the face of the record. On the contrary, all the applications Binayak Sen submitted to the jail officials, requesting a meeting with Sanyal, were written on the letterhead of his organization - PUCL (a Civil Liberties and Democratic Rights organization founded by leading Sarvodaya leader Jayprakash Narayan). These visits were duly permitted by the jail officials and transpired in their full view and hearing.

3. Binayak Sen's relationship with the CPI (Maoists)

That Binayak Sen had a close relationship with CPI (Maoist) is sought to be established by the unsubstantiated testimonies of police officials claiming that Sen and his wife Ilina Sen had assisted alleged hard core Maoists Shankar Singh and Amita Srivastava. Sen has not disputed that Shankar was employed by Rupantar – an NGO founded by his wife Ilina. Nor has he disputed that he and Ilina knew Amita Srivastava whom the latter, on the recommendation of a friend, had helped find a job in a school. But the Judge has just accepted the police's word, without any other testimony or material evidence whatsoever that Shankar and Amita were Maoists.

Judge Verma has also wrongly concluded, on the basis of hearsay by the police, that one Malati employed by Rupantar was the same person as Shantipriya, also using the alias Malati, a Maoist leader's wife convicted for 10 years in a case tried in another court in Raipur. The judge has not even mentioned or verified the defence evidence put on record that the Malati employed by Rupantar was actually Malati Jadhav, whose address was provided by defence witness Prahlad Sahu.

Judge Verma's narrative seems to have a particular fondness for police hearsay as he has blindly accepted, without any corroboration by another witness or any material evidence, wild allegations made by police officials Vijay Thakur and Sher Singh Bande, officer in charge of Konta and Chhuria police stations respectively that Binayak Sen, his wife Ilina Sen and other PUCL members and human rights activists attended the meetings of Maoists in their respective areas. These officials have gone well beyond their Section 161 statements introducing documents not earlier annexed with the charge sheet, and all defence objections in this regard were overruled by the Judge.

But a certain planted letter, exhibit A-37, takes the cake in Judge Verma's narrative. This unsigned letter, supposedly written by the Central Committee of CPI (Maoist) to Binayak Sen, was claimed by the police to have been seized from Sen's house when the police ran a search there. But this letter finds no mention in the seizure list, neither has it been signed by Sen nor the investigating officers nor the search witnesses as per proper procedural requirement. The said letter was also not part of the copy of the charge sheet received by Sen in the court. But the Judge has completely overlooked this obvious planting of evidence, accepting the ridiculous explanation provided by investigating officers BS Jagrit and BBS Rajput that the Article A-37 probably stuck to another article (*chipak gaya tha*) and hence could not get signed by either Sen or the investigating officer or search witnesses. It is no surprise that the judge has also ignored the very valid testimonies of defence witnesses Amit Bannerji and Mahesh Mahobe in this context.

The verdict lets the cat of its ideological bias out of the bag, however, when it accepts above the Supreme Court's wise judicial pronouncements which were brought on record in the case by Sen, the testimony of a mere district collector KR Pisda in charge of Dantewada district that Salwa Judum was a peaceful and spontaneous protest movement of the tribals against the atrocities committed by the Maoists, and not a brutal and armed vigilante operation sponsored by the state. Later in his judgment Judge Verma insinuates that Binayak Sen's principled opposition as a human rights defender to such a non-legal, repressive, brutal vigilante operation indulging in mayhem and violence put him in the Maoist camp against whom the Salwa Judum was targeted.

Not taking into cognizance the evidence provided by the Defence

The statement made by Binayak Sen, the evidence that he brought on record as to his work as a human rights activist, and the newspaper reports which were exhibited by the defence carrying statements of the then DGP Police threatening to take human rights activists to task, which reveal prima facie malice and motive have not been taken into consideration by the Judge, who appears to have considered and relied only upon that interpretation of the evidence that supported the prosecution case without a reasoned consideration of the lacunae and contradictions therein, the objections of the defence and the evidence adduced by Sen, or even the well settled legal principles on which the defence rested its arguments.

Using the legal provision of sedition as a political instrument

While weaving a narrative of sedition against Binayak Sen and other accused in the case, the Sessions court verdict violates a well laid judicial principle of the Supreme Court in matters of sedition. In *Kedarnath Singh Vs State of Bihar* the Supreme Court has held that the provision of sedition in the Indian Penal Code must be interpreted in a manner consistent with the fundamental freedom of speech and expression guaranteed by the Indian Constitution. In this regard the Supreme Court held that the offence of sedition, which is defined as spreading disaffection against the state, should be considered as having been committed only if the said disaffection is a direct incitement to violence or will lead to serious public disorder. No speech or deed milder than this should be considered seditious. The Sessions court verdict in the case against Binayak Sen and others fails to establish that the words or deeds of the accused were a direct incitement to violence or would lead to serious public disorder. This would be the case even if it was established beyond doubt that Binayak Sen had passed on Narayan Sanyal's letters to Pijush Guha, or Pijush Guha was likely to pass on these letters to other members of the CPI (Maoist), or that Narayan Sanyal was a politburo member of the CPI (Maoist).

Binayak Sen : As others see him

The shishya who went on to become my guru

P Zachariah, Former professor of Physiology, CMC, Vellore

...Binayak was no bookworm. He was determined to enjoy student life: on the stage, off the stage, in student union and hostel meetings, in social service projects, playing the fool in picnics and outings and, above all, in endless friendly and fervent arguments. He was conspicuous with a Leftist, analytical perspective, he wanted to go into the why of everything. Such theorising and argumentation of medical student days usually evaporate like dew in the heat of professional and social pressures in later life. But with Binayak, all these were put to practice in the cooperative hospital of the iron-ore miners he helped establish. For almost a decade he worked with the miner volunteers on equal terms and nearly equal income. With many others among the CMC faculty and alumni, I considered him a true follower of Ida Scudder, the founder of CMC. And we remained in touch. As the years passed in the Chhattisgarh region, infested with tuberculosis and malaria, the handsome lively Binayak of student days took on the celebrated look of Gurudev Rabindranath Tagore. He was now looked on with awe at alumni reunions to which his adoring and prosperous fellow alumni invited him as chief guest. And he never failed to chastise them for their perceived shortfall in passion for the marginalised. But one time I saw Binayak really deflated was when his mentor Shankar Guha Niyogi was murdered and the labour movement there lost its Gandhian moorings. He felt he had to move on. But what he moved on to was an even lower level of human need: the dispossession and denial of rights of tribals. Their needs filled his heart again. And his own perceptions moved on from community health and public health to health as a human right. He became physician, public health expert, social activist, eco warrior, political campaigner, all rolled into one. The two days I spent with him at Raipur in the thick of all this remain memorable. As a student, he always asked why. By the time he had finished in CMC and JNU, he had already come to the conclusion that, more than infections and diseases, social factors determined health. But he continued to keep asking why? And that led him increasingly into the political determinants of health, the denial of human rights, the forced ejection

from homes and the way of life of peoples.
I got into teaching medicine in Vellore in the hope

of inspiring young people, like Binayak, for service.
Binayak outgrew that and taught me, that all the
altruism cannot achieve health where human rights
are ignored.

And I hope that when he is eventually released, he
will devote his remaining years to inspiring a new
generation of health professionals to explore the link
between health and human rights. As Jonathan Mann
did when he moved to a Chair in Harvard. And may
that release be soon.

Binayak is already 58 and not in the best of health.
His remaining days are too precious to India to be
spent in Raipur Central Jail.

Courtesy: DNA 21 May 2008

Excerpts from the Citation of the Christian Medical College, Vellore, on conferring the Paul Harrison Award on Dr Binayak Sen, 2004

Dr. Binayak Sen has been true to the spirit and vision of his alma mater and has carried his

dedication to truth and service to the very frontline of the battle. He has broken the mould, redefined the possible role of the doctor in a broken and unjust society, holding the cause much more precious than personal safety. CMC is proud to be associated with Binayak and Illina Sen. He is a role model for the students and staff of CMC, someone who stands out for his literal pursuit of the founding values of CMC.

In recognition of his outstanding contribution to society, the Christian Medical College is proud to

bestow the Paul Harrison award upon its illustrious son, Dr. Binayak Sen.

VELLORE, 25.10.2004

Excerpts from the speech of Dr Nils Daulaire, President of the Global Health Council, at the conferment of the 2008 Jonathan Mann Award for Global Health and Human Rights on Dr Binayak Sen

'Dr Sen's accomplishments speak volumes about what can be achieved in very poor areas when health practitioners are also committed community leaders. He staffed a hospital created by and funded by impoverished mine workers, and he has spent his lifetime educating people about health practices and civil liberties – providing information that has saved lives and improved conditions for thousands of people. His good works needs to be recognized as a major contribution to India and to global health, he is certainly not a threat to state security.'

HOW DID JUDGE B P VERMA CONCLUDE THAT THE 3 ACCUSED ARE GUILTY?

EXCERPTS FROM THE JUDGMENT

PIYUSH GUHA

Para 26. Regarding the involvement of accused Piyush Guha in Naxalite and criminal activities,... Production Warrant was received for producing accused Piyush Guha before CJM Court, Purulia, which is mentioned in the register. A case was pending against accused Piyush Guha before CJM Court, Purulia, under section 121, 121(A), 122, 123, 427, 323, 326, 506, 307 of IPC and 3, 4 C.S.Act and 25 Arms Act. Accused Piyush Guha was sent on 3.06.2007 for production before CJM Court, Purulia, and returned from Purulia on date 15.09.2007.

27. According to the statement of Dilip Kumar Dev (PW 48), during his tenure in CID he went to P.S. Bandwan, District Purulia for the investigation of crime no. 20/2005. ..According to the statement of this witness (Sadhan Kumar Pathak), he was In-charge of the police station Bandwan, District Purulia (West Bengal) on 04.10.2005. He went to the Gudpana C.R.P.F. Centre, which falls within the jurisdiction of his police station, after getting the news of its demolition. Upon reaching there, he saw that the camp, which had been under construction, had been blown by fixing land mines all around, which had caused the whole camp to be demolished. After inquiring, he got to know that about 150 Maoists from Jharkhand, Chhattisgarh and West Bengal had carried out the whole incident. He registered Crime no. 20/05 on his return to the police station... . The chargesheet of this Crime number has been produced in the Purulia court, West Bengal. Aforementioned chargesheet and chargesheets against accused Piyush Guha and other accused have also been produced. The said statements of these witnesses stayed consistent in their cross examinations. Thus, the involvement of accused Piyush Guha in Naxalite and criminal activity is confirmed.

NARAYAN SANYAL

30. Sub Inspector C.H. Devareddy (PW 59) has said in his statement that he was posted as Police Station In-charge in Bhadrachalam Town, Andhra Pradesh from September 2004 to November 2007. On 03.01.2006, at night during patrolling, he received information that some person belonging to the top Maoist cadre is roaming in the Bhadrachalam bus stand area. Thereupon, he went to the Bhadrachalam bus stand with a patrolling party and saw one person in suspicious circumstances, who is present in the Court today. Witness, pointing towards accused Narayan Sanyal, stated that he was the same person whom he had seen at the bus stand under suspicious circumstances. Afterwards, he had questioned him. On being questioned, he did not give any satisfactory answers. Upon his search, a bag was recovered from accused Narayan Sanyal, in which, one pistol loaded with six live cartridges, 2 walkie-talkies of Motorola, Rs. 13,000 cash, seven Bengali books, one Hindi book, one spiral book, 15 Maoist confidential documents, one letter in two folds, one driving license belonging to Ajay Chaudhary containing his photograph issued by R.T.O. Ranchi were found. A search memo was prepared in the presence of witnesses. On being inquired about his name and address, the person stated his name to be Narayan Sanyal alias Navin Kumar alias Vijay alias Subodh etc, residing at Raipur, with a permanent address of Kolkata. He stated himself to be a Member of Central Committee of C.P.I

Maoist and a member of its Politburo. Above said documents and articles were brought to the police station after being seized, and its report is registered as Crime no. 5/2006.

32. Inspector Vijay Thakur (PW 41) said that from 31.03.2003 to 06.05.2006 he was Police Station In-charge at Konta police station. In Konta police station under Crime no. 09/2005, he arrested the accused Narayan Sanyal... Accused Narayan Sanyal is a Naxalite offender and he was active in Sukma and Konta areas. .. Those who worked in the urban network of the Naxalites used to participate in their meetings. Narayan Sanyal, Ramanna, Gopanna, Binayak Sen, Rajendra Sail and Pradeep Singh were among the people who attended these meetings.

36. Sher Singh Bande (PW 49) testified that he was Sub Inspector in Chhuria police station on 06.04.2007. He knows the accused. During his deposition, he even identified the accused by name. He said further that Chhuria police station is adjacent to Maharashtra and Naxalites were active in the area. .. Top level state and central committee Naxalite meetings took place in Chhuria area. In this area, Vishnu Milind Thumbde, Shankar, Ashok, Parvati, Ganesh and women Naxalites Varsha, Urmila and Amita were also active. Binayak Sen and Ilna Sen also used to come to these meetings. Accused Narayan Sanyal was also active in the Chhuria area. PUCL people met Naxalites in the Chhuria area. Amita and Shankar are hard core Naxalites. Narayan Sanyal is also a hardcore Naxalite. On 21.05.2007, Naxalites were meeting in Bijepar and Jhadikhedi forests. When they were surrounded, they ran away. Various items were recovered from the spot. In this connection, Crime no. 113/07 was registered. After investigation, a chargesheet was filed in Rajnandgaon court, Exhibit P 137

38. Additional Sub Inspector H C Jadhav (PW 62) testified that on 12.08.2008, under instructions from the Superintendent of Police Raipur, he went to investigate cases in Balrampur, West Bengal, where he took the statement of Sadhan Kumar Pathak. There was a police camp under construction in Bandwan where nearly 140-150 Maoists had gathered, and they attacked the camp in Gudpana that was being constructed, and destroyed it with landmines. In this connection, a crime was registered in the Bandwan police station. .. In this case, Vijay Da's name came to the surface. This witness said that the accused Narayan Sanyal present in the court is also known as Vijay Da.

BINAYAK SEN

43. As far as accused Dr Binayak Sen's involvement in Naxalite activities is concerned, Prosecution Witness Anil Kumar (PW 1) in Section 3 of his statement said that accused Piyush Guha, on being questioned about where he had acquired the documents seized from him, replied that Binayak Sen used to go to meet with Narayan Sanyal in jail and that that was how the said letters were given to Dr. Binayak Sen.

46. During examination by the prosecution, even accused Dr. Binayak Sen himself identified all the Articles A-19 to A-36 and A-38 to A-48 as articles seized from his house except for Article A-37. Counsel for accused Binayak Sen cross-examined the said witnesses with regard to the seizure of the abovementioned items at length and it was suggested that Article A-37 was not seized from accused Dr Binayak Sen's house. This was not accepted by the witnesses. From this it is established that Article A-37 was also recovered from Binayak Sen's house.

55. Witness SR Thakur (PW 43) testified that Exhibit P 49 register entries ...were dates on which accused Binayak Sen came to meet accused Narayan Sanyal claiming that he was meeting him as a relative to discuss household matters. In the said register, accused Dr Binayak Sen, accused Narayan Sanyal and Thakur himself had signed in columns 9, 10 and 11 respectively. ... This witness in his cross examination acknowledged that in applications submitted by accused Dr Binayak Sen for meetings with accused Narayan Sanyal, he did not write saying that he was his relative.

58. I H Khan (PW 71) testified that jail superintendent Central Jail Bilaspur sent him a list of visitors who met Narayan Sanyal. The letter Exhibit P 118 contained a list of visitors (Exhibit P119) who met

with accused Narayan Sanyal. This was not challenged by counsel for the accused. In any case, accused Narayan Sanyal and Binayak Sen have accepted in their defence statement that Binayak Sen came to meet Narayan Sanyal in jail. Although, the accused during the examination of the accused have denied that the pretext of "relative" was used for the meetings, but the uncontradicted testimony of the witnesses has established that accused Binayak Sen met with Narayan Sanyal on the various dates cited above by claiming to be his relative.

65. Witness inspector C.L. Sirdar (PW 52) states that he was posted at Farshegarh, district Bijapur, as station in-charge. During this time he registered crime no. 7/2007 regarding a Naxalite incident, F.I.R. of which is Exhibit P 138 which he seized, seizure memo is Exhibit P 139 . ..He has also produced the original copy of the confiscated Naxalite literature for evidence. . The witness has stated that accused Vinayak Sen, Ilina Sen, Vijjaiyya, PVCAL Department, Rajendra Sayal etc., are mentioned in Exhibit P 140. The aforementioned witnesses have been extensively cross-examined by the defence, but their statements have withstood the cross-examination.

69. Witness Ramswaroop (PW 44) states that he leased his house in Rohinipuram, Raipur, on rent to Shankar Singh. He has identified the photo in the document Exhibit P 60 as the photo of Shankar Singh. Shankar Singh had informed him that he worked in Rupantar Trust, Katora Talaab, Raipur and that Rupantar Trust belonged to Ilina Sen. The whereabouts of Shankar Singh are unknown after he left the house.

70. The testimonies of the above witnesses prove that Ilina Sen and accused Vinayak Sen know and have relations with hardcore Naxalites Shankar Singh and Amita Shrivastav. They have helped Shankar Singh and Amita Shrivastav open Bank accounts and rent houses, providing them with their introduction.

90. According to B.S. Jagrit (PW 95), Naxalites, meaning CPI Maoist, have two kinds of networking in this area – urban and rural. Urban network of Naxalites, meaning CPI Maoist, helps the rural networks by providing them with arms, ammunition, weapons, medicine and material for propaganda. The accused present in the court used to work in the urban network. The Naxalites in the urban networks help Naxalites in the rural networks in propaganda, expansion and supply of materials. There is an urban network of Naxalites in Durg as well as Raipur city. A cache of arms was caught in Raipur and Durg, K.S. Priya aka Shanti aka Premkumari w/o Gudsa Usendi aka Vijay, Praful Jha were nabbed with this cache, and three cases are underway in connection with this incident in Raipur and Durg courts. The said K.S. Priya, Gudsa Usendi and Praful Jha are hardcore Naxalites. The names of these three are in the printout of the print DVD of the Hard Disk of the CPU that was seized from the house of accused Binayak Sen on 19.05.2007.

91. According to witness B.S. Jagrit (PW 95), Rupantar is an organization of Naxalites in Raipur, which is run by Ilina Sen and accused Dr. Binayak Sen. The name of Dr. Binayak Sen is mentioned as the project director of "Rupantar organization" in the printout of the DVD, and it is also mentioned that he draws a monthly salary of Rs. 5500.00 from Rupantar. This Rupantar organization is an urban networking organization of Naxalites. It is not irrelevant to mention here that accused Dr. Vinayak Sen has himself admitted to the fact of working in Rupantar organization during the examination of the accused. According to the earlier statement of this witness, he knows Shankar Singh, Amita Shrivastav, Madan Barkhade and Bopanna. These are all hardcore Naxalites. Shankar Singh used to work in "Rupantar organization." Amita Shrivastav used to teach at the "Daga school" and the Saraswati Shishu Mandir at Danganiya. Madan Barkhade is in Balaghat jail and Bopanna is in Central Jail Raipur, and Shankar Singh and Amita Shrivastav have been absconding ever since Narayan Sanyal was arrested in Dantewada. ... He also knows Soma Sen. Soma Sen is the wife of hardcore Naxalite Tusharkanta Bhattacharya, who was arrested in police station Buddhaji Nagar, Patna. Shankar Singh, Amita Shrivastav, Madan Barkhade, Bopanna and Soma Sen have connections with the accused present in the court, and their names are in the printout of the DVD of the CPU seized from accused Vinayak Sen.

94 The letter (ostensibly found on Guha) of Article A-8 is addressed to "Dear P" and the letter of Article A-9 to "Dear Friend V." Article A-8 expresses happiness at the success of Ninth Congress and talks of bringing the organized and unorganized workers into the revolution and into our organization. It also

calls murders reactionary and urges building of positive political force. Along with the mention of International Organizational Penetration Scheme, it talks of the Maoists in Nepal reaching the Parliament, and of sending some amount [of money] to somebody named "M.R." The letter of Article A-9 addresses "V" and accuses him of not helping the jailed comrade and he has written "But it is not good." There is also mention of words connected to lack of communication, a big opportunity of big contacts in V's area and promise fulfilment.

95. The letters and magazines of Article A-19 to Article A-37 have been seized from accused Dr. Vinayak Sen. In the People's March magazine of Article A-19, on the occasion of the formation of Communist Party of India (Maoist), joint interviews of its two General Secretaries, Ganpati and Kishan, have been published, in which Ganpati says the formation of the Communist Party of India Maoist is a new milestone, and calls for a protracted people's war to destroy the present system. Accused Vinayak Sen is addressed as comrade in the letter of Article A-20. It is worth mentioning here that accused Narayan Sanyal wrote the letter of Article A-20 to accused Dr. Vinayak Sen while being held in Raipur prison. Article A-21 has a printed article with the title Women's Rights in Andhra Pradesh and Naxalite Groups. Article A-22, Towards Building an Anti-LIS Imperialist Front, is a hand-written manuscript, which mentions Marxist and Leninist groups. Similarly, the document of Article A-23, has been issued by the Krantikari Janwadi Morcha Revolutionary Democratic Front, and it has the title "Globalization and the Glamorization of the Indian Service Sector" Article A-25 to Article A-35 are newspaper cuttings with news about Naxalite activities. Article A-36 is a book about Salwa Judum, which does not present Salwa Judum as a spontaneous movement of the people and describes relief camps as prison camps. 'SPO' [special police officer] has been called the "criminalization of tribal youth." It also talks about the killing of CRPF men and SPOs in an attack by PLJ. In the same way, said book has published praises of Janatana Sarkar, and the PUCL Joint Committee report on Salwa Judum, which criticizes the Salwa Judum. It also has an article about opposing the barbaric atrocities committed by Salwa Judum on the Maoists of Chhattisgarh.

96. Similarly, the letter seized from the house of accused Dr. Vinayak Sen, Article A-37, shows that it was sent by Chhattisgarh State Committee CPI (Maoist) to accused Vinayak Sen and condemns Salwa Judum and the murders of Maoists Bhimkoda and Shyam Bihari, and describes the killings of PW and MCC activists. In Articles A-38 to A-45, which are the CDs seized from the house of accused Vinayak Sen, accused Vinayak Sen and his wife are mentioned as being invited to a "Resistant Conference" by some Apooranand, and on page number-1/179, there is a "Report on the terror of CRPF in Adivasi areas", in which accused Vinayak Sen is described as the Secretary of PUCL. Similarly, various pages in book number-2 mention Rupantar organization and describe many other articles. Similarly, on page numbers -4/131 to 4/141, accused Vinayak Sen's wife is said to be a lifelong member of CLSL, and defence witness Ajay TG and hardcore Naxalite Shankar are said to be its members. Similarly, on page numbers 4/427 and 4/441, accused Vinayak Sen has described himself as the General Secretary of PUCL and on page number 441 he has been described as General Secretary of CLSS and the kidnapping of Sub-Inspector Prakash Soni by People's War Group (PWG) is mentioned, and on pages 7/312 to 7/314 it is said that a workshop will take place on 7-8 January 2004, in which accused Vinayak Sen's wife Ilina Sen and Shankar (who is a hardcore Naxalite and is currently absconding) will be present. Similarly, said documents describe grant for the Rupantar organization by accused Vinayak Sen, and the sum drawn from Rupantar organization is mentioned, and the word "comrade," used for addressing Naxalites, is mentioned.

97. ... Article A-129, on page number 1/117 shows a message about the death of Pakistan's Omar Azghar Khan. On its page number 265, Maher Arak has been written about. Similarly, on page number—223, Marxist Coordination Committee and the names of Yasin Malik and Ghulam Rasool Dar of the Jammu Kashmir Liberation Front have been mentioned, and in page numbers 8/45 to 6/49, the payable honorariums and other expenses of Rupantar have been mentioned, in which the names of Malti (said by the prosecution to be a hardcore Naxalite) and Praful Jha, and sums of money have been mentioned. Similarly, on page 7/348 the name of hardcore Naxalite Amita Shrivastav, whom the prosecution describes as absconding, is mentioned, and from page number 25/139 to 146, Shankar Singh, who also is claimed by the prosecution to be a hardcore Naxalite, is shown as an employee of Rupantar organization.

DEFENCE ARGUMENTS

98. The learned counsel for accused Pijush Guha has argued that accused Pijush Guha is a tendu leaf trader and he frequently visits Raipur in connection with his business. On 01.05.2010 [this should be 01.05.2007] also, he was in Raipur in connection with his business, and was staying in Hotel Mahindra, but the police forcibly took him from Hotel Mahindra and illegally detained him, blindfolded, till 06.05.2007, and on 06.05.2007, conducted fake proceedings against him and involved him in an offence. It was also argued that no letters or magazines or mobile was seized from the accused Pijush Guha, and the entire proceeding conducted by the police is illegal and irregular, and the testimonies of the witnesses are also seriously contradictory. It is also argued that according to the narrative of the prosecution, accused Pijush Guha was arrested from Station Road, Ganj, whereas the rejoinder affidavit filed by investigator BBS Rajput in the Honourable Supreme Court shows the accused Pijush Guha as being arrested from Hotel Mahindra. It is also argued that accused Pijush Guha does not know the other accused, and is not involved in any conspiracy with them, hence accused Pijush Guha should be acquitted.

99. Similarly, the learned counsel for accused Narayan Sanyal has said in his arguments that the letters of Articles A-8, A-9 and A-10 were obtained by the police and the administration through the jail authorities by threatening and pressurizing the accused Narayan Sanyal and forcing him to write them, but he [Narayan Sanyal] is not associated with any Naxalite and terrorist organization and he has been falsely implicated in this case. The argument has also been made that accused Narayan Sanyal does not know the other accused nor has he conspired with them. The argument has also been made that there are serious discrepancies in the testimonies of witnesses, and that witness Inspector B.S. Jagrit is the accuser in this case and he is the one who has done all the investigation in this case, which taints the proceedings of this prosecution. Therefore accused Narayan Sanyal must be cleared of all charges.

JUDGE'S REBUTTAL

100. However, the arguments put forth by the accused Pijush Guha and the accused Narayan Sanyal are not acceptable because from the above mentioned deposition of the witness, the facts regarding seizure of Articles A-1 to A-10 from the accused Pijush Guha, his stay from time to time in various hotels in Raipur, his being involved in Naxalite and criminal activities are established. That letters in Articles A-8 to A-10 were written by Narayan Sanyal in his own handwriting and that both the accused are connected to each other have also been established and need not be repeated here. Besides this, Pijush Guha has not explained how the letters in Articles A-8 to A-10, written by Narayan Sanyal, came into his [Pijush Guha's] possession, which further strengthens the stand of the prosecution. As far as the question of the forcible nabbing of Pijush Guha by police on 01.05.2007 from Mahendra Hotel and illegally detaining him blindfolded till 06.05.2007 is concerned, there is no evidence in this matter and neither has Pijush Guha presented any evidence in his defence to prove it. Similarly, about there being a difference in the place of arrest of the accused Pijush Guha, Investigating Officer B S Rajput (PW 87) has said that he had filed a reply in the honourable Supreme Court, Exhibit D 42, wherein it was mentioned that Pijush Guha was arrested from Mahindra Hotel, but this was a typing error. While dictating his answer he had said that the accused Pijush Guha was arrested from Station Road on 06.05. 2007. However, due to a typing mistake, instead of the 06.05.2007, the date was written as 06.05.2005. The place of arrest had also been wrongly written as above due to a mistake of the writer, which seems natural. Therefore, accused Pijush Guha gets no benefit of the above argument

101. The argument by the learned counsel of the accused Narayan Sanyal that the police and the prosecution had applied pressure to forcibly make him write the letters in Articles A-8 to A-10 is also not acceptable as there is no evidence in the matter, nor has the accused Narayan Sanyal produced any reasonable evidence.

104. During the hearing, the statements of witnesses examined by the prosecution were read line by line by learned counsel for the accused and these statements were claimed to be contradicting each other and they [the counsel] argued at length that the accused be exonerated. Although there are some omissions and inconsistencies in the statements of witnesses examined by the prosecution, these are not of substantial nature and the prosecution's entire case cannot be considered as doubtful and therefore rejected, and also statements of prosecution witnesses cannot be considered unreliable on the basis of these. It must also be mentioned here that during the recording of evidence by

prosecution witnesses, they were not asked specific questions about the said contradictions and made to confront the Investigating Officer and so the accused cannot get the benefit of the said argument.

105. Accused Vinayak Sen has presented the argument that Article A-37 is not mentioned in the final report and seizure memos, and that the copy of the chargesheet provided under Section 207 of the Code of Criminal Procedure does not have the signature of the accused Vinayak Sen on Article A-37, hence said document has been fabricated by the police to falsely implicate the accused in this case.

107. According to Defence Witness No. 9, Mahesh Mahobe, he performed videography of the police search operation at Surya Apartment, Katora Talab. He further said that seized CDs, cassettes, and documents were taken away by police in an open paper bag. In this regard, during cross examination B.S. Jagrit (PW 95) and B.B.S. Rajput (PW 97) stated that "Article A-37 could have stuck to some other Article, hence the signatures of the accused and the investigator could not be taken." Upon the suggestion of the accused Vinayak Sen to witness B.S. Jagrit that after the seizure, Articles A-19 to A-37 were kept at the godown [maalkhaana] of the Ganj police station, this witness assented to the suggestion implying the accused Binayak Sen's acceptance of the seizure of the aforementioned Articles A-19 to A-37 from his house. Upon further cross examination, this witness stated that the aforementioned seized articles were presented in the court in a sealed condition, and that during the trial, on opening the envelope, a copy of Article A-37 was given in the court on the demand of all the accused. From this it is clear that the Articles from A-19 to A-37 were seized from the accused Vinayak Sen's house and produced in the court in sealed condition, and a copy was provided to all accused after opening the seal in the court. If there were any lacunae in the copy, the accused should have immediately informed the court but defence witness number 5 Amit Banerjee clearly accepted in his cross examination that no application was submitted to the court that the received copy was not in accordance with the original chargesheet.

108. Here it is extremely relevant to mention that the accused Vinayak Sen himself received the copy of the chargesheet dated 02.08.2007, but no objection was made by him during the proceedings that the copy was not in accordance with the original chargesheet, therefore the accused Vinayak Sen does not get any benefit of this argument.

111...though defence witnesses Prahlad Sahu and Mohammed Arif stated that Rupantar organization is a registered institution, no document is presented in this regard. Similarly, defence witness Prabhakhar Sinha (DW 6) accepted during his cross examination that PUCL and Chhattisgarh Lok Swatantrya Sangathan are not registered organisations. Therefore, on the basis of audit reports Exhibits D 43 to D45 "Rupantar organization and PUCL and Chhattisgarh Lok Swatantrya Sangatan" do not seem to be organizations registered with the government and it was found during investigation above that Naxalite Shankar Singh, Malati etc used to be employed by Rupantar organization, whose Director is the accused Binayak Sen's wife Ilina Sen and being employed in the aforementioned organization, accused Binayak Sen admitted receiving five thousand five hundred rupees per month as salary, which also makes it evident that the accused Binayak Sen was involved in Naxalite activities and used to shelter and support these activities.

112. As far as the question of the argument related to the accused not having mutual acquaintance and not knowing each other, it has been found in the investigation above that the letters of Articles A8 to A10 were written by accused Narayan Sanyal in Central Jail, Raipur which were given to accused Dr. Binayak Sen during their meeting in the jail, and those letters were further given to accused Pijush Guha with the purpose of sending them to various Naxalite organisations/sagamas etc named in code words. This proves the unity of minds of the accused and the facts of criminal conspiracy for sedition against the State. Apart from this, before the incident, a postcard was sent by accused Narayan Sanyal to accused Binayak Sen and accused Dr. Binayak Sen met accused Narayan Sanyal many times in jail claiming to be a relative of Narayan Sanyal, which also proves that the accused knew each other and had a relationship from before the incident, and hence, indulging in criminal conspiracy and working in accordance with said criminal conspiracy is proved. Therefore, the said argument is not acceptable.

CONCLUSION

115. On the basis of the above investigation, facts are established that the accused Narayan Sanyal and the accused Pijush Guha and Dr. Binayak Sen on 06.05.2007 or before this at Railway Station Road, Raipur (CG), Central Jail, Raipur (CG), Central Jail, Bilaspur (CG), Katora Talab, Raipur(CG), Hotel Mahendra, Hotel Gitanjali, Raipur (CG) were involved in spreading hatred, disrespect and exciting disaffection against the government established by law in India, by circulating Naxalite literature and publications promoting terrorist and Naxalite activities and executing destructive actions of Naxalite activities, namely, Prabhat Patrika, People's March, English journal, Voice of Indian Regulation [sic], Human Rights and Naxalite Groups, Salwa Judum, Revolutionary Democratic Front, Vaishivikaran evam Bhartiya Seva Kshetr ki Chakachond (Globalisation and Glamorization of India's Service Sector), etc, letters, newspapers, CD-cassette, Computer CPU etc, print and visual representations, and in so doing committing the criminal conspiracy of sedition, participating in conventions and activities of unlawful activities of the Communist Party of India (Maoist), Naxalite organizations, despite not being members of unlawful organizations, participating in conventions and activities of Naxalite organizations and providing shelter to the members of such organizations, managing unlawful organizations, cooperating in management, cooperating with and promoting a meeting or members of said organization, participating in their unlawful activities and participants in other mediums or tools, executing unlawful acts, negatively inspiring to unlawful acts, making efforts for these unlawful acts to happen, planning such acts, accused Narayan Sanyal's being a member of a terrorist organization involved in terrorist acts and all accused supporting terrorist organizations.

SENTENCING

123. Arguments from both the sides were considered. Accused persons have committed the serious crime of criminal conspiracy of sedition against the lawfully established government in India, and the accused Narayan Sanyal is an active member of a terrorist organization, Communist Party of India (Maoist). Apart from this, assistance was given by the accused to terrorist organizations. The crime committed by the accused is of a serious nature. Currently, the manner in which terrorist and Naxal organizations are killing Central Security Forces, police officials/police personnel, simple tribals, and innocent people with barbarity/cruelty, has spread fear, terror, and unrest in the entire country, state, and society. Looking at that, this court does not find it appropriate to give the benefit of the Criminal Relief Act to the accused or by showing kindness by penalizing them with the minimum sentence.

124. Consequently, according to the aforementioned proven crimes the accused are sentenced with the punishment described in the following chart:-

Sr. No.	Penalty under Sections	Accused Pijush Guha	Accused Narayan Sanyal	Accused Binayak Sen
01.	02.	03.	04.	05.
01.	IPC Sec. 124 (A) along with 120(B)	Imprisonment for life and Rs. 5,000/- (Five Thousand rupees) monetary penalty and, on non-payment of monetary penalty, additional imprisonment of one year with hard labour	Imprisonment for life and Rs. 5,000/- (Five Thousand rupees) monetary penalty and, on non-payment of monetary penalty, additional imprisonment of one year with hard labour	Imprisonment for life and Rs. 5,000/- (Five Thousand rupees) monetary penalty and, on non-payment of monetary penalty, additional imprisonment of one year with hard labour
02.	Sec. 8(1) Chhattisgarh	2 years (two years)	2 years (two years)	2 years (two years)

	Vishesh Jan Suraksha Adhiniyam, 2005	imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour	imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour	imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour
03.	Sec. 8(2) Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005	1 year (one year) imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour	1 year (one year) imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour	1 year (one year) imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour
04.	Sec. 8(3) Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005	3 years (three years) imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour	3 years (three years) imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour	3 years (three years) imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour
05.	Sec. 8(5) Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005	5 years (five years) imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour	5 years (five years) imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour	5 years (five years) imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour
06.	Sec. 39(2) Unlawful	5 years (five years)	5 years (five years)	5 years (five years)

	Activities Prevention Act, 1967	imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour	imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour	imprisonment with hard labour and Rs. 1,000/- (One Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of three months with hard labour
07.	Sec. 20 Unlawful Activities Prevention Act, 1967	Not applicable (Accused Pijush Guha is not held guilty under Sec. 20 Unlawful Activities Prevention Act, 1967)	10 years (ten years) imprisonment with hard labour and Rs. 2,000/- (Two Thousand) financial penalty and, on non-payment of monetary penalty, additional imprisonment of six months with hard labour	Not applicable (Accused Dr. Binayak Sen is not held guilty under Sec. 20 Unlawful Activities Prevention Act, 1967)

The sentences of the accused Pijush Guha, Narayan Sanyal and Dr. Binayak Sen will run concurrently.

