

Note on the Binayak Sen Judgement

Raipur, 26th December, 2010

As you are aware 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 ninety two 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 CSPA 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 CSPA 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 CSPA 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 thirty three meetings in eighteen 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)**

3.1 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.

3.2 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.

3.3. 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.

3.4 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.

3.5 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).

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